



Amelia Fujikawa
Clean Energy Specialist, Department of Ecology
Cleanenergy@ecy.wa.gov

Re: Comments in response to the Draft Environmental Justice Toolkit for Clean Energy Projects

Climate Solutions appreciates the opportunity to provide feedback on the Washington State Department of Ecology and Department of Commerce's draft Environmental Justice Toolkit for Clean Energy Projects. We commend the Department of Ecology and Commerce along with the Interagency Clean Energy Siting Coordinating Council in taking on this effort and preparing a very thorough resource. Overall, Climate Solutions believes the draft Toolkit effectively captures the clean energy and environmental justice policy context of Washington State, what it means to meaningfully include Tribes and communities in the development process and plan for equitable project outcomes, the case for doing so, and how developers can implement best practices. We respectfully share the following input on how this resource can be most useful to developers while supporting better consultation and engagement processes, more meaningful participation from Tribal Nations and communities in project decision-making, and more equitable outcomes for Tribes and communities.

Section 3: Developer Building Blocks for Tribal Engagement

Building Block 3: Create opportunities for formal partnership

Climate Solutions recommends removing the following bullet point from the list of considerations for developers as they explore tribal partnership opportunities: "Developers may only need to negotiate with one Tribe vs. multiple landowners to secure a land lease." (pg. 48). The land ownership and interest paradigm presented in this point is potentially misleading to developers and may add further confusion as to how and when they should reach out to Tribes to discuss project siting and partnership. As shown in GOIA's [Tribal Reservation and Draft Ceded Areas map](#), all of Washington's non-reservation land represents ceded territory and/or usual and accustomed land, making nearly everywhere of possible interest to one or more Tribes when it comes to clean energy development, even if that development is set to occur on private land. Given this complexity, comparing negotiations with private landowners to negotiations with Tribal Nations may introduce confusion to developers. Additionally, not all Tribes may be interested in discussing clean energy development opportunities on reservation or other Tribally-controlled lands, and this bullet may suggest widespread interest from Tribes. To minimize confusion, we recommend removing this point.

Block 4: Collaborate with Tribes to identify least-conflict sites

Climate Solutions recommends incorporating the following additional best practices to support developers in pursuing least-conflict siting:

- Recommend to developers that certain Tribes may only be interested in discussing and negotiating site selection and facility design if they have access to information that is not publicly accessible (e.g., information a developer found/assessed in their initial desktop review of a

proposed site, GIS layers, etc.), and without that, a developer may not be able to expect fruitful engagement. Tribes may be interested in negotiating NDAs to have access to this information, though that varies from Tribe to Tribe.

- Recommend that developers specifically hire firms to perform archaeological assessments of sites that **have expertise and experience in the PNW**. We hear that some developers bring in firms that are unfamiliar with Washington's history and tribal context, which can severely impact the quality and accuracy of archaeological assessments.
- We're hearing Tribes are increasingly being asked to tell developers where they should put facilities or infrastructure on a given site that is of interest to them. This is largely not feasible for many Tribes for a variety of reasons, including capacity constraints and the idea that a developer may misinterpret that kind of direction as a Tribe "approving" a project. A potential solution is for the developer to be prepared to produce and share multiple site configuration options with a Tribe, from which they can steer a developer towards the least-conflict option. This may not work on a site where any disturbance or the amount of disturbance needed to make the project economical is unacceptable to the Tribe.
- Highlight that just because a Tribe works with a developer in the pre-siting and/or pre-permitting phase of a project, that does not mean they should expect a Tribe to "approve" of or support a project through the entire development and permitting process. For example, if a Tribe works with a developer to avoid known sensitive sites, wildlife migration corridors, or Tribal cultural resources, it is possible that previously unknown resources or sites are revealed through the planning or construction process. In this case, if the Tribe is not immediately alerted and/or if improper action is taken by the developer, support can be lost and the developer can be exposed to litigation risks.

Section 4: Supporting Community Voices

Climate Solutions recommends clarifying the intent of this section, removing it, and/or pulling out content into its own standalone resource. The intended audience of this section appears to be communities that may be impacted by clean energy development across Washington, but that is unclear in its current form. If communities are the intended audience of this section, we suggest it be pulled out entirely into its own standalone resource, as it is not readily accessible while embedded in a nearly 100-page document geared towards project developers. Additionally, if this content is intended to be public-facing, it should undergo restructuring and reformatting to be more succinct, digestible, and usable.

Climate Solutions thanks the Washington State Department of Ecology and Commerce for the opportunity to provide feedback on this important resource.

Sincerely,

Shannon Pressler
Washington Clean Energy Policy Manager
Climate Solutions
shannon.pressler@climatesolutions.org