



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

June 18, 2025

Submitted via Email

ENERGY FACILITY SITE EVALUATION COUNCIL
comments@efsec.wa.gov

RE: Carriger Solar Project
EFSEC Docket No. EF-230001
Draft Recommendation to the Governor and Revised MDSN

Dear Energy Facility Site Evaluation Council:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")¹ regarding EFSEC's recently-published Draft Recommendation Report to the Governor and accompanying Revised Mitigated Determination of Non-Significance ("RMDNS") for the Carriger Solar, LLC Project ("Project"), EFSEC Docket No. EF-230001.

Once again, Yakama Nation objects to the unreasonably brief comment period for both of these documents. EFSEC's continued practice of allowing less than a full week for comments – as well as the Council's refusal to engage directly with Yakama Nation in true Government-to-Government Consultation or hold an adjudication for this Project – calls into question the Council's interest in actually considering the impacts of its proposed actions.

The Draft Recommendation Report to the Governor

As Yakama Nation informed this Council in our May 1, 2025 letter regarding Council Order 899, EFSEC's deliberations on the Project are not fully informed without an adjudication where the Council can hear and understand the Project's impacts on Treaty-reserved natural and cultural resources. Yakama Nation has not been afforded an opportunity to review Chair Beckett's summary of our June 4, 2025 meeting (Attachment 1 to the Draft Recommendation) and therefore cannot say whether or not our concerns were accurately summarized and conveyed to the Council.

What is clear from the materials available to Yakama Nation is that the Draft Recommendation simply does not show meaningful Project modifications in order to avoid or mitigate impacts to Yakama Nation Traditional Cultural Properties. The information provided by Director Bumpus regarding the setbacks and screening tools identified on page

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.

7 of the Draft Recommendation show very minor modifications given the Project's overall footprint. Even more concerning is the updated Project map that shows an increase in panels to the south of the Department of Natural Resources parcel of concern compared with the original Project design.

The Draft Recommendation is inconsistent with RCW 80.50.010's legislative findings and policies. The Washington Legislature has tasked EFSEC with balancing its job of "provid[ing] abundant clean energy at reasonable cost" with its responsibility to "preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities." Because the Project, as currently proposed within the Draft Recommendation, fails to avoid or mitigate impacts to Yakama Nation's Treaty-Reserved Resources, including Traditional Cultural Properties, EFSEC cannot meet its statutory responsibility by approving the Draft Recommendation.

The Revised Mitigated Determination of Non-Significance

The deficiencies in the original Mitigated Determination of Non-Significance identified by Yakama Nation in its April 18, 2025 letter are still present in the RMDNS. The RMDNS lacks sufficient information about the Project's environmental impacts to wildlife, water, and cultural resources. I have attached, and reincorporate on behalf of Yakama Nation, the concerns raised in our April 18, 2025 comment letter.

Because the Draft Recommendation relies upon the RMDNS, I must point out again that EFSEC Director Bumpus is substituting her personal opinion over the professional findings of our expert archaeologist in a way that is unsupported by the available documents and applicable regulations.² Yakama Nation's Cultural Resource Program ("CRP") has provided documentation regarding the insufficiency of the proposed mitigation measures, which Tribal Council reiterated to Chair Beckett and Director Bumpus during the June 4, 2025 meeting.

The only direct accommodation for cultural resources in the RMDNS is an ask for continued dialogue and identification of Traditional Cultural Properties ("TCPs") by the applicant, "when practical." EFSEC cannot suggest this as a remedy as Yakama Nation has already provided EFSEC with a meaningful and detailed report identifying TCPs and impacts. EFSEC engaged little with CRP staff in response to the report in order to determine possible solutions. EFSEC now proposes passing those difficult conversations on to the applicant *despite* EFSEC staff's awareness that we do not wish to share sensitive and confidential cultural information directly with the Project developer. The RMDNS forces this conversation. Furthermore, EFSEC did not engage with Yakama Nation CRP staff to inquire if RMDNS-proposed screening was sufficient to reduce impacts to TCPs.

The RMDNS also perpetuates EFSEC's continued deferral of its statutory responsibility to consider the Project's environmental impacts on water resources. During our June 4, 2025

² "The EFSEC Director developed measures that she concluded would mitigate the significant adverse impacts from the Project to TCPs." Draft Recommendation at page 7.

meeting, EFSEC staff acknowledged that no water purveyor had been publicly identified to supply water to the Project and that impacts specific to use from a specific water source had not been evaluated. Instead, EFSEC indicated they had evaluated all potential sources of water within a reasonable area from the Project site, presumed here to be a reference to the Little Klickitat River Basin. A review of the available documentation from the RMDNS indicates that no such analysis has been conducted. EFSEC staff may have been referring to Attachment L in their comments to Tribal Council but that report only evaluates impacts from flooding and does not attempt to evaluate the potential impacts that withdrawal or diversion of water for the Project from an unidentified water purveyor could have.

Furthermore, because the Project requires a year-round use of water, it is likely that the applicant will attempt to find a water purveyor whose source of water is groundwater, as a surface water right is typically not available year-round and would require additional approvals from the Department of Ecology to change the season of use. This suggests that an analysis of groundwater impacts will be needed, and it is not clear that a licensed hydrogeologist has conducted any such analysis related to the Project.

The RMDNS claims that use of an existing water right precludes the potential for significant impacts related to the withdrawal or diversion of water from that source. This is clearly not the case. While it lessens the potential for impairment, it does not preclude other impacts that may occur to Endangered Species Act listed species, water quality, and other impacts. These impacts cannot be evaluated until a specific water source is identified.

Conclusion

EFSEC should not approve the Draft Recommendation nor adopt the RMDNS on June 25, 2025 for the reasons identified in this letter and previous correspondence (attached). The Council may still commence an adjudication, which it should do after requiring EFSEC staff to complete a full and accurate analysis of the Project's environmental impacts under the State Environmental Policy Act.

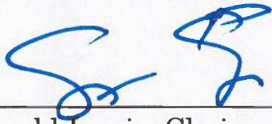
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Sincerely,



 Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

Attachments: May 1, 2025 letter from Chairman Gerald Lewis
April 18, 2025 letter from Chairman Gerald Lewis

cc via email: Amí Hafkemeyer, Director of Siting and Compliance
(ami.hafkemeyer@efsec.wa.gov)
Jon Thompson, Senior Counsel (jonathan.thompson@atg.wa.gov)
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Owen Rowe, Governor's Senior Policy Advisor on Natural Resources
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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.

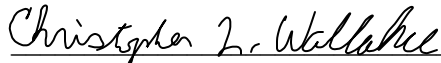
¹⁸ Compare MDNS at 5-7 with Carriger Solar Application for Site Certification (February 10, 2023) at page 181-82 (siting alterations to limit impacts to big game movement corridors), page 184 (50-foot buffers in select locations to mitigate for impacts to the western gray squirrel).

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,



fw 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.



Confederated Tribes and Bands
of the Yakama Nation

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May 14, 2025

Transmitted via Email

Kurt Beckett, Chair
ENERGY FACILITY SITE EVALUATION COUNCIL
comments@efsec.wa.gov

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

RE: EFSEC Docket No. EF-230001

Dear Director Bumpus and Chair Beckett:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")¹ regarding EFSEC's outstanding offer of "consultation" on the Carriger Solar, LLC Project ("Project"), EFSEC Docket No. EF-230001.²

As you are aware, Yakama Nation has neither a direct *nor* confidential avenue to communicate the Project's negative impacts on our Membership directly to the Council in the absence of an adjudication. An adjudication is the only proceeding contemplated by RCW Chapter 80.50 that provides for i) direct communication, ii) by impacted parties, iii) to the full EFSEC Council, iv) with the ability for the EFSEC Council to ask clarifying questions and receive responses from impacted parties, iv) in a confidential setting when sensitive matters such as cultural resource impacts are at hand. We feel the need to make this very clear given the obfuscation of the issue by comments from EFSEC staff during the May 5, 2025 public meeting.

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, nor meet the same threshold of engagement of an adjudication. Because the EFSEC Council has declined to engage directly with Yakama Nation by adopting Order 899, I write in response to Director Bumpus' May 2,

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.

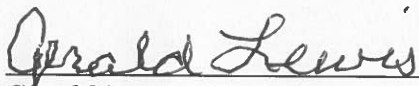
² Yakama Nation objects to the unreasonably brief comment period for Draft Order 899.

2025 letter regarding an option to still engage in a direct meeting in the absence of true Consultation.

In an effort to ensure that the meeting is productive and confidential, we ask that you provide the following documentation ahead of the meeting: 1) all proposed mitigation, avoidance measures, and project design changes related to cultural resources (including Traditional Cultural Properties) that you are relying upon for your mitigated determination of non-significance, and 2) written confirmation that no information shared with you (or EFSEC staff that may attend the meeting) about cultural resource impacts will be discussed in public forums. We appreciate Director Bumpus's commitment to keep written materials regarding sensitive matters exempt from public disclosure, but remain concerned about how those materials will be conveyed to, and deliberated on, between EFSEC Councilmembers.

Yakama Nation's Tribal Council meets regularly each month beginning on the first Tuesday of the month. I request that you make yourselves available to meet with Yakama Nation Tribal Council and our staff during our June 2025 Tribal Council session. To confirm a time on Tribal Council's June 2025 Regular Session, please contact Yakama Nation Energy Specialist Paris Valdez at valp@yakamafish-nsn.gov.

Sincerely,



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 (jonathan.thompson@atg.wa.gov)
Sarah Reyneveld, Counsel for the Environment (sarah.reyneveld@atg.wa.gov)