

**RESPONSE OF THE COLUMBIA DEVELOPMENT AUTHORITY  
HB 2805 GRIEVANCE**

DATE: January 8, 2024

GRIEVANCE DATED: December 19, 2023

GRIEVANT: Kelly Doherty

GRIEVANCE SUMMARY: The Columbia Development Authority unlawfully convened a meeting on an unspecified date as part of a decision-making process later presented to the Port of Morrow Board. (Grievance attached as Exhibit A.)

The Board of the Columbia Development Authority (CDA) issues the following response:

1. CDA acknowledges receipt of the above-referenced grievance. No date is specified for the alleged unlawful public meeting of the CDA Board. The grievance is, therefore, legally insufficient.
2. The grievance mentions a meeting of 5 attorneys. On November 29, 2023, the CDA Executive Director and CDA attorney met with the attorney for each of the following entities: Morrow County, Umatilla County, the Port of Morrow, the Port of Umatilla and the Confederated Tribes of the Umatilla Indian Reservation. Each of these five entities is a party to the Intergovernmental Agreement that created the CDA in 1995 (hereinafter referred to as "IGA" and "IGA Parties", respectively). The IGA is attached to this Response as Exhibit B. The CDA Board is made up of one representative for each IGA Party, who is appointed by that Party's governing body. See IGA, Section 5.a. If the attorney meeting on November 29, 2023 is the subject of Ms. Doherty's grievance summarized above, the Board issues the response, below, in compliance with HB 2805.
3. The Board acknowledges that the CDA Executive Director and CDA attorney met with attorneys for the IGA Parties on November 29, 2023. The attorneys for each IGA Party are employed or retained by the IGA Parties' governing body and represent their clients, the public bodies of Morrow County, Umatilla County, the Port of Morrow, the Port of Umatilla and the Confederated Tribes of the Umatilla Indian Reservation. The attorneys who participated in the November 29, 2023 meeting do not represent any individual associated with or appointed by their clients' governing bodies to serve as board members for the CDA.
4. The purpose of the attorneys' meeting was to discuss the possible division of a CDA asset in a manner that might be acceptable to each IGA Party governing body. The five attorneys present for the IGA Parties were not representing the board members of the CDA, they were representing the IGA Parties and are akin to a staff member of the IGA Parties.

5. Any proposal regarding the division of assets would come before the CDA Board for CDA approval. No presentation to or deliberation by the CDA Board on this topic has yet to occur but, were it to occur, it will be during a regularly scheduled board meeting.
6.
  - a. In relevant part, ORS 192.610(7)(a) defines the term “Meeting” for purposes of Oregon’s Public Meeting Law as “. . . the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.”
  - b. ORS 192.610(5) defines “Governing body” as “. . . the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.”
  - c. ORS 192.610(6) defines “Public body” as “the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.”
  - c. As amended, ORS 192.610(1) now defines “Convening” as:
    - (a) Gathering in a physical location;
    - (b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants;
    - (c) Using serial electronic written communication among participants; or
    - (d) Using an intermediary to communicate among participants.
  - d. As amended, ORS 192.610(3) now defines “Deliberation” as “discussion or communication that is part of a decision-making process.”
7. The grievance alleges that:

“. . . the CDA convened . . . a non-noticed meeting in which deliberations were made. These distinct *deliberations* . . . were part of a decision making process that was presented to our Board at the Port of Morrow. The substance of the presentation clearly outlined that positions were taken, if not an informal vote. The vote may have been a vote of the attendees, but their associated representation with the individual board members is clear. This was not merely 5 attorneys meeting randomly. It was clearly using an intermediary to communicate among participants of the CDA Board.”
8. No quorum of the CDA Board “convened” in any of the ways now defined by ORS 192.610(1). While the grievance mentions an intermediary, attorneys for IGA Parties are not “intermediaries” for individual CDA Board members. They are akin to staff members for the IGA Parties. Meetings between staff members for various governing bodies are not prohibited by ORS 192.610 to 192.690

9. The IGA Party attorneys lack any delegated authority to make decisions for or recommendations to the CDA on policy or administration, nor was any alleged.
10. Attorneys for individual IGA Party governing bodies are not the attorneys for or representatives of individual CDA Board members. For this reason, the CDA denies that the facts and circumstances set forth in the grievance accurately reflect the conduct of the CDA governing body. The accurate facts and circumstances as determined by the CDA Board and the reasons why those facts and circumstances do not amount to a violation of ORS 192.610 to 192.690 are set forth above and in this response.
11. CDA staff will send a copy of the written grievance and this response to the Oregon Government Ethics Commission on CDA's behalf at the time CDA responds to Ms. Doherty's grievance on or before Tuesday, January 9, 2024.



Greg Smith  
Executive Director  
Columbia Development Authority  
PO Box 200  
Boardman, Oregon 97818  
541-481-3693

## EXHIBIT A

On Dec 19, 2023, at 11:16 AM, [odohertycattleco@machmedia.net](mailto:odohertycattleco@machmedia.net) wrote:

Columbia Development

Association Chair Kim Puzey,

This letter will serve as my grievance toward the Columbia Development Authority. I believe that the Columbia Development Authority held a meeting outside of the public meeting laws of the State of Oregon. It appears the CDA *convened ( House Bill 2805) ORS 192.610(1)(d)* a non noticed meeting in which deliberations were made. These distinct *deliberations ORS 192.610(2)(3)* were part of a decision making process that was presented to our Board at the Port of Morrow. The substance of the presentation clearly outlined that positions were taken, if not an informal vote. The vote may have been a vote of the attendees, but their associated representation with the individual board members is clear. This was not merely 5 attorneys meeting randomly. It was clearly using an intermediary to communicate among participants of the CDA Board.

It saddens me that the public business of the CDA Board is not being held in the view of the public. It bothers me that our regional representation as economic developers would violate ethics laws. This was a poor decision by whomever convened this meeting. I await your response.(HB 2805)

Kelly Doherty  
68812 Wilson  
Lane  
Boardman, OR. 97818

Ph # 541-571-5181

## EXHIBIT B

### AMENDED AND RESTATED

### COLUMBIA DEVELOPMENT AUTHORITY

### INTERGOVERNMENTAL AGREEMENT

This Amended and Restated Columbia Development Authority Intergovernmental Agreement (Agreement) is made and entered into, by and between the County of Morrow, the County of Umatilla, both political subdivisions of the State of Oregon, the Port of Morrow, the Port of Umatilla, both port districts and municipal corporations of the State of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), a Federally recognized Indian Tribe whose aboriginal territory included the Umatilla Army Depot Activity. This Agreement is entered into pursuant to the provisions of ORS 190.003 to ORS 190.085 and ORS 190.110.

This Agreement amends and restates that certain Umatilla Army Depot Reuse Authority Intergovernmental Agreement entered into on May 15, 1995 (Original Agreement), and changes the name of the intergovernmental entity created thereby to the Columbia Development Authority ("Authority").

#### 1. PURPOSE

The Columbia Development Authority (Authority) created by this Agreement shall not be an agency of the State of Oregon. The purpose of this Agreement is to establish the Authority as the means:

- a. to administer the transition of the Umatilla Army Depot (Depot) located in Morrow and Umatilla Counties from military to civilian use;
- b. to develop a final Umatilla Army Depot Land Reuse Plan (Reuse Plan) for approval by the Department of Defense;
- c. to oversee the development of an economic diversification strategy to address the adverse economic impacts associated with realignment of the Depot and to develop economic opportunities through transition of the Depot to civilian uses;
- d. to implement the final Reuse Plan;
- e. to coordinate all levels of assistance and intergovernmental efforts involving the Authority, the final Reuse Plan and transition to civilian use;
- f. to review and comment upon the environmental cleanup at the Depot so as to accommodate future civilian uses of the Depot; and
- g. to perform such other functions as may be necessary for implementation of the final Reuse Plan.

## 2. INITIATION DATE/LENGTH OF AGREEMENT

This Amended and Restated Intergovernmental Agreement (IGA) takes effect on the date fully executed by the parties and shall replace in full the Original Agreement. The Authority shall exist until terminated as provided herein; provided that the Authority shall exist for a period of at least seven years following any transfer of land pursuant to the Reuse Plan.

## 3. POWERS, AUTHORITIES, DUTIES

The Authority shall have the following powers, subject to any limitations set forth in this or other sections of this Agreement, and subject to any limitations imposed by other laws affecting the jurisdiction or powers of the parties to this Agreement:

- a. to make and enter into contracts and agreements with the Department of Defense or any other federal, tribal, state or local government agency, or private party, for purposes associated with depot realignment and reuse activities, including but not limited to contracts, caretaker arrangements, leases, and acquisition or disposition of real and personal property;
- b. to accept gifts, donations, property and grants from private and public sources for Authority purposes;
- c. to hire, appoint, discipline, or remove employees of the Authority and prescribe their qualifications and duties and fix their compensation; to contract for consulting, professional or management services for the Authority;
- d. to establish advisory boards and committees as needed;
- e. to issue revenue bonds under Oregon laws for the public purposes of this Agreement, but only after the governing body of each of the parties hereto holds a public hearing and approves by resolution or order the issuance of the bonds. The Authority shall not have the power to levy taxes or issue general obligations bonds;
- f. to hold, acquire, purchase, lease, sell, receive, give, exchange, or otherwise acquire and dispose of real or personal property, including but not limited to the Depot;
- g. to rent, manage, operate, construct, reconstruct, and maintain facilities and improvements of the Depot;
- h. to provide such transportation, utilities and related infrastructure and services for the Depot as the Authority deems appropriate;
- i. to make, pass or adopt resolutions, by-laws, orders or protocols which are necessary or convenient for the governance, management, operation and execution of the powers vested in the Authority and for carrying out the provisions of this Agreement;
- j. to prescribe by resolution or by-laws a system for business administration and create any and all necessary offices or positions associated with such a system;

- k. to develop, adopt and implement the Reuse Plan;
  - 1. to cooperate with and exchange services, personnel, and information with any federal, state, tribal, or local governmental entity or agency;
- m. to borrow and lend money and grant mortgages for debt obligations, incur debts, liabilities, or obligations, but, to the extent permitted by law, no debt, liability, or obligation of the Authority shall be a debt, liability or obligation, jointly or severally, of any party to this Agreement;
- n. to procure insurance against any loss in connection with its property and other assets, including any loans, in such amounts and from such insurers as it may determine appropriate;
- o. to have and exercise all rights and powers necessary to carry out the purposes and intent of this agreement, including any rights and powers incidental to or implied from the specific powers granted to the Authority by this agreement; and
- p. this Agreement and the creation of the Authority does not imply and shall not be construed as obligating the Authority or any of the parties to this Agreement to accept ownership or responsibility for any or all of the Depot property.

#### 4. ANNUAL REPORT

The Authority shall, in addition to any other required audit or reporting requirements, present an annual written program and financial report to the Morrow County Court and the Umatilla County Commissioners, to the Port Commissions of the Ports of Morrow and Umatilla, and the CTUIR no later than four months after the close of the Authority's fiscal year. The fiscal year for the Authority shall be July 1 through June 30 of the succeeding year.

#### 5. ADMINISTRATION

The Authority shall be governed by a joint board composed of representatives from each of the parties to this Agreement (Board).

- a. The Board shall consist of five members appointed as follows:
  - (1) One representative of Morrow County appointed by the Morrow County Court;
  - (2) One representative of Umatilla County appointed by the Board of Umatilla County Commissioners;
  - (3) One representative of the Port of Morrow appointed by the Port Commission;
  - (4) One representative of the Port of Umatilla appointed by the Port Commission; and

(5) One representative of the Confederated Tribes of the Umatilla Indian Reservation appointed by the Tribal Board of Trustees.

Each party may also appoint one alternate representative to serve in place of the appointed representative, as needed, during the term of the appointment.

b. Duly appointed members of the Board and alternates will serve for a term of four years and may be reappointed to successive four-year terms by the appointing body. If a vacancy occurs by resignation or otherwise, the appointing body shall appoint a member within sixty days to fill the unexpired term.

c. Three members of the Board shall constitute a quorum for the transaction of business. The Board shall seek consensus on all decisions; however, a majority vote of the Board for the purpose of taking an action requires the concurrence of at least three Board members at a meeting for which all members were provided written notice of the meeting and proposed action, and for which a quorum was present. Each member of the Board shall have one vote.

d. The Board and the Authority shall be subject to the requirements of the Open Meetings and Public Records and Public Contracting laws of the State of Oregon.

e. The Board shall meet regularly at such time and place as determined by the Board, but not less than every quarter. Special and emergency meetings and executive sessions may be called upon notice as provided in the Open Meetings Law.

f. The Board may establish advisory committees reflecting the interests of the region.

g. The Board may appoint such additional nonvoting members as it deems necessary. Additional nonvoting members, if appointed, shall not be included in determining whether a quorum is present.

h. The Authority shall maintain its books and accounts in accordance with sound accounting practices consistent with those used by Oregon Municipalities.

i. The Board may elect a Chairperson and Vice Chairperson from its members to serve for a term of two years. Members may be re-elected to serve additional two-year terms without limitation.

j. The Board shall select one of its member public entities to serve as the Fiscal Agent for the Authority. The responsibilities of the Fiscal Agent shall include but are not limited to:

(1) Keeping and maintaining accurate financial books and records on behalf of the Authority to account for all expenditures of funds;

(2) Receiving funds and making payments on behalf of the Authority, as authorized by the Board;



(3) Obtaining as may be required by the Board, or following the customary practices of the entity serving as Fiscal Agent, an independent audit conducted by a Certified Public Accountant;

(4) Providing access to books and records of the Authority for open inspection by the parties during business hours, upon reasonable notice; and

(5) If requested by the Board, providing employer services on behalf of the Authority, including making arrangements for payroll and any agreed upon benefits to employees of the Authority.

k. As may be requested by, and in cooperation with the Board, any member entity may provide services and support on behalf of the Authority including but not limited to marketing, staffing, project management, physical facilities, and administrative or professional services.

## 6. PROPERTY

a. Except as provided herein, all assets acquired by the Authority during the course of its operations under the terms of this Agreement shall be the assets of the Authority alone, and not of the Parties. The Board may transfer or distribute all or any part of the Authority's funds, property or assets. Upon termination of this Agreement any property, funds or assets acquired as a result of Authority activities shall be divided or distributed among the Parties in accordance with a decision of the Board.

b. It is expressly contemplated that the Authority will take ownership of lands transferred by the U.S. Department of Defense ("DOD") as part of the process of implementing the Reuse Plan. Any decision to sell or lease such lands from the Authority to another party (including but not limited to any party to this Agreement, private party, or other entity) shall require approval of the Board.

## 7. LIABILITIES

To the extent permitted by law, the debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority only, and not of any or all of the parties to this agreement.

## 8. RESERVATION OF POWERS

Powers of the Authority shall not be construed as restricting or limiting any of the parties hereto, individually or severally, from performing any governmental or regulatory powers or duties of the parties.

## 9. GENERAL PROVISIONS

a. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

b. Notwithstanding anything herein to the contrary, at such time as realty and improvements thereon shall be released from the Federal government to the jurisdiction of the Authority, excepting any real estate held in trust by the United States for the benefit of the CTUIR, all such realty and/or improvements situated east of the Umatilla-Morrow County line shall be subject to the comprehensive land use plan(s) and any zoning ordinances applicable to any other like property situated in Umatilla County. Likewise, all such realty and improvements situated west of the said county boundary, excepting any real estate held in trust by the United States for the benefit of the CTUIR, shall be subject to the comprehensive land use plan(s) and zoning ordinances of Morrow County.

d. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

#### 10. AMENDMENTS/TERMINATION/WITHDRAWAL

a. This Agreement may not be amended in any manner except by the written agreement of all of the parties to this Agreement.

b. Any party to this agreement may withdraw from participation in the Authority by giving written notice to terminate to all other remaining parties with an effective date of withdrawal not less than 60 days from the date of notice. Within 30 days following notice of withdrawal, the parties shall amend the Agreement as necessary to reflect the withdrawal.

c. This Agreement may be terminated and the Authority dissolved by a unanimous vote of the parties, provided, the Authority shall remain in effect and the Agreement may not be terminated sooner than seven years following an Economic Development Conveyance by the DOD. Prior to dissolution, the parties shall adopt by unanimous vote of the parties a plan for the disposition, division and distribution of any assets acquired by the Authority and the assumption of any outstanding indebtedness or other liabilities of the Authority by the parties.

d. This Agreement replaces and supersedes any other intergovernmental or other agreement relating to reuse and realignment of the Depot.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date last written below.

**SIGNATURES ON FOLLOWING PAGE**

COUNTY OF MORROW

By: *Serry K. Salmae*  
Its: *COUNTY JUDGE*  
Dated: *8/5/2014*

COUNTY OF UMATILLA

By: *William Elfring*  
Its: *Commissioner*  
Dated: *07/31/14*

PORT OF MORROW

By: *Larry Keaf*  
Its: *General Manager*  
Dated: *7-23-14*

PORT OF UMATILLA

By: *JH Turner*  
Its: *Commissioner*  
Dated: *8/12/2014*

CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION

By: *Larry Berlin*  
Its: *CHAIRMAN*  
Dated: *7-14-14*

COUNTY OF MORROW

By:

Its:

Dated:

PORT OF MORROW

By:

Its:

Dated:

CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION

By:

Its:

Dated:

COUNTY OF UMATILLA

By: *William J. Elfer*

Its: Chair, Board of Commissioners

Dated: July 9, 2014

PORT OF UMATILLA

By:

Its:

Dated:



COUNTY OF MORROW

COUNTY OF UMATILLA

By: Servy K. Gallman  
Its: MORROW COUNTY JUDGE  
Dated: 7/16/2014

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

PORT OF MORROW

PORT OF UMATILLA

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:  
Bobbi Childers by  
Theresa Crawford  
Morrow County Clerk  
Deputy Clerk



**C E R T I F I C A T E**

The undersigned, Gary Burke and N. Kathryn Brigham, hereby certify that they are the Chairman and Secretary, respectively, of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, and at a regular meeting of said Board of Trustees at the Board Chambers of the Nixyáawii Governance Center, Mission, Oregon, on the 14th day of July, 2014, a quorum of said Board was present and the following Resolution was regularly moved, seconded, and adopted by a vote of 6 for, 0 against, and 0 abstaining.

**R E S O L U T I O N**

**WHEREAS,** the Board of Trustees is the governing body of the Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) by the authority of Article VI, Section 1 of the Constitution and Bylaws of the Confederated Tribes, adopted on November 4, 1949 and approved on December 7, 1949, as amended; **AND**

**WHEREAS,** pursuant to Article VI, Section 1(a) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to represent the Tribes and to negotiate with Federal, State and local governments”; **AND**

**WHEREAS,** pursuant to Article VI, Section 1(b) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to manage all affairs of the Confederated Tribes, including the administration of tribal lands, funds, timber and other resources, under appropriate contracts, leases, permits and loan or sale agreements”; **AND**

**WHEREAS,** pursuant to Article VI, Section 1(e) of the Constitution and Bylaws, the powers of the Board of Trustees include the authority “to exercise any rights and powers heretofore vested in the Confederated Tribes, but not expressly referred to in this Constitution, or any powers that may in the future be delegated by an agency of local, state or Federal government”; **AND**

**WHEREAS,** the County of Morrow and the County of Umatilla, both political subdivisions of the State of Oregon, the Port of Morrow and the Port of Umatilla, both port districts and municipal corporations of the State of Oregon, and the Confederated Tribes (collectively, the “Parties”), entered into the Umatilla Army Depot Reuse Authority Intergovernmental Agreement on May 15, 1995 (the “Original Agreement”), which established the Umatilla Army Depot Reuse Authority, an entity tasked with developing a Land Reuse Plan for the Umatilla Army Depot (“Reuse Plan”); **AND**

**WHEREAS**, the Confederated Tribes intends to join with the other Parties in amending and restating the Original Agreement to establish the intergovernmental entity created thereby as an entity responsible for implementation of the Reuse Plan and to rename the intergovernmental entity to the "Columbia Development Authority"; **AND**

**WHEREAS**, the powers, authorities and duties of the Columbia Development Authority are described in the Amended and Restated Columbia Development Authority Intergovernmental Agreement ("Agreement"), attached as Exhibit 1; **AND**

**WHEREAS**, in entering into the Agreement, the Parties are acting pursuant to the provisions of ORS 190.003 to ORS 190.085 and ORS 190.110; **AND**

**WHEREAS**, the Board of Trustees reviewed the Agreement at a work session held July 2, 2014; **NOW, THEREFORE, BE IT**

**RESOLVED**, that the Board of Trustees supports the restructuring of the Umatilla Army Depot Reuse Authority as the Columbia Development Authority and authorizes the Board Chair to execute the Agreement on behalf of the Confederated Tribes; **AND BE IT FURTHER**

**RESOLVED**, that the Agreement shall be effective when signed by all Parties; **AND BE IT FINALLY**


**RESOLVED**, that this Resolution is effective immediately;

**AND**, that said Resolution has not been modified amended or repealed and is still in full force and effect.

**DATED** this 14<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Gary Burke, Chairman  
Board of Trustees

**A T T E S T:**

  
\_\_\_\_\_  
N. Kathryn Brigham, Secretary  
Board of Trustees

**RESOLUTION NO. 14-038**

**TOPIC: Amended and Restated Columbia Development Authority IGA**

**Department: Administration/OED**

**Exhibits: 1**

**Page 3 of 3**

<u>Name</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Leave</u>
Gary Burke , BOT Chairman				
Leo Stewart, BOT Vice Chairman				Travel
Aaron Hines, BOT Treasurer	X			
Kat Brigham, BOT Secretary	X			
Justin Quaempts, BOT Member	X			
Bob Shippentower, BOT Member	X			
Armand Minthorn, BOT Member	X			
Woodrow Star, BOT Member				Personal
Alan Crawford, General Council Chairman	X			