



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

April 18, 2025

Submitted via Email and Online Comment Portal

Sonia Bumpus, Director
ENERGY FACILITY SITE EVALUATION COUNCIL
Sonia.bumpus@efsec.wa.gov

RE: Mitigated Determination of Non-significance
EFSEC Docket No. EF-230001

Dear Ms. Bumpus:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) regarding your recently-issued Mitigated Determination of Non-significance (“MDNS”) for the Carriger Solar, LLC Project (“Project”), EFSEC Docket No. EF-230001, proposed by Cyress Creek Renewables (the “Applicant”).¹

Yakama Nation has a significant interest in ensuring that EFSEC fully complies with the State Environmental Policy Act (“SEPA”) and other applicable laws in evaluating the Project and its environmental impacts.²

The MDNS contains deficiencies and omissions that render it non-compliant with SEPA. Specifically, the MDNS lacks sufficient information and at times contains inaccurate or conflicting information about environmental impacts to wildlife, water, and cultural resources. Each specific area of concern is described in further detail below.

Taken as a whole, the MDNS reads more like a plan to develop future mitigation rather than a plan for clear and sufficient mitigation of identified impacts. Given the inadequacy of the proposed mitigation, and in many sections a lack of identified mitigation, EFSEC should withdraw the MDNS consistent with WAC 197-11-340, issue a determination of significance under WAC 197-11-360, require sufficient environmental review through an environmental impact statement, and conduct an adjudication in order to ensure that the Council’s ultimate decision regarding the Project is informed through adequate fact finding as to the Project’s impacts to Yakama Nation’s natural and cultural resources.

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 Yakama Nation.

² These comments are based on information presently available to Yakama Nation and submitted under an unreasonably short deadline. Should additional information become available, our assessment and comments regarding the Project’s likely impacts 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 In order to achieve SEPA's purpose, the lead agency – in this case EFSEC – must demonstrate that the proposed action will not result in probable significant adverse environmental impacts before issuing a determination of non-significance.⁴ EFSEC “shall make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal. . .”⁵

A MDNS is *improper* if EFSEC is unable to show that: (1) its decision to issue a MDNS was based on information sufficient to evaluate a proposal's environmental impact, and (2) it considered the relevant environmental factors.⁶ When a SEPA-responsible official does not have sufficient information, or there is scientific uncertainty, concerning a Project's impacts, they may only proceed in the absence of vital information if they follow a process that includes analysis of a “worst case” scenario with regard to the unknown environmental impacts.⁷

Here, the MDNS improperly relies upon non-technical expertise to inform decisions on mitigation of cultural resource impacts, and contains insufficient and incomplete information about potential impacts to cultural and natural resources (water, plants and animals) from the proposed Project actions.

II. Potential Impacts to Cultural Resources.

The present MDNS is improper because it is not based on sufficient information and the proposed mitigation measures will not prevent likely significant impacts to cultural resources. Yakama Nation is particularly discouraged by EFSEC's decision to issue a MDNS for the Project after the deliberative engagement between EFSEC and Yakama Nation Cultural Resource Program's technical staff regarding the Project's likely impacts to Yakama Nation Traditional Cultural Properties (“TCP”s).

EFSEC previously recognized the likelihood that the Project would have significant impacts.⁸ The agency found that further analysis was necessary, and then engaged Yakama Nation's Cultural Resource Program to perform a thorough TCP study. Based upon the findings of that study, technical staff made recommendations to EFSEC and engaged in staff-level discussions regarding potential mitigation or avoidance measures.

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

⁴ WAC 197-11-350(2).

⁵ WAC 197-11-335.

⁶ *Id.*; *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 423 (2010), (citing RCW 43.21C.030(2)(c)); *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176 (2000).

⁷ WAC 197-11-080(3).

⁸ August 11, 2023 letter from Sonia Bumpus to Lauren Altick (https://www.efsec.wa.gov/sites/default/files/230001/001/20230811_Carriger_Notice_Ltr_Copy.pdf).

The MDNS does not include *any* measures that actually mitigate or avoid the Project’s TCP impacts identified through the TCP study that EFSEC commissioned. Instead, in a staff memo supporting the MDNS, EFSEC references “site redesigns” negotiated between EFSEC and the Applicant that EFSEC asserts will mitigate multiple TCP impacts, including impacts to “visual landscapes” and “cultural experience.”⁹ The staff memo acknowledges that Yakama Nation’s Cultural Resource Program¹⁰ provided feedback to those site designs and confirmed that they would not avoid, minimize, or mitigate the Project’s TCP impacts – and then goes on to rely upon those same site designs to determine mitigation can occur:

EFSEC concurs with the Yakama Nation on the presence of the TCP(s), and related impacts identified in the TCPS, but *believes* that the Applicant’s commitments and site redesigns implemented by the Applicant at EFSEC’s direction are sufficient to reduce TCP impacts to a level below significance.¹¹

EFSEC provides no explanation or justification for its *belief* that Yakama Nation’s technical experts were incorrect in their professional assessment of whether the site redesigns did, in fact, avoid, minimize or mitigate the Project’s negative impacts to TCPs. To the extent that additional site design alterations were negotiated between yourself and the Applicant, as Yakama Nation learned of only through verbal updates during EFSEC’s April 16, 2025 meeting, those additional alterations are not identified in the MDNS or accompanying staff memo.

The only requirement included in the MDNS is for the Applicant to “maintain ongoing engagement with affected Tribes to facilitate identification, location, quantification, and mitigation of potential impacts to TCPs.”¹² It is hard to see how further engagement will have any impact when EFSEC has already dismissed the need to address the Project’s TCP impacts by relying upon insufficient and/or undisclosed design alterations.

III. Potential Impacts to Water Resources.

Both the MDNS – and the environmental checklist that it relies on – fail to disclose and adequately consider the Project’s impacts to water resources. Because the Applicant has not actually identified a water source for the Project,¹³ there is not sufficient information for EFSEC to make any analysis or finding regarding the Project’s water resource impacts.¹⁴ Instead, EFSEC defers its SEPA responsibility on water source impacts entirely.¹⁵

⁹ MDNS Staff Memo at 23-24.

¹⁰ Yakama Nation has not engaged in policy-level Consultation with EFSEC on this Project. The MDNS and staff memo in support of the MDNS both erroneously characterize EFSEC’s engagement with Yakama Nation. When engaging directly with Yakama Nation professional staff and programs, the respective program should be identified.

¹¹ MDNS Staff Memo at 26 (emphasis added).

¹² MDNS at 9.

¹³ The Project’s application is not compliant with EFSEC’s own regulations on demonstrating water availability. WAC 463-60-165.

¹⁴ MDNS at 3.

¹⁵ *Id.*

The staff memo in support of the MDNS is similarly deficient in its identification of water for the Project. The memo cites to the Project applicant's general statement that ". . .water may be sourced either from an existing on-site well with a valid water right to be confirmed by [Washington Department of Ecology] or by purchasing water from a permitted off-site source and hauling it to the Project Area."¹⁶ The memo later states that "[t]he Applicant has no intention of using site surface or ground water for the Project and will most likely source water from a local municipal water provider with a valid water use permit."¹⁷ The staff memo is unclear on what water source will serve the Project because the Applicant has not yet identified one.

IV. Potential Impacts to Wildlife.

The MDNS relies on insufficient information regarding mitigation measures for the Project's wildlife impacts. For example, the MDNS inexplicably fails to reference multiple mitigation measures proposed within the Project's application, making it unclear whether such mitigation measures are required for the Project to avoid significant environmental impacts.¹⁸ The MDNS includes mitigation ratios for Priority Habitats, but defers to future identification of impacts to those Priority Habitats, which would be the impetus for applying the relevant mitigation ratios. It is unclear how EFSEC can determine that mitigation is possible without first identifying Priority Habitat that may be impacted.

The MDNS also improperly defers to the Applicant to determine what degree of mitigation is necessary for wildlife, stating that ". . . the *Applicant* would consider if incremental expansion of Project wildlife corridors is *practicable* through intra-site relocation of solar arrays."¹⁹ EFSEC's deferral of its regulatory authority to the Applicant provides even less clarity on what mitigation EFSEC is relying upon in order to issue its SEPA determination.

V. Conclusion.

Due to the lack of sufficient environmental analysis and EFSEC's reliance upon inaccurate or incomplete mitigation measures, the MDNS does not comply with SEPA's requirements and implementing regulations. EFSEC should withdraw the MDNS and require a full environmental analysis of the Project's potential impacts under SEPA.

By issuing the MDNS, EFSEC has also set the Project on a permitting pathway that does not require full fact finding of the Project's impacts through an adjudicative hearing. In doing so, EFSEC is removing the main avenue that Yakama Nation Leadership has for conveying confidential and sensitive to the Council itself regarding our concerns with the Project, as well as any potential Project design alterations that would avoid or mitigate TCP impacts.

¹⁶ MDNS Staff Memo at 8.

¹⁷ *Id.* at 24.

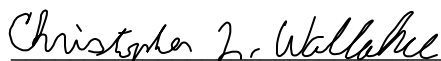
¹⁸ *Compare* MDNS at 5-7 with Carriger Solar Application for Site Certification (February 10, 2023) at page 181-82 (siting alterations to limit impacts to big game movement corridors), page 184 (50-foot buffers in select locations to mitigate for impacts to the western gray squirrel).

¹⁹ MDNS at 6 (emphasis added).

My office is in receipt of the EFSEC's offer to engage in "consultation" with the Chair and yourself.²⁰ Please advise whether such a meeting between with Yakama Nation Tribal Council – as well as any materials conveyed by the Chair to the full Council as a result of the meeting – would be treated by EFSEC as confidential and not subject to public disclosure if the meeting were to occur.

Yakama Nation understands that your office, and perhaps the Council itself, has received significant pressure to advance this particular Project without full environmental review under SEPA or an adjudication under RCW 80.50.090(4). Yakama Nation supports responsibly-sited and designed Projects as a critical tool to meeting the state's decarbonization targets. Ignoring the project's significant impacts to TCPs, and advancing the Project in the absence of sufficient information on other impacts, is not the legal or morally correct way to permit new alternative energy development under Washington law. We urge EFSEC to take a different approach in compliance with applicable law.

Sincerely,



for Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

cc via email: Amí Hafkemeyer, Director of Siting and Compliance
(ami.hafkemeyer@efsec.wa.gov)
Jon Thompson, Senior Counsel (jonathon.thompson@atg.wa.gov)
Sarah Reyneveld, Counsel for the Environment (sarah.reyneveld@atg.wa.gov)

²⁰ Yakama Nation defines Government-to-Government Consultation as direct confidential communication between Tribal Council and the applicable decision maker at our governmental headquarters in Toppenish, Washington. The level of engagement authorized under RCW 80.50.060(8) does not meet this definition because the full EFSEC Council will decide how to recommend the Governor action on the Project's pending application.