



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

December 28, 2020

FILED ELECTRONICALLY

Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426

RE: YAKAMA NATION COMMENTS ON NEPA SCOPING DOCUMENT NO. 1 FOR PROPOSED GOLDENDALE PUMPED STORAGE PROJECT (P-14861-002).

Dear Secretary Bose,

Included herein are comments on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) Natural Resources Department in response to the October 29, 2020 Notice Soliciting Scoping Comments (“Scoping Document”) for the Goldendale Pumped Storage Project FERC No. 14861 (“Project”) pursuant to the National Environmental Policy Act, 40 CFR §§ 1500 – 1508 (“NEPA”). Consistent with the Yakama Nation’s comments below, the Federal Energy Regulatory Commission (“FERC”) must conduct an Environmental Impact Statement (“EIS”) of this Project and should extend a second Scoping Document with additional necessary complete information. This letter preserves, incorporates, and reasserts the Yakama Nation’s concerns regarding the Project made known to the FERC and Project Applicants through previous communications.¹ This letter further agrees with and incorporates corresponding comments submitted by the Columbia Riverkeeper on the Project Scoping Document.

I. Background.

The 1855 Treaty between the United States and the Yakamas (“Treaty”) reserved a 1.3 million acre Reservation “for the exclusive use and benefit” of the Yakama people.² The Treaty further designated reserved rights for Yakamas to exercise “in common with” citizens of the United States at all usual and accustomed places within the Treaty

¹ See Exhibit A - Letter From Yakama Tribal Council Chairman To FERC Secretary (Mar. 2020).

² See Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3.

Territory.³ A federal treaty is considered the supreme Law of the Land under the U.S. Constitution.⁴ Pursuant to its status as a sovereign Native Nation and its Treaty-reserved authority, Yakama Nation acts as a Co-Manager of the Columbia River fishery, as recognized by federal courts,⁵ for the protection of all natural and cultural resources in Yakama Nation's Treaty Territory. The Yakama Nation Treaty Territory encompasses usual and accustomed fishing sites, cultural areas, and ceremonial locations from the mouth of the Columbia River upstream north of the 49th parallel.

The Yakama Nation's enrolled membership exceeds 11,000 people whose history, culture, and way of life are intertwined with Nch'i Wa'na (the Columbia River), and its host of salmon, fish, plants, medicines, and animals. Protecting the land adjacent to and the waters of the Columbia River is critical for ensuring the Yakama Nation's Treaty-reserved resources and rights, and ultimately to the health and welfare of the Yakama people.

The Yakama Nation has expressed concerns of direct negative Project impacts from its beginning. Previously, the Yakama Nation opposed similar project proposals at this location due to the numerous natural and cultural resources that are incompatible with invasive development, including but not limited to: irreparable destruction of Traditional Cultural Properties; loss of aquatic resources; harmful impacts to avian and wildlife populations; and, existing soil and groundwater contamination from the former Columbia Gorge Aluminium smelter site.

II. Project Description.

The Project will consist of an off-stream, closed-loop pumped-storage project with an upper and lower reservoir with over 2,400 feet of maximum gross head that involve no river or stream impoundments, allowing for water conveyances. Proposed facilities include: 1) an upper reservoir consisting of a rock fill embankment dam approximately 175 feet high, 8,000 feet long, and a surface area of about 61 acres at an elevation of 2,940 feet above mean sea level; 2) a lower reservoir consisting of an embankment approximately 205 feet high, 6,100 feet long, and a surface area of about 63 acres at an elevation of 590 average mean sea level; and 3) an underground water conveyance tunnel and underground powerhouse and 23-kilovolt transmission line(s). The Project requires approximately 9,000 acre feet of Columbia River water to be filled initially, and likely an additional 390 acre feet per year to recharge water loss.

III. Direct Project Impacts to Yakama Nation Treaty Resources.

i. Cultural Properties

The Project Area of Potential Effect ("APE") is in an area of exceptional cultural importance to the Yakama Nation. The Project cumulatively adds to other energy

³ See *Id.* at art. III, cl. 2.

⁴ See U.S. Const. art. VI, cl. 2.

⁵ See *United States v. Washington*, 384 F. Supp. 312, 382 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975); see also *U.S. v. State of Oregon*, 666 F.Supp. 1461 (D. Or. 1987).

infrastructure, including hydro-electric dams and utility-scale wind turbine facilities, that devastate and destroy Yakama Nation's traditional fishing sites, villages, burial sites, ceremonial gathering places, root and medicine harvests, and cultural landmarks up and down the Columbia River. This Project permanently damages and alters nine culturally significant sites or Traditional Cultural Properties. FERC's obligation in the Scoping Document requires actual consideration of (i) the effects of Project construction and (ii) alternative project plans for the protection, mitigation, and enhancement of Native American Traditional Cultural Properties, historic and archaeological resources, and access to exercise ceremonial practices and treaty rights.⁶

The Scoping Document is impermissibly vague regarding the protection of cultural resources and fails to establish criteria that could ensure Project accountability for cultural resource protection. The Scoping Document's only prescription is to:

"Develop and implement a Historic Properties Management Plan in consultation with the Washington and Oregon State Historic Preservation Officers and affected Native-American tribes to protect and manage cultural resources."⁷

This proposed environmental measure is insufficient for Scoping purposes because a management plan fails to consider alternatives to the proposed action up to and including alternative Project locations or other types of renewable energy technology. Ultimately the construction of a pump storage facility at this proposed site unavoidably destroys cultural resources through earthworks and reservoir storage. Only the Yakama Nation can determine what is culturally significant to its people – resource consultation in a management plan fails to protect the resources that will necessarily be destroyed through initial development and is insufficient legal protection required under NEPA.

The Applicant has not proposed a plan for mitigating impairment to Yakama Nation's access to, and use of critically significant cultural resources caused by the Project's construction and operation. Nor has the Applicant provided any acceptable plan addressing the consequences of damage, breach, or decommissioning of the proposed reservoirs and earthen dams.

a. Unacceptable Limits On Cultural Use And Access

The Project development would impede and disrupt an existing Programmatic Agreement between the State of Washington and the Bonneville Power Authority for on-going root and plant gathering access by Yakama members.⁸ Yakama members regularly access this site for root and medicing gathering, and to practice religious and cultural ceremonies. The Programmatic Agreement preserves and recognizes the critical archaeological and cultural resources within the Project APE. This Project will also directly

⁶ See Scoping Document § 4.1.7.

⁷ See Scoping Document § 3.2.3 at 15.

⁸ See Exhibit B - Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation (May 1997).

and indirectly restrict access and use at the adjacent North Shore Treaty fishing Access Site which is a Treaty-fishing location in the Zone 6 Fishery.

b. Decommissioning Cannot Replace Destroyed Cultural Property

The Project Applicants have not generated a decommissioning plan that replaces or restores Tribal Cultural Properties – presumably because this is not possible after such properties are destroyed. The nature and character of the cultural resources within the APE will be diminished or lost forever if construction is permitted. An adequate decommissioning plan must contain sufficient enforcement and funding mechanisms for achieving a return to pre-Project resources, which still fails to account for this site’s ancient and integral meaning to the Yakama people’s religious and ceremonial practices.

ii. Aquatics Resources.

Calling the Project, a “closed-loop” system is disingenuous and misleading. Approximately 2.93 million gallons of water will be drawn from Columbia River to fill the Project’s two reservoirs. These open air reservoirs must be continuously replenished at a rate of approximately 1.2 million gallons of water per year from the Columbia River to offset losses from evaporation and leakage. Emptying of these reservoirs for maintenance and repair will require additional water to replace lost volumes. The Columbia River fishery already suffers from the negative impacts of over-allocated water resources. Salmonids and other aquatic species require stable water quantity, quality, and temperature for survival. This Project, when combined with the impacts from existing dams and their impoundments, and the comorbidities of climate change, may irreversibly tilt the ecological scales long-term survival of the Columbia River fishery.

The Project’s upper reservoir will permanently destroy several ephemeral waterbodies including approximately 965 linear feet of streams. These streams are perennial tributaries of the Klickitat River located approximately 2.4 miles north of the survey area. It is unclear what actions the Applicant will implement in the event reservoir waters do not meet applicable water quality standards that would result in contamination of surrounding streams and wetlands. Additionally, it is unclear what the impacts will be if one or both of the proposed reservoirs earthen dams are damaged, breached, or completely fail.

iii. Plant and Animal Resources

Combined, the two proposed reservoirs would result in over 120 acres of surface water body attraction to birds and bats which may result in more interactions with wildlife and an increase in birds and bats being wounded or killed by wind turbines. Additionally, these water bodies are expected to further alter laminar wind currents which are already influenced by existing wind farms. According to United States Fish and Wildlife Service, bald eagle, golden eagle, and prairie falcon nesting occur in the area which combined with foraging and rearing habitat makes this area unique to these species. Eagle nesting, rearing, and foraging habitat would be degraded during both the construction phase and upon completion of the two reservoirs. The area also provides habitat and supports plant species important to Yakama Nation.

Ephemeral and seasonal waterbodies at the site are important sources of seasonal water for many plant and animal species living in this otherwise dry region. The seasonality of the water supply is necessary for those plants and animals to complete life history phases. Ephemeral or seasonal waterbodies also slow surface water and stormwater runoff reducing erosion and flood impacts and allow for water to infiltrate to replenish groundwater. The Project does not account for the impacts of expected leakage from the reservoirs, which is insufficient to prevent contamination of surrounding plant and terrestrial resources.

iv. Columbia Gorge Aluminium Smelter Cleanup

The Project's lower reservoir is proposed over the former Columbia River Gorge Aluminum ("CGA") Smelter, which is now a Resource Conservation and Recovery Act ("RCRA") contaminated site that is subject to ongoing management and clean-up by the Washington State Department of Ecology ("DOE"). Previously FERC has denied the development of pump storage at this location because of necessary cleanup activities that are still ongoing and imperative for environmental recovery.⁹ The Project Applicant has not characterized or developed an actual plan to address the soil contaminants that would be excavated during construction of the lower impoundment. The Applicant must have a plan for properly disposing of that material in accordance with applicable law if hazardous or dangerous material is excavated during construction. The Scoping process must also consider the status of CGA as part of its environmental review, including potentially significant adverse effects. Performing an EIS is necessary to provide such consideration within the context of applicable law.

IV. Conclusion.

The Yakama Nation's Treaty-reserved cultural and natural resources will be irrevocably damaged or destroyed due to the Project construction and location on top of a culturally and environmentally sensitive area. The Project does not protect Yakama Nation's Treaty resources or the Yakama members who rely these resources. The land at this Project site is subject to Federal Trust responsibility to preserve and protect the irreplaceable resources and FERC has a legal duty to extend the Scoping inquiry and require an EIS for the adequate protection of these resources.

For further comments or questions please contact me at phil_rigdon@yakama.com, Phil Rigdon or at (509) 865-5121, ext. 4655.

Respectfully,



PHIL RIGDON, SUPERINTENDENT

⁹ See *Public Utility District No.1 of Klickitat County, Washington, Clean Power Development, LLC*, 155 F.E.R.C. ¶ 61,056 (2016).

YAKAMA NATION DEPARTMENT OF NATURAL RESOURCES

cc: Erik Steimle, Vice President, Rye Development, FFP Project 101, LLC
Phil Rigdon, Superintendent, Yakama Nation Department of Natural Resources
Rob Whitlam, State Archaeologist, Washington Department of Archaeology &
Historical Preservation
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office

EXHIBIT A

Letter From Yakama Tribal Council Chairman To FERC Secretary (Mar. 2020)

Exhibit Coversheet Only.

[Paginated separately.]



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

March 11, 2020

FILED ELECTRONICALLY

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Comments and Recommendations for Additional Study on the Goldendale Energy Storage Project Draft License Application, FERC Project No. 14861

Dear Secretary Bose,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") to submit the following comments and requests for additional study on the Draft License Application for the Goldendale Energy Storage Project ("Project"), Federal Energy Regulatory Commission ("FERC") Project No. 14861, submitted by FFP Project 101, LLC ("Applicant"). This letter preserves, incorporates, and reasserts the concerns of and opposition to the Project previously recorded in the Yakama Tribal Council Chairman's letter, dated February 21, 2019 and filed as FERC Submittal No. 20190228-5314, and previously recorded in the Yakama Nation Cultural Resources letter to the Project Applicant dated February 14, 2018.

I. Background.

The 1885 Treaty between the United States and the Yakamas ("Treaty") reserved a Reservation "for the exclusive use and benefit" of the Yakama constituent tribes and bands. The Treaty further reserved rights in common with citizens of the United States at all usual and accustomed places within the Treaty Territory. *See* Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951, art. II, cl. 3, and art. III, cl. 2. A federal treaty is considered the supreme Law of the Land under the U.S. Constitution. *See* U.S. Const. art. VI, cl. 2.

Yakama Nation's Treaty Territory, south of the 1.3 million-acre Yakama Reservation, encompasses usual and accustomed fishing sites, cultural areas, and historical locations of religious worship from the mouth of the Columbia River upstream to beyond the 49th parallel. Yakama Nation's enrolled membership exceeds 11,000 people who rely on

the ceremonial, cultural, and subsistence resources found within the proposed Project Area of Potential Effect ("APE").

As noted in Yakama Nation's 2018 and 2019 letters, and also during Rye Development's in-person meeting with the Yakama Nation Tribal Council on September 4, 2018, Yakama Nation concludes this Project will have a detrimental impact on archaeological sites and Traditional Cultural Properties ("TCP") documented under federal and state laws. More importantly, Yakama Nation regards the sites and TCPs as more than simply sources of research data. Rather, they serve as ultimate evidence of our tribal history that represents the connection of the modern Yakama people to the region defined as their home in both a physical and spiritual sense. For this reason, only Yakama Nation can determine what constitutes its significant cultural or natural resources. Yakama Nation believes that the proposed Project's damage to the sacred TCPs and archaeological sites therein cannot be mitigated by merely producing historical documentation because the proposed Project will cause significant harm to Yakama peoples' way of life.

II. Draft License Application App. 'H': Cultural Resources Report.

The Applicant contracted with the Yakama Nation Cultural Resources Program to conduct a cultural resources survey of the proposed Project APE. This survey is reported in the Draft License Application Appendix H, Cultural Resources Report ("Cultural Report"), a privileged document under the FERC guidelines. The Cultural Report identified six archaeological sites within the proposed Project area, plus three additional archaeological sites outside of the proposed Project area but still within the Project APE. Additionally, the Cultural Report identifies that the proposed Project area is within two National Register of Historic Places ("NRHP")-eligible TCP sites, one of which is a NRHP-eligible multiple property documentation ("MPD") TCP. The proposed Project area is also within a nationally-designated Archaeological District. See National Park Service ("NPS") Form 10-900-a Columbia Hills and NPS Form 10-900 Juniper Point certified by Maryann Armbrust, Bonneville Power Administration (Apr. 8, 1997). Combined, these nine archaeological sites in the proposed Project APE, the NRHP-eligible TCP and MPD-TCP, and Archaeological District can be described here as Yakama Nation's cultural inventory that has been documented under state and federal laws within the proposed Project APE.

i. Project Comments.

The archaeological sites and TCPs that comprise the cultural inventory here provide significant archaeological information, and more importantly exist as a source of significant cultural and spiritual meaning and instruction to the Yakama Nation and the Yakama people. The Cultural Report documents lithic tools in the APE that evidence Yakamas connection to the subsistence resources in the APE that were regularly and consistently harvested for food, medicinal, and spiritual purposes. FERC should adhere to the Cultural Report recommendation that the proposed Project avoid disruption of the archaeological sites and TCPs in the proposed Project area.

The proposed Project will compromise the existing TCP by diminishing that TCP's NRHP-eligibility through the destruction of sacred plants in the locale associated with Yakama legend and creation. The proposed Project will further compromise the existing

MPD-TCP by diminishing that MPD-TCP's documented association with additional nearby cultural properties.

Additionally, FERC should stipulate that the proposed Project is prohibited from breaching the existing Programmatic Agreement between the Washington State Historic Preservation Office and the Bonneville Power Administration as stipulated to allow Yakama Nation members to access and harvest traditional foods and medicines from the TCP within the proposed Project APE.

ii. Recommendation For Additional Study.

The proposed Project area is located within an existing MPD-TCP, which means that this site shares documented interconnectivity with other TCPs along the Columbia River, and the MPD-TCP is eligible for the National Register of Historic Places ("NRHP") under the NRHP criterion that the MPD-TCP be associated with significant events. See GAIL THOMPSON, *THE TRADITIONAL CULTURAL IMPORTANCE OF THE YAKAMA INDIAN PEOPLE* (1997). However, the MPD-TCP was not evaluated under the NRHP's other three criteria, for association with significant individuals, the presence of design, construction, or artistic expression, and the cultural information potential. Additionally, subsurface deposits have not been identified or analyzed at this MPD-TCP. Yakama Nation recommends evaluating this MPD-TCP under NRHP Criterion B – D, along with analysis of subsurface deposits. Yakama Nation further recommends general evaluation of the archaeological sites be evaluated for their eligibility and contribution to the existing TCP, MPD-TCP, and Archaeological District.

Additional survey is also recommended to correct the boundary of the existing TCP so that it properly incorporates the connected plant resources as documented in 1995 and 2019.

III. Draft License Application App. 'G': Historic Properties Management Plan.

The proposed Project's negative impacts include damage during construction activities and permanent loss through land use conversion. Construction or operational activities will disrupt or preclude future traditional use associated with the archaeological sites and TCPs within the proposed Project area. Yakama Nation advises FERC to make a finding of adverse effect under the 36 Code of Federal Regulations ("CFR") 800.5 criteria regarding the archaeological sites and TCPs within the proposed Project area because the archaeological sites and TCPs will be altered, damaged, and negatively impacted by construction and operational activities.

IV. Draft License Application App. 'E': Vegetation Management and Monitoring Plan.

The plants and roots found within the APE are pieces of the Yakama creation legend. Yakama people have returned to the sites and TCP for millennium in observance of our origin stories to gather the foods and medicines that remain at the proposed Project site today. Protecting Yakama members' access to exercise the traditional harvest of subsistence plants for foods and medicines must be a goal of the Vegetation Management and Monitoring Plan ("VMMP"). Yakama Nation understands this access for cultural

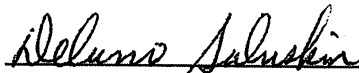
PAGE 3 OF 4 - COMMENTS AND RECOMMENDATIONS FOR ADDITIONAL STUDY ON THE GOLDENDALE ENERGY STORAGE PROJECT DRAFT LICENSE APPLICATION, FERC PROJECT NO. 14861.

purposes to mean both that the VMMP prohibits the destruction or removal of traditional plants from the proposed Project APE and that Yakama members' harvest practices are not prohibited within the proposed Project area. Accordingly, best management practices to protect native vegetation cannot only preserve the minimum number of plant specimens for survival, but must also account for traditional and cultural gathering activities as is provided by the existing pre-Project conditions.

V. Conclusion.

It is Yakama Nation's policy to preserve, protect, and perpetuate all significant natural and cultural resources, particularly the archaeological sites and TCPs within this proposed Project APE. The federal government, including FERC, has a Federal Trust Responsibility to preserve and protect the irreplaceable resources that Yakama Nation's people have relied upon since time immemorial for traditional and cultural practices at this proposed Project site. For further comments or questions please contact the Yakama Nation Lead Archaeologist, Jon Shellenberger, (509) 865-5121 ext. 6323 or by electronic mail at jon_shellenberger@yakama.com .

Respectfully,



DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

cc: Erik Steimle, Vice President, Rye Development, FFP Project 101, LLC
Phil Rigdon, Superintendent, Yakama Nation Department of Natural Resources
Elizabeth Sanchey, Manager, Yakama Nation Environmental Program
Rob Whitlam, State Archaeologist, Washington Department of Archaeology &
Historical Preservation
Dennis Griffin, State Archaeologist, Oregon State Historic Preservation Office

EXHIBIT B

Programmatic Agreement Among The Bonneville Power Administration, The Washington State Historic Preservation Officer, And The Advisory Council On Historic Preservation

Exhibit Coversheet Only.

[Paginated separately.]

MAY 05 1997

Historic Preservation

**PROGRAMMATIC AGREEMENT AMONG
THE BONNEVILLE POWER ADMINISTRATION,
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICER,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Regarding the Power Purchase Agreement
before the Bonneville Power Administration
for the Conservation and Renewable Energy System
Columbia Wind Farm #1
located in the Columbia Hills,
Klickitat County, Washington

WHEREAS, the Bonneville Power Administration (BPA) may enter into a Power Purchase Agreement with Conservation and Renewable Energy System (CARES) for the Columbia Wind Farm #1 (the Project);

WHEREAS, BPA, pursuant to 36 CFR 800.4(a) has determined that the Area of Potential Effect (APE) of the Project, as defined in 36 CFR 800.2(c), is that geographic area encompassed by the proposed Project boundary shown on Figure 1 in Appendix A and includes Juniper Point;

WHEREAS, BPA has determined that the Project may affect historic properties, including the Juniper Point traditional cultural property;¹

WHEREAS, BPA has conducted a historic sites assessment of the APE contained in a report by Archaeological and Historical Services, Eastern Washington University, dated February 1995;

WHEREAS, BPA has afforded the Confederated Tribes and Bands of the Yakama Indian Nation (CYN) opportunities for consultation and has invited the CYN to concur in this Programmatic Agreement;²

WHEREAS, BPA has consulted with the Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the regulations, 36 CFR 800.13, implementing Section 106 of the National Historic Preservation Act, 16 USC 470f (Section 106); and

WHEREAS, Klickitat County has issued a permit to CARES for the Project under Conditional Use Application CU-95-09, which includes Conditions of Approval (CUP) as shown in Appendix B;

¹ "Traditional" Yakama Peoples consider the term "cultural resources" to include the intermeshed physical, spiritual, and cultural components of the entire landscape--rocks, water, fish, roots, and other resources. The non-Yakama legal use of the term primarily designates prehistoric, historic, and traditional cultural sites and objects. The term "cultural sites" is used herein to indicate archaeological, historical, and traditional cultural properties, the last as defined in National Register Bulletin 38 (produced by the National Park Service, 1990).

² Boreson, Keo, Fred Crisson and Craig Holstine. February 1995. *A Cultural Resources Study of the Proposed CARES Columbia Wind Farm #1, Klickitat [sic] Washington*. Short Report 444. Archaeological and Historical Services, Eastern Washington University, submitted to Jones and Stokes Associates, Bellevue, Washington.

³ Indigenous human cosmologies often consider animals and plants to be "Native Americans" or "Peoples". This Programmatic Agreement will use the term "Native Americans" to refer to human beings.

NOW, THEREFORE, the BPA, the SHPO, and the Council agree that the Project will be implemented with the following stipulations in order to take into account the effects of the Project on archaeological, historical, and traditional cultural sites.

STIPULATIONS

BPA will carry out the following measures or ensure through its Power Purchase Agreement with CARES that the following measures are carried out:

1. ADDITIONAL CULTURAL SITES SURVEY

- 1.1. The Project 115-kV transmission line location has not yet received a cultural sites survey. Following Section 3.1 of the CUP, CARES will conduct a cultural sites survey of the transmission line corridor that follows the survey procedures documented in *A Technical Report: A Cultural Resources Study of the Proposed CARES Columbia Wind Farm #1, Klickitat [sic] County, Washington.*²
- 1.2. The survey will include a preliminary evaluation of the eligibility of any identified cultural sites for listing in the National Register of Historic Places. This preliminary evaluation will eliminate cultural sites that clearly do not appear to be eligible for National Register listing based on information collected during the background research for the Project and during the cultural sites survey. Cultural sites not eliminated will be considered potentially eligible for listing in the National Register.
- 1.3. Following Section 12.4.3 of the CUP, CARES will attempt to locate construction areas to avoid cultural sites considered potentially eligible for listing in the National Register. If construction cannot avoid effects on these sites, CARES will, following Section 3.2 of the CUP, conduct additional investigations as needed to determine whether the sites are eligible for listing. BPA will conduct the Determination of Eligibility in consultation with the SHPO, following 36 CFR 800.4 (c) (1 through 5).
- 1.4. These investigations could include historical research, oral interview, archaeological testing, or some combination of these methods. BPA recognizes that the CYN objects to archaeological testing, and BPA will attempt to minimize the use of this method. BPA will also ask the CYN about its views on the National Register eligibility of the sites and include the information it provides in the Determination of Eligibility.
- 1.5. BPA will submit the Determination of Eligibility to the SHPO for review in accordance with 36 CFR Section 800.4(c) and will obtain SHPO consensus on Determinations of Eligibility for potentially eligible cultural sites where adverse effects cannot be avoided.

2. ASSESSMENT OF PROJECT EFFECTS ON NATIONAL REGISTER-ELIGIBLE CULTURAL SITES

BPA will apply the Criteria of Effect and Adverse Effect in 36 CFR 800.9 to any National Register-eligible cultural sites that have not been previously evaluated for Project effects.

BPA will also ask CYN about its views on Project effects on National Register-eligible cultural sites and include the information it provides in the assessment of effects. BPA will afford the SHPO, CYN, and Council an opportunity to review and comment on the findings of effect.

For any portion(s) of the Project where construction will have no direct effect on any National Register-eligible cultural site, BPA may provide authorization to proceed with construction in such area(s), subject to the conditions of the Monitoring Plan (see Stipulation 4).

3. TREATMENT

- 3.1. BPA, in consultation with SHPO and CYN, will develop a Treatment Plan for the treatment of historic properties within the Project's Area of Potential Effect. BPA will submit the draft Treatment Plan to the SHPO, CYN, and Council for review and comment on how accurately and completely the substance of the Treatment Plan reflects this stipulation. SHPO, CYN, and Council will have 30 days to review the draft Treatment Plan, after which BPA will produce a final Treatment Plan that takes SHPO, CYN, and Council comments into consideration. BPA will ensure that CARES implements the Treatment Plan.
- 3.2. The signatories to this Programmatic Agreement recognize that, where feasible, preservation in place is the preferred treatment for cultural sites that are eligible for listing in the National Register, and the Treatment Plan will reflect this perspective.
- 3.3. The Treatment Plan will be consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties*. The Treatment Plan will provide for a research design and site-specific data recovery plans for data recovery efforts, including analysis and reporting.
- 3.4. BPA shall ensure that CARES makes a good-faith effort to acquire an access easement on private lands in the APE from the landowner where construction occurs to allow members of the CYN to conduct traditional plant gathering activities and other traditional uses. BPA will inform SHPO, Council, and the CYN of progress made in this regard. Any access agreement developed for this purpose will be submitted to each signatory and attached to this PA upon implementation.
- 3.5. As required by the CUP, CARES will develop a Decommissioning Plan for the Project. This Plan will provide for the removal of towers and foundations up to 4 to 6 inches below grade level, restoration of the topography, and reseeded with plants. The plants, to be approved by Klickitat County, will include species similar to the dominant native species within the plan communities on the Project site.
- 3.6. Any disputes that arise regarding preparation and implementation of the Treatment Plan will be resolved in accordance with Stipulation 8 of this Agreement.

4. CONSTRUCTION MONITORING

- 4.1.** As part of its Construction Environmental Protection and Monitoring Plan, required under Section 6 of the CUP, CARES, in consultation with the SHPO and CYN, will prepare a Cultural Sites Monitoring Plan. BPA will submit the draft Monitoring Plan to the SHPO, CYN, and the Council for review and comment on how accurately and completely the substance of the Plan reflects this stipulation. SHPO, CYN, and Council will have 30 days to review the Plan, after which BPA will produce the final Plan that takes the SHPO, CYN, and Council comments into consideration.
- 4.2.** The Monitoring Plan will specify construction areas that will be monitored. The Monitoring Plan will also address actions to be taken if previously unidentified cultural sites or Native American burials are discovered during construction. The Monitoring Plan will set forth the means by which the immediate area of the find will be secured from construction and other disturbance, who is responsible for notifying SHPO and CYN, how much time these parties have to consult, how much time will be made available to treat the find, and when construction can move forward.
- 4.3.** The Monitoring Plan will specify the location of the National Register-eligible cultural sites to be avoided and the means by which they will be marked and avoided. Following Section 2.2 of the CUP, CARES will precisely locate any cultural sites considered eligible for listing in the National Register, which are identified during the work outlined in Stipulation 2 above using property surveys or other means so that the final design of roads along the turbine strings and placement of the turbines can avoid the identified sites and isolates where feasible. Disturbance of identified sites or isolates, or any additional sites or isolates discovered during construction activities, will not occur until Stipulations 2 and 3 have been met.
- 4.4.** Following Section 6.3 of the CUP, CARES will train construction workers on the importance of cultural sites, how to identify cultural sites, the need to avoid damage to cultural sites, and procedures to follow if previously unidentified cultural sites, including Indian graves, are encountered during construction. Trainers will include one or more archaeologists qualified under the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and one or more members of the CYN, if it chooses to participate.
- 4.5.** Following Section 6.2 of the CUP, CARES will use Klickitat County and BPA-approved cultural sites specialists and one or more tribal monitors, if appointed by the CYN, as independent cultural sites monitors to ensure that flagged cultural sites are avoided.
- 4.6.** The Monitoring Plan will set forth the methods and interval(s) for long-term monitoring of cultural sites in the APE considered eligible for National Register listing to confirm that Project operation will have no adverse effects on them. If monitoring reveals adverse effects, BPA will ensure that CARES takes any actions that may be needed to confirm that affected sites are eligible for the National Register, to evaluate Project effects on such sites, and to mitigate adverse effects in accordance with the Treatment Plan.

4.7. In the case of inadvertent discovery of Native American burials or Native American human remains during construction, archaeological fieldwork, or laboratory analysis, CARES will halt construction activities in the immediate area of the discovered deposit, take reasonable action to secure such area, and promptly notify the BPA, SHPO, Council, and CYN. BPA will consult with the SHPO, Council, and include the CYN, if such archaeological deposits are related to Native Americans or if the source of the archaeological deposits is unknown, regarding evaluation and treatment of the deposits in accordance with 36 CFR 800.11.

4.8. Any disputes that arise regarding preparation of the Cultural Sites Monitoring Plan will be resolved in accordance with Stipulation 8 of this Agreement.

5. REPORTING

5.1. BPA will produce one or more reports as needed on the additional cultural sites survey, Determination of Eligibility, assessment of Project effects, treatment of cultural sites, and construction monitoring. The report(s) will discuss the methods and results of the work that is the subject of the report. If archaeological testing, data recovery excavations, or salvage excavations are needed at more than three cultural sites, BPA will produce a final synthetic report for the Project for submittal to appropriate repositories for cultural sites professionals and the public.

5.2. The report(s) will follow the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties*. BPA will submit draft reports to the SHPO, CYN, and Council for review and comment on how accurately and completely the substance of the report reflects the Programmatic Agreement stipulation or plan under which the report was prepared. SHPO, CYN, and Council will have 30 days to review each draft report, after which BPA will produce final reports that take SHPO, CYN, and Council comments into consideration. All final reports will be completed within eight months after the completion of the construction monitoring set forth in Stipulation 4.

5.3. Any disputes that arise regarding preparation of the Project reports will be resolved in accordance with Stipulation 8 of this Agreement.

6. CURATION

BPA will ensure that the records and materials resulting from identification and data recovery efforts are curated according to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 *et seq.*) and the Advisory Council's *Handbook on the Treatment of Archaeological Properties*, taking into consideration 36 CFR Part 79. Human skeletal remains and associated artifacts are to be reburied at the discretion of the CYN after consultation among BPA, SHPO, and CYN regarding the need for any basic forensic analysis. BPA designates the CYN Heritage

Center, as an institution qualified under 36 CFR Part 79, as the repository for curating records and materials on cultural sites for the Project.

7. AMENDMENT OF THE PROGRAMMATIC AGREEMENT

If a signatory to this Programmatic Agreement determines that the terms of the Programmatic Agreement cannot be met or believes a change is necessary, such party may request the signatories to consider an amendment to the Programmatic Agreement in accordance with 36 CFR 800.5(c)(5). Such an amendment will be executed in the same manner as the original Programmatic Agreement; parties invited to concur in the Programmatic Agreement will be invited to concur in any such amendment.

8. DISPUTE RESOLUTION

Should any party to this agreement object within 30 days to any plans provided for review or actions proposed pursuant to this Agreement, the BPA shall consult with the objecting party to resolve the objection. If the BPA determines that the objection cannot be resolved, the BPA shall forward documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

1. provide the BPA with recommendations, which the BPA shall take into account in reaching a final decision regarding the dispute; or
2. notify the BPA that it will comment pursuant to 36 CFR Section 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the BPA in accordance with 36 CFR Section 800.6(c)(2) with reference to the subject of the dispute.
3. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the BPA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.
4. At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure or its manner of implementation be raised by any member of the public, the BPA will take the objection into account and consult as needed with the objecting party, the SHPO, or the Council to resolve the dispute. In no event shall such objection and consultation provide grounds for postponing or delaying the conduct of the undertaking or the terms of this agreement.

9. TERMINATION

BPA, the SHPO, or the Council may terminate this Programmatic Agreement by providing thirty (30) days' prior written notice to the other signatories; provided, however, that during the thirty-day period, the signatories will consult to seek agreement or amendment or other actions that would avoid termination of the Programmatic Agreement. In the event the parties are unable to avoid termination, BPA will comply with 36 CFR 800.4 through 800.6 with regard to any elements of the Project that have not previously been taken into account by BPA.

CONCLUSION

Execution of this Programmatic Agreement by the BPA, the SHPO, and the Council, and implementation of its terms are evidence that BPA has taken into account the effects on cultural sites of the CARES Columbia Wind Farm #1 in accordance with Section 106 of the National Historic Preservation Act.

Signatory Parties:

BONNEVILLE POWER ADMINISTRATION

By: *Margaret A. Smith* Date: 3/13/97

WASHINGTON STATE OFFICE OF ARCHAEOLOGY AND HISTORIC PRESERVATION

By: *[Signature] ACTING SHPO* Date: 5.12.97

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

Concurring Party:

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA INDIAN NATION

By: _____ Date: _____