

February 25, 2020

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Dear Acting Director Vought and Board Members Styles, Phillips, Winstead, Rahall, and Hocker and Board Executive Director Bodner:

I write to request that the Office of Management and Budget (OMB) and the Public Buildings Reform Board (PBRB) reconsider and reverse their decision to close and sell the Federal Archives and Records Center located at 6125 Sand Point Way NE in Seattle, Washington (the National Archives at Seattle).

The decision is illegal and was made without consulting with local, state, or tribal officials. If OMB and PBRB had consulted with local, state, and tribal officials, you would have learned of the sad legacy of the land on which the archives facility is located and the deep historical significance of the records stored there. The Seattle facility houses a significant body of tribal and treaty records relating to the 272 federally recognized tribes in Alaska, Washington, Oregon and Idaho.<sup>1</sup> These records are regularly used to establish tribal membership. It also contains the original

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<sup>1</sup> <https://www.seattletimes.com/seattle-news/terrible-and-disgusting-decision-to-close-national-archives-at-seattle-a-blow-to-tribes-historians-in-4-states/>

copies of correspondence between Governor Stevens, Indian agents, and Tribal leaders during treaty negotiations in the mid-19th Century, as well as original drafts of the treaties themselves.<sup>2</sup>

In addition, the Seattle facility maintains 50,000 files related to the Chinese Exclusion Act of 1882, as well as records related to the internment of Japanese-Americans in World War II. These records, which are of significant regional importance, must remain in the Pacific Northwest.

Finally, residents of my state use the Seattle facility for a broad range of personal research. My late father, Murray Ferguson, spent many, many hours at the Seattle facility. I have heard from numerous Washingtonians who are outraged by your decision and the “process” which led to this outcome.

### **I. The Seattle Archives Building Was Built On Land That Had Been A Thriving Farm of an Interned Japanese-American Family**

“Those who cannot learn from history are doomed to repeat it.”<sup>3</sup> The history of the land on which the National Archives at Seattle is located reflects the nation’s sad history of internment of minorities and immigrants, a fact that does not appear to have been considered by either PBRB or OMB.

As documented by a now-retired senior NARA archivist,<sup>4</sup> the land on which the Seattle facility sits was once a thriving farm operated by the Uyeji family, who emigrated from Japan. In the decades leading up to WWII, the Uyeji family and their Japanese-American neighbors, the Takasugi family, lived and worked on the land.



Two members of the Uyeji family in their greenhouse during the 1930s and picture of the Uyeji family farm. Their home and farm were located on the site of the current Seattle Archives facility. Photos from Densho, Uyeji Collection.

<sup>2</sup> <https://www.documentcloud.org/documents/6671516-National-Archives-Puyallup-and-Port-Gamble.html>

<sup>3</sup> George Santayana.

<sup>4</sup> <http://www.discovernikkei.org/en/journal/2013/6/20/nara-seattle-1/>

In May 1942, when the federal government ordered the forced evacuation of residents of Japanese ancestry in the area, the Uyeji family and their Japanese-American neighbors were removed from their home and family farm. The Uyeji family was initially interned at the Pinedale Assembly Center in central California and then later at the Tule Lake Relocation Center in northern California. The Uyeji family was never able to return to their Seattle home.



Instead, while the family was interned, the land was sold and then subsequently condemned by the U.S. Navy in 1945 in order to build the warehouse that is now used by NARA. Since 1963, the warehouse has been a NARA facility, and it currently houses records about the Uyeji family farm – including a key to the front door of the family’s former home – as well as records related to the internment of Japanese-Americans in the 1940s. The connection between the land on which the Seattle facility sits and the records it holds, further underscores the intense regional importance of the facility.

The Uyeji family greenhouse in 1944, two years after the family was forced to abandon it during their internment. This photo is located at the Seattle Archives.

If closure of the facility proceeds, these records will be transferred to facilities in Kansas City, Missouri, and Riverside, California. According to local archivist organizations like *Densho*, which preserve and share the history of the WWII incarceration of Japanese-Americans, physically moving these archives would impede local families’ research into their roots and genealogy.<sup>5</sup> These records are particularly relevant to families whom the federal government forcibly removed from the Pacific Northwest, and those seeking to fully understand the impact of internment.

I am deeply troubled that PBRB did not have any clear process for obtaining comments and input on its impending decision whether to close a building with so much local and regional history. This flatly contradicts the PBRB’s stated goal of transparency.

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<sup>5</sup> <https://iexaminer.org/concerns-raised-about-closure-of-national-archives-in-seattle-which-contains-chinese-exclusion-act-records/>

## II. The Tribal Records Stored At The Archives Are Essential Records That Tribes in the Pacific Northwest Must Be Able To Easily Access

Your agencies also wholly failed to consider the impact that closure of the Seattle facility would have on tribes and native corporations in the Pacific Northwest, notwithstanding your agencies' obligation to do so under Executive Order 13175.

As I am sure you are aware, Executive Order 13175 seeks to “. . . establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, [and] to strengthen the United States government-to-government relationships with Indian tribes . . . .”<sup>6</sup> Here, the decision of your agencies to sell the National Archives at Seattle and relocate its records thousands of miles away will cause significant and immediate harm to the tribes and native corporations in this region.

As John Hollowed, legal adviser to the Northwest Indian Fisheries Commission, told the press following a meeting with NARA staff after closure of the Seattle facility was announced, “Everything of value to the tribes has been taken away by the federal government. Their land, their right to fish, and the worst travesty was taking away their kids.”<sup>7</sup> OMB and PBRB are now further perpetuating these harms by depriving local tribes even of access to critical historical documents on these and many other issues.



Photographs of Metlakahtla (Tsimshian) Children in Metlakahtla, Alaska.  
Available at the National Archives at Seattle (Box 276).

<sup>6</sup> <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>

<sup>7</sup> <https://www.seattletimes.com/seattle-news/frustrated-tribes-finally-get-hearing-with-national-archives-about-sand-point-facility-closure/>

The National Archives at Seattle houses a significant body of tribal and treaty records relating to the 272 federally recognized tribes in Alaska, Washington, Oregon and Idaho.<sup>8</sup> These include records from Bureau of Indian Affairs offices and Indian agencies and schools in Alaska, Idaho, Oregon, and Washington.<sup>9</sup> The National Archives at Seattle also houses records transferred to Seattle when the National Archives facility in Anchorage closed in 2014. The collection that moved from Alaska includes “everything from village census records from before statehood to histories of fur seal hunts in the Pribilof Islands.”<sup>10</sup>

As Chairman Jeromy Sullivan of the Port Gamble S’Klallam Tribe and Chairman David Bean of the Puyallup Tribe of Indians noted in letters to Acting Director Vought on January 23, 2020, tribes rely on physical access to critical historical documents and, as a result, sale of the Seattle facility will have a “profound, negative and irreparable impact.”<sup>11</sup> As Chairman Bean explained, the facility “houses critical documents associated with litigation that document the Tribe’s effort to protect our treaty rights and territory.” *Id.* Chairman Sullivan similarly explained that “[t]he facility also houses critical and hard-to-reproduce historical information related to the area tribes.” *Id.* Indeed, tribal members use NARA records for scores of different reasons, including to establish tribal membership, demonstrate and enforce tribal rights to fishing and other activities, trace their lineage and ancestry, and access native school records. If these historical records are removed from the Pacific Northwest, many tribal members will effectively be denied access to them and will be prevented from demonstrating and enforcing these important rights. Neither OMB nor PBRB seem to have given any consideration to the critical role that the National Archives at Seattle serves in preserving this cultural heritage and community identity.

The decision of your agencies not to meet with or collaborate with local tribal officials as required by Executive Order 13175 and to wholly ignore the impact that removing tribal records from the region would have on tribes located in the Pacific Northwest is inexcusable and unacceptable.

### **III. The Archives Stores Critical Records Related To The Chinese Exclusion Act**

The National Archives at Seattle also contains 50,000 case files related to the Chinese Exclusion Act of 1882, which was originally passed to limit the number of Chinese laborers entering the United States. Individuals applying for entry or re-entry into the United States under the Chinese Exclusion Act had to go through an extensive application process. The Seattle NARA facility has case files for individuals who entered the United States through ports in Portland and Seattle as well as individuals who entered through ports that were managed by officials in Seattle.<sup>12</sup>

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<sup>8</sup> <https://www.seattletimes.com/seattle-news/terrible-and-disgusting-decision-to-close-national-archives-at-seattle-a-blow-to-tribes-historians-in-4-states/>

<sup>9</sup> <https://www.archives.gov/seattle/finding-aids/bia-subject-guide>

<sup>10</sup> <https://www.alaskapublic.org/2014/06/10/national-archives-departure-impacts-broad-community/>

<sup>11</sup> <https://www.documentcloud.org/documents/6671516-National-Archives-Puyallup-and-Port-Gamble.html>

<sup>12</sup> <https://www.archives.gov/seattle/finding-aids/chinese-exclusion-act>



Photograph from the Chinese Exclusion Act case file of Soong May Ling (National Archives at Seattle, RS Case File 1483). As an adult, Soong May Ling, also known as Madame Chiang Kai Shek, played a role in the repeal of the Chinese Exclusion Act.

The Seattle facility's case files include identification photographs, biographical information, interrogation notes, copies of federal and local court records, as well as personal letters and photographs. *Id.* They have been a critical resource to Chinese Americans looking for information about their ancestors.<sup>13</sup> As one individual who successfully mapped together his family history with the help of NARA Seattle staff explained, "[i]t's all there on paper, so you can literally recreate a picture of the village and the family tree through these documents."<sup>14</sup>

To help facilitate access to these records, there is a dedicated staff of local volunteers at the Seattle facility working to index the Chinese Exclusion Act case files.<sup>15</sup> Indeed, the hard work of these NARA Seattle volunteers is profiled in a *Seattle Times* video, which shows their efforts in making these files more readily accessible to the public.<sup>16</sup> But removing these files from the Pacific Northwest would end this work and make local access to these critical historical files impossible. Once again, your agencies failed to give any consideration to the impact your decision to close the Seattle archives would have on access to records of significant regional import.

#### **IV. OMB And PBRB Acted In Violation Of FASTA**

Your decision also should be reconsidered and reversed because it suffers from numerous legal deficiencies. First, OMB did not satisfy even its most basic statutory obligations under Section 11 of FASTA, including the requirement that it work with GSA to develop and circulate standards and criteria for the PBRB to use in evaluating potential properties for sale. As even PBRB itself concedes in its report, "[u]nfortunately, the PBRB did not benefit from the Section 11 FASTA directive that OMB, in consultation with GSA, develop standards and criteria to use in evaluating agency submissions and making recommendations to the PBRB." PBRB High Value Assets

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<sup>13</sup> <https://www.kuow.org/stories/first-panic-then-a-battle-to-keep-the-national-archives-in-seattle>

<sup>14</sup> <https://iexaminer.org/concerns-raised-about-closure-of-national-archives-in-seattle-which-contains-chinese-exclusion-act-records/>

<sup>15</sup> <https://www.archives.gov/seattle/volunteer#profiles>

<sup>16</sup> <https://www.seattletimes.com/video/5978784223001/its-like-reading-someones-life-seattles-chinese-exclusion-act-files>

Report at 10 (the PBRB Report).<sup>17</sup> PBRB thus made its recommendations outside the statutory process contemplated by Congress.

Indeed, as the Board further admits, “[t]o the best of PBRB’s knowledge, the standards and criteria were *never* developed.” *Id.* (emphasis added). OMB’s failure on this point is particularly difficult to understand given that FASTA became law in December 2016. OMB and GSA thus had nearly *three years* to develop and circulate the criteria prior to the PBRB’s issuance of recommendations. OMB’s complete failure to satisfy Congress’s directive to promulgate these standards was arbitrary and capricious and in violation of the law.

Second, as evidenced by the PBRB Report, the agency’s process for evaluating data and identifying appropriate properties for sale was highly problematic even apart from its failure to receive or consider statutorily-mandated standards and criteria for decision-making. For example, although FASTA became law in December 2016, it was not until almost *two and a half years later* in May 2019 when even a minimum quorum of five members were appointed to the agency. And, despite the agency’s short, six-month window for identifying and recommending high-value properties for sale, the PBRB Report makes clear this process was similarly problematic:

- The Board’s members “did not have Government ID’s for over 2 months after being sworn in.” *Id.* at 12.
- The PBRB “had no staff for the first 4 months” of its brief, six-month decision-making period, leaving “substantial work to be accomplished in just 8 weeks.” *Id.*
- The Board further concedes that it “faced, and continues to face, challenges in gathering the data needed to support decision making for complex real estate transactions.” *Id.*
- Finally, the Board also acknowledged “extraordinary issues with data gaps and data integrity” in the data used for its decision making. *Id.* at 13. As one witness testified at a PBRB public meeting, the Board’s data suffered from numerous problems and might, for example, incorrectly show a federal building was located “in the middle of an ocean.” PBRB June 17, 2019 Public Meeting at 107.<sup>18</sup>

Third, state and local officials were denied the opportunity to present information and data to the PBRB on the importance of maintaining the archives facility in Seattle. *See* FASTA, PL 114-287, 130 Stat. 1463, § 12(d)(1). The Board conducted no consultation with state and local officials prior to recommending the facility for sale and thus likely acted with no knowledge of the importance of the land and the records housed there. *Id.* § 12(d), (2). Nor were any public hearings held in Washington, Idaho, Oregon, or Alaska, where members of the public could have provided input. *Id.* § 12(f). Thus, there was no meaningful consideration of the significant negative impact closure of the National Archives at Seattle will have on the “public access to agency services.” *Id.* § 11(b)(3)(J).

Shipping these records to Riverside or Kansas City will effectively *eliminate* public access to the records, creating insurmountable obstacles for local tribal members and other affected

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<sup>17</sup><https://www.pbrb.gov/assets/uploads/20191227%20High%20Value%20Assets%20Report%20as%20Required%20by%20FASTA.pdf>

<sup>18</sup> [https://www.pbrb.gov/assets/uploads/Public%20Meeting%20Transcript%20June%202017%202019%20\(1\).pdf](https://www.pbrb.gov/assets/uploads/Public%20Meeting%20Transcript%20June%202017%202019%20(1).pdf).

communities in the Pacific Northwest seeking access to critical historical resources. This decision, which was based on incomplete and flawed information and was made outside the statutory requirements of FASTA, is ultra vires and should be reconsidered and overturned.

## **V. Conclusion**

I urge you to reconsider the sale of the National Archives at Seattle. Reconsideration is warranted in light of PBRB's and OMB's failure to consider the unique historical nature of the archives location and the import the records hold for tribes and native corporations in the Pacific Northwest as well as the local Chinese-American and Japanese-American communities.

In addition, reconsideration is also required in light of the Board and OMB's indefensible choice to ignore Executive Order 13175 and to rely on flawed and incomplete data.

Although I hope to avoid litigation, my team is preparing to take legal action to defend access to these important historical records and prevent your agency's unlawful decision from taking effect. Please respond no later than close of business on Wednesday, March 18, 2020 with your assurance that the records housed at the Seattle facility will remain in Washington State. I am open to meeting with you between now and March 18<sup>th</sup> in order to have a direct conversation about resolving these issues and keeping these records in Washington state.

Sincerely,

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Washington State Attorney General

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