



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 1, 2023

Sent via Electronic Mail

Sonia Bumpus, EFSEC Director
ENERGY FACILITY SITE EVALUATION COUNCIL
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RE: DRAFT ENVIRONMENTAL IMPACT STATEMENT – HORSE HEAVEN WIND PROJECT

Dear Ms. Bumpus:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) regarding the Energy Facility Site Evaluation Council’s (“EFSEC”) Draft Environmental Impact Statement (“DEIS”) for the proposed Horse Heaven Wind Project (“Project”), published December 19, 2022.¹ Yakama Nation has a significant interest in ensuring that EFSEC complies with the State Environmental Policy Act (“SEPA”) and other applicable laws in evaluating the Project and its environmental impacts.²

Yakama Nation appreciates the degree to which EFSEC considered Yakama Nation’s comments and concerns in preparation of the DEIS. Yakama Nation concurs with EFSEC’s findings that the proposed action will meaningfully contribute to the cumulative impacts on historic and cultural resources, visual aspects, and wildlife in the Project proximity.

Nonetheless, Yakama Nation is broadly concerned that the DEIS lacks sufficient information and a comprehensive analysis, as required by SEPA. At times the DEIS contains inaccurate or conflicting information concerning environmental impacts to wildlife and cultural resources. Once those resources are destroyed, they are lost forever. We are also concerned that the only alternative addressed by the DEIS is a “no action” alternative, rather than a meaningful consideration of adjusting or limiting this 72,428 acre project.

Given the inadequacy of the DEIS’s disclosure and analysis of likely environmental impacts, EFSEC should conduct another round of drafting and public comment before moving forward in finalizing the environmental impact statement or further evaluating the Projects suitability and compliance with applicable law through the adjudication process.

¹ In submitting this comment, Yakama Nation does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty with the Yakama of 1855 (12 Stat. 951). Furthermore, submission of this comment does not substitute for formal consultation with the Yakama Nation Tribal Council.

² These comments are based upon information presently available to Yakama Nation. Should additional information become available, our assessment and comments may be revised.

I. Information Required by SEPA.

SEPA-mandated environmental reviews are meant to avoid environmental degradation in permitting decisions, as well as preserve and even enhance environmental quality by requiring that actions of state and local government agencies be informed by sufficient environmental information.³ The purpose of an environmental impact statement is to “ensure that SEPA’s policies are an integral part of the ongoing programs and actions of state and local government.”⁴ The DEIS was developed because ESFEC determined that the Project meets the SEPA threshold for a determination of significance. Therefore, the DEIS is required to disclose the likely environmental impacts of the Project and any proposed mitigation or alternatives. While SEPA does not compel environmentally-wise choices, the DEIS must provide EFSEC with “sufficient information to make a reasoned decision.”⁵

The DEIS must contain a “reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency’s decision.”⁶ The analyses shall be an “. . . impartial discussion of significant environmental impacts . . .” and “. . . inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.”⁷ The individual characteristics of proposed development will determine the scope of the environmental analysis and significant impacts may be direct, indirect, or cumulative.⁸ The nature and extent of the environmental analysis to be included in an environmental impact statement may be tailored to fit the specific proposal, but must be more than mere disclosure, rationalization or justification; it is to be used by agency officials in making decisions on proposed actions in conjunction with other relevant materials.⁹

II. Impacts to Cultural Resources Generally.

Yakama Nation appreciates the degree to which EFEC has considered Yakama Nation Cultural Resource Program’s (“CRP”) comments and concern in preparation of the DEIS. If approved, this Project will deeply impact the environment, causing harm to Yakama Nation’s Traditional Cultural Properties (“TCP”) and other cultural resources. Yakama Nation concurs with EFSEC’s findings that the Project will meaningfully contribute to the cumulative impacts on historic and cultural resources, and visual aspects. All of these impacted resources are aspects of the cultural landscape, not only integral to the lands which comprise the Project footprint, but directly interwoven with the cultural history and landscapes of the surrounding region.

³ RCW §§ 43.21C.010, 43.21C.020, 43.21C.030(2).

⁴ WAC § 197-11-400(1).

⁵ *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn. 2d 356, 362 (1995).

⁶ *Gebbers v. Okanogan County Pub. Util. Dis. No. 1*, 144 Wn. App. 371, 375 (2008), *review denied*, 165 Wn.2d 1004 (2008) (internal citations omitted).

⁷ WAC § 197-11-400(2).

⁸ WAC §§ 197-11-060(2)(a), 197-11-792.

⁹ WAC § 197-11-400(4).

Yakama Nation CRP has communicated to both EFSEC and the Project's developer Scout Clean Energy, LLC ("Proponent") that this proposed Project will directly harm a complex and irreplaceable TCP landscape, inclusive of legendary, monumental, and traditional use resources. Areas of concern include, but are not limited to, the ridgeline of Chandler Butte, locations near Webber Canyon, the ridge slope east of Webber Canyon, and Jump Off Joe at the eastern extent of the Project's proposal.¹⁰ While it would not alleviate all impacts, CRP shared sensitive cultural information in good faith with the Proponent and requested that the Proponent remove or relocate a small number of towers in particularly problematic areas. The Proponent refused, citing confidential economic factors. The Proponent's response was particularly disappointing as early discussions over many years led Yakama Nation to believe that our concerns would be meaningfully considered.

Several TCPs that are imperiled by this Project have been documented by CRP in a formal study commissioned by United States Bureau of Land Management, and are considered eligible to the National Register of Historic Places (NRHP).¹¹ One of these TCPs spans both federal lands and private lands, and carries with it integral aspects of the viewshed and precontact archaeological material. For many years, Yakama Nation has advocated for the protection of these integral components of this TCP, voicing our concern to land management agencies and to the Proponent through CRP. The construction of this facility at this location will affect the TCP across jurisdictional boundaries, causing detrimental impacts to portions of the TCP located on both private *and* federal lands. Federal lands carry additional protections for tribal rights guaranteed by the United States, and it is of the utmost importance that public lands remain accessible in order for Yakama Nation Members to exercise Treaty-reserved rights.¹²

Yakama Nation continues to advocate for the avoidance of archaeological resources, particularly precontact archaeological resources. These carry a high cultural value to Yakama Nation, and are critically important to the understanding of archaeology in our region. Some precontact archaeological resources on this landscape are aspects of TCPs, including but not limited to 45BN261, which is associated with other nearby sites and located within the project corridor. We continue to request the protection of integral aspects of these TCPs, including but not limited to viewshed concerns. Without on-site accommodation to preserve these resources, these places will be lost. Access agreements, off-site mitigation, training, monitoring, or financial contribution do not "mitigate" these damages. Yakama Nation simply seeks protection, preservation, and perpetuation of these resources. We ask that our history and culture be respected in the place it was meant to be since time immemorial. The mitigation proposed in the DEIS falls far short.

¹⁰ Specific areas of concern are based on information available at this time. Due to the size and scale of this project, collection of cultural data is ongoing. Avoidance of these areas will not relieve all concerns or address all impacts. Yakama Nation intends to engage in direct consultation with EFSEC, as requested in Kathleen Drew's January 5, 2023 letter, to better communicate the sensitive and complex nature of Yakama Nation's cultural resources in the Project area.

¹¹ Further location information and other sensitive data can be provided in confidential consultation between Yakama Nation, EFSEC, Washington State Department of Archaeology and Historic Preservation ("DAHP"), and the Bureau of Land Management.

¹² Yakama Nation has reserved its inherent rights to exercise cultural, religious, and subsistence practices in this area. *See* Treaty with the Yakama, U.S. - Yakama Nation, June 9, 1855, 12 Stat. 951.

III. Specific Impacts to Cultural Resources.

a. *Cultural Resources: Affected Environment*

- The DEIS contains multiple discrepancies regarding the number and types of sites identified.¹³ While these discrepancies may be the result of the manner in which the sites are discussed (as described with temporal association, etc.), more clarity is required to ensure that Yakama Nation understands the information and can respond appropriately. This confusion is heightened where the DEIS notes 27 sites that were left unevaluated, yet does not note the temporal or phase association of these sites.¹⁴
- Yakama Nation is concerned the archaeological surveys did not include systematic subsurface testing and therefore there is a greater “unknown” element within the affected environment than if this had been completed during phase I surveys. The lack of systematic subsurface testing during archaeological surveys likely resulted in a failure to identify the true extent and nature of these resources. This landscape contains previously-documented Pleistocene and paleontological components – some of our most ancient sites and resources.
- Correspondence tracking was limited to the subject of cultural resources, and not documented for any other science within the affect environment section of this DEIS.¹⁵ It is apparent that the correspondence documentation is meant to mirror, or demonstrate compliance with, consultation requirements of cultural resources laws and regulations. This is not appropriate as the Proponent cannot assume or perform consultation duties required by local, state, or federal agencies under the law. The contents and subject of any discussion the Proponent had with Yakama Nation should be considered confidential and should not be reported without our prior consent. Reports submitted by Historical Research Associates, on behalf of the Proponent, were not considered formally submitted¹⁶ and were reviewed as a courtesy.

¹³ DEIS at 3-149, § 3.9.2.1 (“Five precontact period resources, including two archeological sites and three isolates have been identified in the Area of Analysis for the Project.”); *id.* at 3-141, § 3.9; *id.* at 3-150 (“Thirty-seven historical archaeological resources have been identified in the Area of Analysis during the pedestrian survey phase, comprising 27 historic sites and 10 isolates.”); *id.* at 3-156, § 3.9.5 (“In summary, 48 historic and cultural resources have been identified within the Area of Analysis, including four pre-contact period resources, 37 historic-period resources, and seven architectural resources.”)

¹⁴ *Id.* at 3-141, § 3.9. (“In total, HRA recorded 41 archaeological resources, including 29 sites and 12 isolates. Ten isolates and two sites date to the historic period and have been recommended as not eligible for the NRHP. Two isolates date to the precontact period. The remaining 27 archeological sites are unevaluated for the NRHP.”) (Internal citations omitted).

¹⁵ *Id.* at 3-146-7, Table 3.9-1.

¹⁶ Reports are formally submitted by a lead local, state, or federal agency under specific regulatory nexus identifying report status and consulting parties.

b. Cultural Resources: Analysis of Potential Impacts and Mitigation

- Yakama Nation requested avoidance of all archaeological resources,¹⁷ avoidance of precontact archaeological sites,¹⁸ protection of precontact material from excavation disturbances under permit with the Department of Archaeology and Historic Preservation,¹⁹ and avoidance of precontact sites.²⁰ While Yakama Nation appreciates precontact isolates being considered a “high magnitude” rating due to our request for avoidance, this rating should be applied to all precontact sites.²¹ Yakama Nation disagrees that impacts on NRHP’s unevaluated archaeological resources should be considered “medium magnitude.”²² As precontact archaeological sites do not require NRHP evaluation under RCW Chapter 27.53, this DEIS impact rating places the magnitude of disturbance of precontact sites below some historic resources and precontact isolates, which were both given a “high magnitude” rating.²³ This is counter intuitive and does a disservice to these resources.
- A high magnitude rating for TCPs should also be based upon the extreme cultural importance that these sites carry.²⁴ They are integral to the continuity of a living culture.
- Yakama Nation previously requested full avoidance of archaeological material, *particularly* precontact resources.²⁵ The DEIS mischaracterizes Yakama Nation’s avoidance request by limiting it to precontact resources.²⁶
- The likelihood of impact to unknown archaeological resources should be considered “probable” as initial archaeological surveys did not include systematic subsurface testing.²⁷ Due to the lack of subsurface testing, there is a heightened potential for the Project footprint to contain archeological material that was not identified by survey.

¹⁷ CRP letter to Sonia Bumpus, EFSEC Director, EFSEC, March 2, 2021.

¹⁸ CRP letter to Dave Kobus, Project Manager, Scout Green Energy LLC, February 22, 2019.

¹⁹ CRP email to Lance Wollwage, Assistant State Archaeologist, Department of Archaeology and Historic Preservation, October 29, 2021.

²⁰ CRP email to Amy Moon, Site Specialist Lead, EFSEC, December 7, 2021.

²¹ *Id.*

²² DEIS at 4-279, § 4.9, Table 4.9-2 (“Impacts on archeological resources that are unevaluated for inclusion in the NRHP fit the criteria for medium magnitude.”)

²³ *Id.* at 4-280.

²⁴ *Id.* at 4-280, § 4.9, Table 4.9-2 (“[P]recontact isolates have an elevated resource sensitivity, because the Confederated Tribes and Bands of the Yakama Nation has requested avoidance, and therefore, resources are provided a high magnitude rating in this analysis.”)

²⁵ *Id.* at 4-281 (“[T]he Yakama Nation has requested avoidance of precontact isolates.”)

²⁶ CRP letter to Sonia Bumpus, EFSEC Director, EFSEC, March 2, 2021.

²⁷ See “Unknown Archeological Resources and Architectural Resources” sections and associated text. DEIS at 4-286, Table 4.9-3; *id.* at 4-293, Table 4-9-4; *id.* at 4-296, Table 4.9-5; *id.* at 4-300, Table 4.9-6; *id.* at 4-304, Table 4.9-7 (Likelihood of impact of construction on unknown archeological resources and architectural resources is currently designated as “Feasible”).

- Construction Impacts to TCPs should be considered “*unavoidable*.”²⁸ This proposal will construct a massive wind and solar facility on a traditionally important landscape. Construction is the act that will destroy that finite and valued place. As long as the Proponent moves forward with the Project’s construction, impacts are unavoidable.
- Operational Impacts to TCPs should be considered “*unavoidable*.”²⁹ After construction, a massive wind and solar facility will exist upon a traditionally important landscape. It will forever alter this landscape, harming integral aspects of the TCPs, impeding both access and use. This constitutes ongoing harm to the resources’ *aspect* and *condition* through the life of the facility.
- A 20-meter buffer is not adequate protection for archaeological resources. A minimum buffer should be 30-meters.³⁰ For certain resources such as 45BN261, this buffer may need to be considerably larger.
- Proposed Mitigation Measures³¹ are impractical and will not alleviate impacts.
 - Yakama Nation’s previous request to the Proponent to remove or relocate the most harmful towers was rejected for economic reasons. Yakama Nation has no faith that continued correspondence will influence design or be met with consideration. CR-1 has already been demonstrated infeasible by the Proponent.
 - While Yakama Nation notified the Proponent of the most harmful tower locations, the proposed site of the entire facility is located on a TCP landscape. Avoidance of impacts will require significant alterations to the Project footprint.
 - Access agreements will not mitigate impacts to legendary and monumental TCPs. Mitigation proposals are minor accommodations and tertiary allowances that will not offset the permanent alteration of the cultural landscape.
- The DEIS does not acknowledge avoidance measures already requested by Yakama Nation.³² As this table is the summary of recommendations, this acknowledgement is critical to justify likelihood of impacts in Table 4.9-11a. “Engagement with Tribes, DAHP and landowners” is not valid mitigation in the event that a resource impact cannot be avoided. Engagement, when

²⁸See “Traditional Cultural Properties” and associated text; *id.* at 4-286, Table 4.9-3; *id.* at 4-304, Table 4.9-7. (Likelihood of impact of construction on TCPs is currently designated as “Feasible”).

²⁹ *Id.* at 4-308, Table 4.9-8.

³⁰ *Id.* at 4-311, § 4.9.3.

³¹ *Id.* at 4-312, § 4.9.3.

³² *Id.* at 4-313, Table 4.9-10.

conducted properly, is what forms the basis of proper environmental analysis and avoidance of harm. Loose commitments of engagement post-permitting fall far short of SEPA's requirements.

- Impacts to TCPs are unavoidable. The DEIS should be duly corrected.³³

c. *Visual Aspects: Affected Environment and Analysis*

- Yakama Nation appreciates that the DEIS considers visual aspects as components of cultural resources,³⁴ and acknowledges that Yakama Nation attaches significance to the landscape.³⁵ Yakama Nation provided preliminary information to both EFSEC and the Proponent indicating tower locations that will impact critical viewshed integral to TCPs.³⁶ The Proponent refused, without explanation, to alter any turbine locations in response to the information we provided, and the DEIS similarly fails to adequately evaluate alternative Project designs.
- Based upon information gathered to date, Yakama Nation CRP is concerned with viewshed impacts to TCPs from Key Observation Points ("KOP") 1 (McNary National Wildlife Refuge, KOP 3 (Chandler Butte), KOP 5 (Badger Mountain), KOP 9 Benton City, and KOP 11 (Highland/Finley Area). Additional areas may be identified as our compilation of information continues.
- Yakama Nation requests that additional visual impacts be assessed from the east side of the Columbia River near Wallula Gap. This is a culturally important view-shed to Yakama Nation TCPs.
- Yakama Nation concurs with the DEIS's determination that wind turbines will cause a high magnitude of visual impacts with no identified mitigation.³⁷ The view of towers, lights or other infrastructure from these key KOPs would cause great harm to the legendary and monumental aspects of this cultural landscape and the TPCs of which it is comprised.

IV. Impacts to Wildlife and Vegetation.

The Project has the greatest impacts to wildlife, soil and vegetation where it is planned in native habitat and/or will detrimentally impact avian species. The comprehensive project would permanently disturb 717 acres of Rabbitbrush Shrubland (Class II Habitat), 236

³³ *Id.* at 4-319, Table 4.9-11a; *id.* at 4-320, Table 4.9-11b; *id.* at 4-321, Table 4.9-11c. (Likelihood of impact to TCPs currently designated as "Probable" in the DEIS).

³⁴ *Id.* at 3-169.

³⁵ *Id.* at 3-169-70. ("Lands within the Lease Boundary are also of interest to the Confederated Tribes and Bands of the Yakama Nation...who may attach cultural significant to natural landscape components.")

³⁶ Locations identified are based on information available at this time. Due to the size of scale of this project, collection of cultural data is ongoing. Relocation of identified towers will not resolve all impacts.

³⁷ *Id.* at 4-392-3, Table 4.10-14b.

acres of Planted Grassland (Class III Habitat), and 73 acres of Eastside Grassland (Class III Habitat). We acknowledge that a Habitat Mitigation Plan would potentially mitigate for disturbed habitat with the acquisition of replacement habitat up to a 2:1 ratio. However, there is no recourse for native habitat degraded to such an extent that Special Status Species are displaced.

The following deficiencies in the DEIS should be corrected.

a. Executive Summary

- The Executive Summary should be corrected to include impacts from soil compaction, including but not limited to water infiltration in the soil, root growth, and soil chemistry.³⁸ This analysis should also include long term impacts, which will depend on types of equipment used and duration of use.
- The Executive Summary regarding vegetation impacts and mitigation should be amended to include additional mitigation for loss of native habitat without trees.³⁹ “Tree avoidance” is not sufficient mitigation.
- The Executive Summary regarding vegetation impacts also fails to consider many cross-section impacts.⁴⁰ The DEIS must evaluate the minutiae in niche habitats that much of the upland native vegetation occupy. Changes in water availability in the soil and runoff will impact vegetation that wildlife rely upon and Yakama Nation members have a Treaty-reserved right to harvest.
- The Executive Summary regarding socioeconomic impacts should be amended to fully evaluate the socioeconomic impact of habitat degradation upon Treaty-reserved gathering areas and Yakama Nation members.⁴¹

b. Affected Environment

- The DEIS acknowledges lack of sufficient data and fails to adequately analyze impacts on local populations of pronghorn antelopes that use the Project site as a migration corridor. The Project will have direct and indirect impacts on the Pronghorn population that inhabit and migrate through the area, especially in the winter months.⁴² The Pronghorn population has grown exponentially but are sensitive to changes in habitat and land use.⁴³ The proposed fencing creates barriers that exclude Pronghorn from habitat use and travel corridors. Habitat fragmentation and continued loss with project construction predicts a foreseeable increase in mortality due to increased traffic shifting travel patterns. Yakama Nation Wildlife Resource

³⁸ *Id.* at ES-11, § ES 4.2.

³⁹ *Id.* at ES-13, § ES 4.5.

⁴⁰ *Id.*

⁴¹ *Id.* at ES-157, Table ES-4c.

⁴² *Id.* at 4-186, § 4.6.2.4.

⁴³ Fidorra, J. C., Peterson, T.C . 2021. Summary Report 2021: Pronghorn antelope abundance survey in south-central Washington. Yakama Nation Wildlife and Washington Department of Fish and Wildlife. Unpublished report online.

Management Program possesses spatial data that identifies the Project's implementation impacts upon Pronghorn habitat use and travel.

- The noxious weeds analysis should be updated to reflect current conditions.⁴⁴ The Kochia, Rush Skeletonweed and the Cereal rye were observed as abundant in the locations surveyed but the surveys were done in 2020 and 2021. The invasive plant surveys do not contain sufficient information because they do not address i) distribution of infestation or ii) the number of infested acres.⁴⁵ There were also observations of Yellow Starthistle and Knapweed but the information within the DEIS is not sufficient to determine whether the Starthistle was observed at 2 locations in 2020 but not in 2021 was eradicated or not.

c. Analysis of Potential Impacts

- The Ferruginous Hawk is perhaps the species the project would impact the most. Ferruginous hawks are state listed as endangered and are a state priority species, partially due to the continued contraction in breeding pairs statewide.⁴⁶ The DEIS correctly predicts a high and constant impact to the species in both the Construction and Operation phases, as noted by the nine Ferruginous Hawk nests located within two miles of the lease boundary in between 2017 and 2019.⁴⁷ Construction of turbines and associated roads and power lines may result in the direct and indirect loss of habitat. Nesting success could be impacted by construction activities proximal to nests or activities that change prey abundance. The impacts during the Operation Phase include mortality due to collisions with both wind turbines and powerlines, changes in prey abundance, and reduction of nesting territories due to disturbance. Given the potential impacts to the Project area and proximal territories, the DEIS's proposed mitigation is insufficient.
- The DEIS does not adequately describe or analyze the environmental impacts of panel washing.⁴⁸ Panel washing will encourage the growth of non-native species and potentially negatively impact native species due to abundant water availability at unnatural times. This will also impact soil chemistry and its composition of microorganisms.
- Although the DEIS recognizes that vehicles and heavy equipment may cause distribution, it does not include adequate mitigation measures such as proactive pre-treatment and post-treatment approaches.⁴⁹ Even temporary disturbances can have long-term effects on the environment when invasive species move into areas of recent soil disturbance.

⁴⁴ DEIS at 3-84, § 3.5.4.

⁴⁵ *Id.* at 3-84, Table 3.5-6.

⁴⁶ Hayes, G.E. and J.W. Watson. 2021. Periodic Status Review for the Ferruginous Hawk. Washington Department of Fish and Wildlife, Olympia, Washington. 30+i iii pp.

⁴⁷ DEIS at 3-106, § 3.6.2.2.

⁴⁸ *Id.* at 4-66-70, § 4.4.2.2.

⁴⁹ *Id.* at 4-103-4, § 4.5.2.1.

- The DEIS’s analysis of habitat loss and wildlife mortality from the construction of turbines should be amended to acknowledge the critical importance of shrub-steppe habitat.⁵⁰ The shrub-steppe is one of the most threatened ecosystems in the United States.⁵¹ Any habitat loss, no matter the size, is a critical loss to intact native shrub-steppe. Many species of birds, mammals, and herptiles that inhabit the shrub-steppe are threatened. These include the Golden Eagle, Great Sage Grouse, Pygmy Rabbit, Northern Leopard Frog, Ferruginous Haw, and Columbia Sharp-tailed Grouse.⁵² Their habitat should be considered critical and continue to be undisturbed by development.
- The Horse Heaven Hills site is a significant travel corridor for Greater Sage Grouse between the remaining populations in Central Washington.⁵³ Their population size is at a critical low level and safe passage between these populations should be protected and enhanced.

Finally, habitat loss and mortality associated with the project are expected to be additive to past and present actions in the region, resulting in cumulative impacts on the species. Cumulative habitat loss occurs gradually from the conversion of lands from native shrub-steppe due to energy projects and other developments. Similarly, the Ferruginous Hawk’s greatest risk of mortality is expected to occur at projects that create obstacles within the raptor’s flight path, such as powerlines and wind power projects. Therefore, the impacts of mortality from the Project are expected to be additive to similar projects (i.e. transmission lines and wind power projects).

V. Absence of Reasonable Alternatives.

SEPA requires lead agencies to include “alternatives to the proposed action” in the EIS process.⁵⁴ An EIS “must present sufficient information for a reasoned choice among alternatives.”⁵⁵ While an EIS is not required to examine all potential alternatives, “. . .there must be a reasonably detailed analysis of a reasonable number and range of alternatives.”⁵⁶ The “reasonable alternatives that must be considered are those that could ‘feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.’”⁵⁷

⁵⁰ *Id.* at 4-148-56, § 4.6.2.1.

⁵¹ Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Management recommendations for Washington’s priority habitats: managing shrubsteppe in developing landscapes. Washington Department of Fish and Wildlife, Olympia, Washington.

⁵² *Id.*

⁵³ Washington Connected Landscapes Project: Analysis of the Columbia Plateau Ecoregion. Appendix A.2, p. A2-23.

⁵⁴ RCW 43.21C.030(c)(ii).

⁵⁵ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn. App. 439, 442 (1992); also see WAC 197-11-440(5).

⁵⁶ *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 41 (1994).

⁵⁷ WAC 197-11-440(5)(b); *Weyerhaeuser*, 124 Wn.2d at 41; See also *Citizens for Safe & Legal Trails v. King County*, 2003 Wash. App. LEXIS 2092, *20-21.

The DEIS is insufficient because it only explores a “no action” alternative, and does not include other “reasonable alternatives for achieving the proposal’s objective on the same site” as required when analyzing a proposal for a private project on a specific site.⁵⁸ Yakama Nation has proposed an alternative structure for the Project through removal or relocation of certain turbines within the Project site and informed EFSEC directly of the request. That alternative is not mentioned anywhere within the DEIS. Furthermore, the DEIS does not provide any explanation for how there can be no reasonable alternative iterations of a Project of such magnitude that it is currently designed to cover 72,428 acres. The DEIS’s failure to consider any meaningful alternative Project designs renders it legally insufficient. Instead of allowing the Proponent’s financial goals to dictate the scope of environmental review, SEPA requires EFSEC to conduct a full environmental analysis, which includes “sufficient information for a *reasoned* choice among alternatives.”⁵⁹

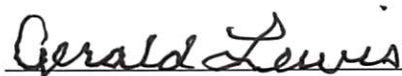
VI. Conclusion.

Due to the mischaracterization of impacts to important cultural and archeological resources, and the suggestion of mitigation efforts that do not address the loss of those critical resources, the DEIS fails to adequately evaluate the Project’s impacts to Yakama Nation’s Treaty-reserved cultural resources. The DEIS also fails to adequately identify impacts to wildlife or full mitigation for those impacts. Lastly, the DEIS is legally insufficient due to its failure to identify and evaluate reasonable alternatives for the Project’s current design or adequately justify this omission.

Without fully identifying all likely adverse impacts and evaluating reasonable alternatives to the Project’s current design, EFSEC cannot move forward in good faith or under state law in its obligation to analyze the Project’s full impacts against the non-Project option or the proposed mitigation. The DEIS should be significantly revised and supplemented to address the concerns raised in this letter and analyze all environmental impacts fully.

To discuss the cultural resource concerns identified in this letter, please contact Ms. Jessica Lally, Yakama Nation Cultural Resource Program Archaeologist, at (509) 865-5121 x4766 or jessica_lally@yakama.com. To discuss the other concerns listed above, please contact Mr. Phil Rigdon, Yakama Nation Department of Natural Resources Superintendent, at (509) 865-5121 x4655 or phil_rigdon@yakama.com.

Sincerely,



Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

⁵⁸ WAC 197-11-440(5)(d).

⁵⁹ See *Solid Waste Alternative Proponents*, 66 Wn. App. at 442; WAC 197-11-440(5); *Weyerhaeuser v. Pierce County*, 124 Wn.2d at 41.