



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 14, 2022

Sent via USPS Mail

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: October 11, 2022 Energy Development Summit

Dear Governor Inslee:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") regarding our October 11, 2022 summit to discuss tribal concerns regarding green energy siting. We appreciated the opportunity to discuss this important matter with you directly. During our time together, you asked how we can move forward in a better way. In response, please see the guiding principles and specific requests below.

Washington State Agencies:

Consultation. Consultation must be more than checking a box for the state agencies and developers on project applications. Project applicants must be required to learn about the development impacts of projects that they propose and state agencies should initiate early engagement with the appropriate tribal entity. Potentially harmful projects that have been identified through initial consultation with the regulatory agency need to be paused until consultation is completed. It is unacceptable for Washington agencies to advance development applications while the tribal governments are consulting in good faith.

Increased Notice. Current notice and review deadlines are inadequate to get tribal consideration on all the project reviews. Tribal staff need one year advance notice with sufficient-enough detail to determine if a project footprint is likely to harm tribal resources. Time for archaeological review or survey is needed for projects in previously undeveloped areas that also have a high propensity for environmentally and culturally significant resources.

Avoidance First. Some classes of resources are too endangered or historic to be replaced. State entities should regulate for avoidance first, before getting to mitigation of resource loss from project development.

DAHP Training and Authority. Executive agencies, specifically the Departments of Natural Resources, Fish & Wildlife, Transportation, and Ecology need more training and collaboration with the state Department of Archaeology & Historic Preservation ("DAHP"). State entities need to be empowered to screen and reject more development proposals, or hold county permitting staff accountable for avoidance-first

policies, when DAHP's archaeological database already identifies important cultural resources.

Surveys. Permitting agencies should always require site cultural surveys to enforce avoidance before mitigation strategies. State entities should utilize the DAHP confidential inventory of recorded archaeological sites to implement avoidance early or screen and reject project applications.

Developer Responsibility. State agencies should create an enforcement structure that requires project applicants to take responsibility for identifying creative solutions to concerns and needs raised during the application review process, instead of letting developers assume a property right to destroy environmental and cultural properties.

Indian Country Economic Development. Priority should be given for developers who partner with tribes on energy development to ensure those projects are sited responsibly, and to ensure that Indian Country receives the benefit—rather than the burden—of these new energy resources.

Cumulative Impacts and Collective Planning:

Cumulative Impacts. The Governor's Office should initiate a study of the cumulative impacts of green energy projects to cultural and natural resources, and how to decrease those cumulative impacts through different forms of green energy development.

Map for Infill. Use mapping and permitting to identify and favor energy development in urban growth areas as opposed to development-sprawl in sensitive environmental and cultural areas. Mapping of areas for potential energy like solar should prioritize the built-out environment like roof tops, parking lots and, over irrigation canals like the Yakama Nation's current project that was presented during our summit.

No Transmission Sprawl. Developers utilize state-subsidized transmission corridors to speculate on the development of new energy sites. Do not authorize the construction of new transmission corridors through areas that need to be protected for significant environmental and cultural reasons.

New Legislation or Amendments to Existing Legislation:

Adequate and proportional funding. State and tribal staff levels for necessary environmental and cultural resource reviews need to be funded proportional to the level and workload of staff to address the proposed development activity. Developers often use archaeologists unfamiliar with cultural resource compliance requirements in Washington, making it even harder to track and protect the Yakama Nation's resources. Increase funding to Tribes, DAHP, EFSEC, and WDFW consistent with the volume of project applications and review deadlines. Identify available funding from federal, state, and utilities sources.

Early Notice. Proposed developments need to provide early notice of projects to tribes one year in advance with enough project specifics that environmental and cultural site review can discern the impacts from construction.

Cultural Information Protection. EFSEC and the Counties often push consultation onto the project proponents, who gather tribal cultural information and then publish it in public forums without permission. Stronger protections for cultural resource information are needed throughout the energy siting and development process. There should be penalties for disclosure of this sensitive information.

DAHP's Authority. DAHP needs stronger authority to require plans for prevention of destruction of known sites in the database, and authority to enforce protection plans. These plans should be developed collaboratively with the impacted Tribe before siting and permitting occurs. DAHP monitoring plans that are developed with the impacted Tribe needs to be included as a permit condition prior to the permit approval.

EFSEC. Permits for projects going through the Energy Facility Site Evaluation Council ("EFSEC"), are not currently required to consider environmental justice issues under the HEAL Act. This Agency must be mandated to follow the HEAL Act. The EFSEC status-quo for Tribal Consultation is currently insufficient based on similar concerns raised above in this letter.

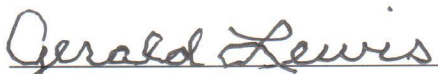
Further, in order to complete regulatory review in an organized fashion, EFSEC must take the role of a lead agency. It must collect and distribute notices, reports, facilitate clear comment periods, collect comments, consider comments, and consult with affected tribes. The EFSEC process has lacked a lead agency role, causing confusion and inappropriately pushing consultation responsibilities to the project proponents. In order to facilitate this lead agency role, EFSEC needs to have a clear understanding of confidentially, particularly as the law allows for cultural resources in Washington.

HEAL Act. The HEAL Act requires certain state agencies, but not EFSEC, to consider the environmental health disparities map currently being developed by the Department of Health, and how the proposed action affects overburdened communities and vulnerable populations, including contamination to traditional foods. Although the Yakama Nation is one of these populations, there was a lack of Tribal Consultation in the development of this Map. Important health impacts specific to Native communities are overlooked and traditional First Foods, including Treaty-reserved fish, game, berries, and roots, continue to be lost to development pressure. Usage of this Map should be stayed until adequate consultation occurs.

Thank you again for the opportunity to meet and discuss how we can better work together to support responsible green energy development. For Yakama Nation, responsible development does not ask us to sacrifice our sacred Treaty-reserved resources. We know this is possible if the state and its agencies work with us through adequate notice, true consultation, and shared principles of avoidance and protection for these resources.

I am hopeful that our meeting encouraged your consideration of the above issues of concern and suggestions for changes, so that our Governments can address the challenges to our Climate together for all future generations.

Sincerely,


Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

CC via Email:

Chief of Staff Jamila Thomas
Governor General Counsel Katheryn Leathers
Executive Policy Director Nick Streuli
Governor's Office of Indian Affairs Director Craig Bill
Director Laura Watson, Washington Dept. of Ecology
Director Kelly Susewind, Washington Dept. of Fish and Wildlife
Director Allyson Brooks, Washington Dept. of Archaeology & Historical Preservation
Senator Patty Murray
Senator Maria Cantwell
Congressman Dan Newhouse