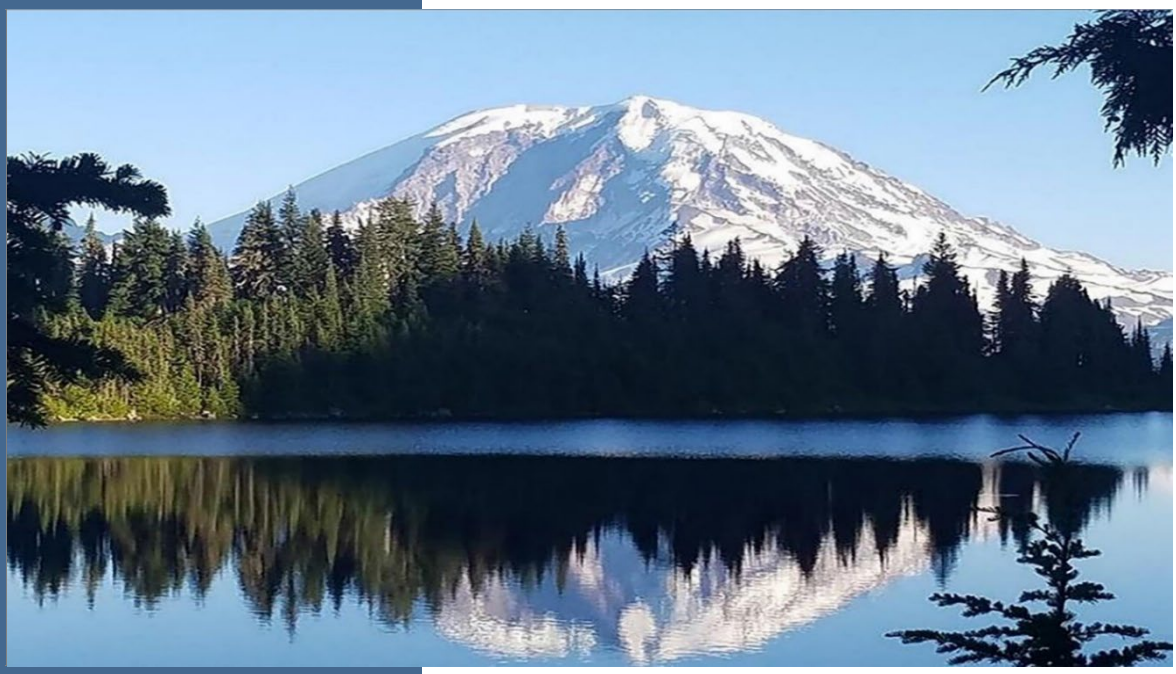

Low-Carbon Energy Project Siting Improvement Report

Report and Recommendations for Improving Siting and Permitting of Industrial Clean Energy Facilities

Shorelands and Environmental Assistance Program

Washington State Department of Ecology

and

Energy Division

Washington State Department of Commerce

Olympia, Washington

November 2022, Publication 22-06-013

DEPARTMENT OF ECOLOGY
State of Washington

Washington State Department of Commerce

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Related Information

- Publication 21-06-029: Low-Carbon Energy Project Siting Improvement Interim Legislative Report[1]
- Publication 21-06-030: Low-Carbon Energy Project Siting Improvement: Overview of State Siting Efforts and Agencies[2]

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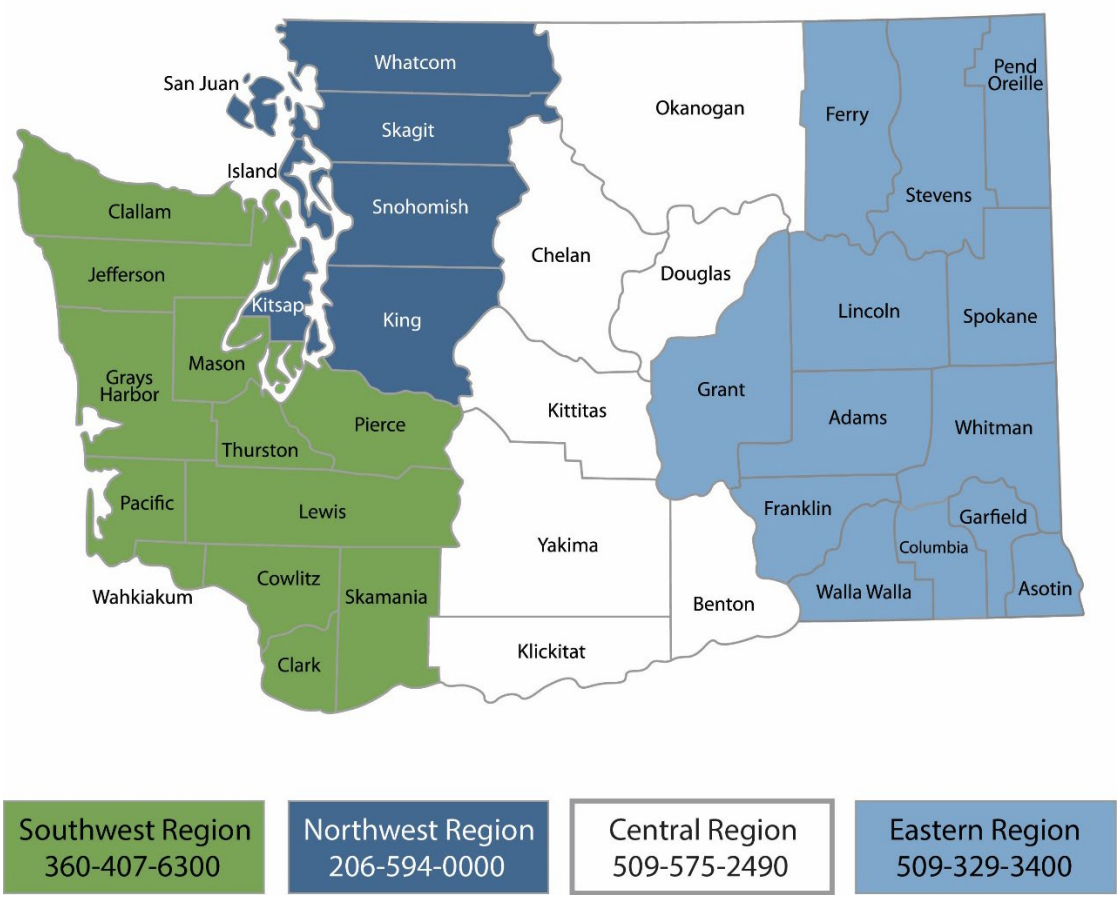
[1] https://apps.ecology.wa.gov/publications/SummaryPages/2106029.html
[2] https://apps.ecology.wa.gov/publications/SummaryPages/2106030.html
[3] www.ecology.wa.gov/contact

Department of Ecology's Regional Offices

Map of Counties Served



Southwest Region 360-407-6300	Northwest Region 206-594-0000	Central Region 509-575-2490	Eastern Region 509-329-3400

Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	PO Box 330316 Shoreline, WA 98133	206-594-0000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
Headquarters	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

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Acknowledgements

The Washington State Departments of Ecology and Commerce acknowledge and appreciate the time and effort members of the Advisory Board, Tribes and the Interagency Team invested in participating in this process. The discussion, input and feedback from these groups was critical for the agencies in the development of recommendations in this report. The agencies are also grateful to Ross Strategic staff for facilitating meetings and to the presenters who helped build a knowledge base to support discussions.

Executive Summary

The Legislature directed the Washington State Department of Ecology (Ecology) and the Washington State Department of Commerce (Commerce) to develop recommendations for potential improvements to the siting and permitting of industrial low-carbon projects and facilities in Washington. These are projects and facilities which would contribute to achieving the state's greenhouse gas emissions limits. The recommendations in this report would improve siting and permitting processes, while protecting Tribal rights and resources and maintaining standards for the protection of the environment and local communities.

The Legislature and Governor Jay Inslee have taken actions ensuring the state does its part to reduce contributions to global climate change and help facilitate the clean energy transition in Washington. Recent state and federal legislation has been enacted to support and fund this transition. As a result, there has been an increase in the number of clean energy projects in Washington and more are expected in the future. It is critical that the state prepare for this growth in a coordinated and inclusive manner, and improve processes for siting, review and permitting of industrial clean energy projects. These improvements must also protect Tribal rights and resources, overburdened communities and the environment.

Ecology and Commerce conducted a study on how to improve siting, environmental review and permitting processes for low-carbon energy projects in Washington. The study included monthly meetings with an Advisory Board and an Interagency Team, multiple Tribal forums and public meetings. These groups provided Ecology and Commerce input and feedback used to develop recommendations.

The siting study helped surface challenges and concerns related to the siting and permitting of industrial clean energy projects. Identified barriers included insufficient engagement with Tribes, inefficient and time-consuming permitting of facilities, lack of project transparency for involved parties, and uncertainties over project impacts and benefits.

Ecology and Commerce created solution-oriented goals to address these issues with associated strategies and recommended actions for each. The goals focused on:

- Developing and implementing equitable community engagement.
- Improving engagement and information sharing with Tribes and government-to-government consultation.
- Assisting local governments to support coordinated clean energy and economic development.
- Supporting the clean energy transition through equitable economic development.
- Conducting upfront planning to make siting and permitting projects more effective and ensure protection of natural resources, communities, and Tribal rights and resources.
- Providing guidance, training and tools for clean energy projects and planning.
- Coordinating at federal, state and local levels.
- Improving statewide support.

The diverse groups involved helped develop potential solutions; however, these recommendations are a further step in ongoing discussions, and additional work will be needed with broader sets of stakeholders and Tribes to further refine and implement them.

Recommendations

This report identifies 73 recommendations which could be implemented singly or in groups. They include recommendations for potential legislative, agency and policy actions, as well as suggested actions Tribes may choose to implement, and for developers and industry to consider.

Table 1: List of recommendations

Reference	Recommendation
Environmental Justice (EJ) Goal: Develop and Implement Equitable Community Engagement and Ensure Overburdened Communities Are Not Disproportionately Impacted by Industrial Clean Energy Projects	
EJ-1	Develop detailed guidelines for agencies and local governments to engage overburdened communities as part of planning processes in equitable and accessible ways.
EJ-2	Consider how local government could coordinate with communities to develop guidelines on how best to engage with representative organizations.
EJ-3	Coordinate with communities on options to provide longer timelines for review and comment on permits.
EJ-4	Develop best practices for developers on meaningful community engagement, including optimal timing for early engagement, holding accessible meetings, providing feedback and direct engagement with members of impacted communities.
EJ-5	Consider providing funding for local governments, Tribes and communities to provide information and training directly to developers on meaningful engagement.
EJ-6	Identify communications and engagement strategies for working with overburdened communities and provide data on participation rates.
EJ-7	Require environmental justice impact analysis be conducted as part of a state environmental review process or other related review process.
EJ-8	Consider developing guidance and best practices for conducting impact analysis for overburdened communities.

Reference	Recommendation
EJ-9	Incorporate equity consideration in requests for proposals for consumer-owned utility projects, similar to Washington Utilities and Transportation Commission requirements.
EJ-10	Agencies not covered by the Healthy Environment for All Act should review the benefits of opting in.
EJ-11	Opt-in agencies with a nexus to clean energy siting or permitting should consider participating in the Healthy Environment for All Interagency Work Group.
Tribal Consultation and Engagement (TRIBAL) Goal: Improve Engagement and Information Sharing with Tribes and Government-To-Government Consultation	
TRIBAL-1	Designate a lead point of contact in each state agency to provide information and coordinate between Tribes and developers on clean energy projects upon notification of a potential project.
TRIBAL-2	Determine which Tribal technical staff to contact for early project planning.
TRIBAL-3	Consider how to meaningfully include Tribes as part of the siting decision-making processes at the state and local levels and develop a mechanism for determining which Tribes may be impacted.
TRIBAL-4	Consider how developers could contact Tribes early in the siting process, ideally before land is acquired for a project or before permit applications are developed and offer information relevant to Tribal technical staff.
TRIBAL-5	Consider how to consistently track and document Tribal engagement activities and findings related to siting, environmental review and permitting processes.
TRIBAL-6	When assessing Tribal lands and interests that may be directly, indirectly or cumulatively affected by a project, the evaluation should include Tribal treaty reserved rights, Tribal reservations, off-reservation rights, Trust lands, other Tribal-owned land and other areas of significance to Tribes.
TRIBAL-7	Fund and request individual Tribes to self-identify their areas of interest.
TRIBAL-8	Develop map layers for routes of migratory species, vessel traffic routes or other information of interest to Tribes.
TRIBAL-9	Consider creating high-level map layers where a Tribe could self-identify areas of interest and provide contact information for early communication regarding potential projects.
TRIBAL-10	Consider requiring a Tribal monitor for archaeological survey crews to provide input on traditional cultural properties, sacred site and culturally significant sites.

Reference	Recommendation
TRIBAL-11	Require ongoing monitoring of facilities for impacts to treaty resources.
TRIBAL-12	Consider options to provide state funding for Tribal staff for clean energy planning and project reviews.
TRIBAL-13	Consider approaches for applicants to fund work by Tribal staff or consultants to support Tribal pre-application engagement and project review.
TRIBAL-14	Support sufficient federal funding for Tribal staff to meet federal requirements for project reviews.
TRIBAL-15	Consider how the state could assist Tribes to develop clean energy projects.
TRIBAL-16	Consider how to provide additional funding and staffing to state agencies and Tribal Historic Preservation Officers to support Tribal consultation and engagement work related to clean energy projects.
TRIBAL-17	Build on existing Tribal consultation and Tribal treaty rights training by offering a variety of training to developers, state agencies and local governments.
Local Government (LOCAL) Goal: Assist Local Governments to Support Coordinated Clean Energy and Economic Development	
LOCAL-1	Consider how to assist counties and cities in updating local codes for emerging clean energy technology by providing template language that could be modified locally.
LOCAL-2	Expand training opportunities for local governments on clean energy processes and regulations, emerging technologies and on Tribal affairs and relations.
LOCAL-3	Consider how to provide state funding for local government staff for clean energy planning, project reviews and permitting.
LOCAL-4	Consider how to assist local government in accessing federal funding for clean energy.
LOCAL-5	Consider developing GMA guidance on land conversion for clean energy projects, including for rural and resource lands.
LOCAL-6	Update the Rural Element Guidebook.
LOCAL-7	Develop guidance for local governments about aligning GMA requirements for rural character and resource land protection with potential clean energy projects.
LOCAL-8	Assist local planning agencies with community engagement regarding long-term planning for low-carbon energy projects.

Reference	Recommendation
Equitable Economy (EE) Goal: Support Clean Energy Transition Through Equitable Economic Development	
EE-1	Consider how to facilitate opportunities for high-quality, family-wage local jobs and small businesses from clean energy projects.
EE-2	Consider how to include community benefit agreements or good neighbor agreements as part of planning or environmental reviews, if appropriate.
EE-3	Consider options for workforce development opportunities, including understanding workforce availability and opportunities for training, apprenticeships and high-quality jobs.
EE-4	Consider how to include labor standards, workforce agreements and local hiring provisions for clean energy projects.
EE-5	State agencies develop rural clean energy economy roadmaps in collaboration with local governments.
EE-6	Consider incentives to develop projects at sites identified through least-conflict studies or through planned actions or programmatic environmental impact statements to avoid or minimize impacts.
EE-7	Consider requirements for bonds for decommissioning facilities of all sizes, including those for which decommissioning is not a normal component of development agreements.
EE-8	Consider statutory change to strengthen requirements that communities receive benefits when new energy resources are developed.
EE-9	Consider how to incentivize use of already developed industrial areas, infrastructure and brownfields, including opportunities to overcome financing barriers.
EE-10	Provide assistance to local governments related to documentation required for utilizing brownfield or Comprehensive Environmental Response, Compensation and Liability Act sites for clean energy projects.
EE-11	Provide funding and technical assistance for cleanup activities and reuse planning for siting on contaminated brownfields.
EE-12	Consider modifications or revisions to tax language to address different or concurrent uses of land, such as when land could be used for agricultural purposes and also for clean energy purposes.
EE-13	Consider developing guidelines for county assessors about how the income capitalization approach could be used to value clean energy facilities to avoid shifting tax burden due to depreciating assets.

Reference	Recommendation
EE-14	Develop information on tax incentive options for local government, developers and Tribes.
EE-15	Consider and explore financial tools for mitigating impacts of clean energy facilities.
Upfront Planning (PLAN) Goal: Conduct Upfront Planning to Make Siting and Permitting Projects More Effective and Ensure Protection of Natural Resources, Communities, and Tribal Rights and Resources	
PLAN-1	Conduct additional least-conflict mapping for specific geographic areas or energy types.
PLAN-2	Conduct coordinated and early planning to identify, evaluate and address potential impacts for possible sites of clean energy projects.
PLAN-3	Provide funding for local governments, Tribes, agencies and communities for early planning.
PLAN-4	Develop guidance on how local governments can utilize least-conflict processes and upfront planning to provide information and reduce timelines for review and permitting of projects.
Provide Assistance (ASSIST) Goal: Improve Guidance, Training and Tools for Clean Energy Projects and Planning	
ASSIST-1	State agencies should consider developing publicly accessible roadmaps for specific types of energy projects.
ASSIST-2	Develop pre-application guidance for developers to consider when designing and siting clean energy projects.
ASSIST-3	Provide greater clarity about state agency, local government, and Tribal government roles and responsibilities, and processes for making siting, review and permitting decisions.
ASSIST-4	Conduct internal process improvement analysis for state agency permitting processes.
ASSIST-5	Agencies should consider developing lessons learned for the public about the review and permitting processes for projects.
ASSIST-6	Develop guidance on the type of information needed for environmental reviews and permitting.
ASSIST-7	Build state-level expertise on clean energy facilities and impacts to provide technical assistance for reviews and permitting.

Reference	Recommendation
ASSIST-8	Conduct studies and develop guidance to provide updated data and information for use by state agencies, local governments, Tribes and developers in environmental assessments.
ASSIST-9	Develop tools to support consistent policies, standards and guidance on mitigation of impacts.
ASSIST-10	Designate and fund an agency to manage and maintain an informational mapping tool to provide points of contact for engagement and to identify issues to consider for siting clean energy projects.
Agency Coordination (COORD) Goal: Improve Coordination at Federal, State and Local Levels for Clean Energy Projects	
COORD-1	Develop landscape-level plan for federal lands that includes impact analysis and mitigation with state and federal agencies to be used for permitting of projects.
COORD-2	Consider developing a template for National Environmental Policy Act and State Environmental Policy Act integration that could be used by local governments to help make state and federal environmental review processes more effective.
COORD-3	Consider the development of standard Memorandums of Understanding or cooperative agreements to establish consistent federal and state coordination for environmental reviews.
Statewide Support (STATE) Goal: Improve State Organizational Structure to Implement Recommendations, Provide Information and Coordinate Efforts	
STATE-1	Establish an interagency policy coordination team to implement recommendations and align siting, review and permitting processes.
STATE-2	Develop a dashboard to provide one stop for information on proposed clean energy projects.
STATE-3	Establish “clean energy navigators” at a state agency to provide guidance and expertise on state agency processes.
STATE-4	State agencies should assess current project-level interagency coordination for potential improvements to siting, environmental review and permitting roles and actions.
STATE-5	State agencies assess needs for staff dedicated to working on clean energy projects, planning and providing technical assistance.

Low-Carbon Energy Project Improvement Siting Study

Ecology, in partnership with Commerce, conducted a study on how to improve siting, environmental review and permitting processes for low-carbon energy projects in Washington. These clean energy projects can help the state achieve future greenhouse gas limits mandated under state law. The study included monthly meetings with an Advisory Board and an Interagency Team, multiple Tribal forums and information sessions, and three public meetings. These groups provided Ecology and Commerce input and feedback to assist in the development of recommendations in this report.

This work will help:

- Contribute to the development of Washington's low-carbon energy economy.
- Avoid or reduce potential adverse impacts to the environment and overburdened communities.
- Protect and minimize impacts to Tribal rights and resources[4] and ensure meaningful government-to-government consultation.
- Support family-wage jobs.

Ecology and Commerce provided an interim legislative report[5] to the Legislature in December 2021. It described the approach for the study and the people involved. While preliminary, it identified some of the issues for consideration and an overview of siting work in Washington.

This final legislative report builds on these ideas using input from the Advisory Board, Tribes, agencies, stakeholders and the public. It includes recommendations to improve how industrial clean energy projects are sited, reviewed and permitted in Washington. The recommendations include legislative, policy, and agency actions that would support the clean energy transition in our state, while ensuring the protection of natural resources, communities and Tribal rights and resources. Many of the recommendations acknowledge further work is needed to equitably and comprehensively engage with Tribes, communities, stakeholders and industry.

Legislative directive

Chapter 43.21A.738[6] Revised Code of Washington (RCW) states:

> (1) The department, in coordination with the department of commerce and other agencies as appropriate, must develop recommendations for potential improvements to

[4] The definition of Tribal rights and resources in this report is based on the definition from Chapter 253, Laws of 2022 (Engrossed Substitute House Bill 1753) on Climate Commitment Act Funding – Tribal Consultation. Tribal rights and resources include Tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in Tribal lands and lands within which a Tribe or Tribes possess rights reserved or protected by federal treaty, statute or executive order.
[5] https://apps.ecology.wa.gov/publications/SummaryPages/2106029.html
[6] https://app.leg.wa.gov/RCW/default.aspx?cite=43.21A.738

the permitting processes for industrial projects and facilities in Washington that would contribute to achieving greenhouse gas emissions limits established under RCW 70A.45.020[7] while maintaining standards for the protection of the environment and the preservation of tribal consultation and treaty rights. The department must provide increased clarity on areas in the state that may be suitable for siting projects that have a lower potential for negative environmental impacts, especially to highly impacted communities as defined in RCW 19.405.020[8] and identify strategies for minimizing and mitigating negative environmental impacts where possible. The department must provide clear guidance and direction intended to improve project proposals, recommend policy and administrative improvements necessary to improve the permitting process, and recommend any additional studies needed. The department shall convene businesses, local governments, community organizations, and environmental and labor stakeholders, and consult with tribes.

(2) The department and the department of commerce shall produce and submit to the governor and the legislature an interim progress report with initial policy proposal recommendations for the 2022 legislative session by December 1, 2021, and a final report including findings, recommendations, and further policy proposals by December 1, 2022.

(3) This section expires June 30, 2023.

Focus of study

The study identified systemic issues and areas for improvement related to:

- Siting industrial clean energy projects.
- Environmental review and permitting processes.
- Avoiding or minimizing impacts to Tribal rights and resources.
- Consideration of overburdened communities, highly impacted communities and vulnerable populations.

The study concentrated on clean energy projects that can help achieve greenhouse gas emission limits established under chapter 70A.45.020[9] RCW. Such projects include, but are not limited to:

- Biorefineries and refineries producing alternative fuels.
- Solar and wind farms.

[7] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.45.020
[8] http://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020
[9] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.45.020

- Solar and energy storage major component manufacturers, including electric vehicle batteries.
- Pumped storage hydropower and battery energy storage facilities.
- Green hydrogen facilities.
- Offshore energy facilities (such as wind and tidal).

Advisory Board

Stakeholder and Tribal government engagement in the siting study process was critical to ensure those who may be affected by or involved with clean energy planning and project siting and permitting had a chance to voice their opinions and share their experiences. Ecology and Commerce established an Advisory Board to engage with stakeholders and Tribes in July 2021. The goal was to hear directly from representative stakeholders and Tribal government representatives on a broad range of issues of concern and potential solutions.

In addition to the Advisory Board, Ecology and Commerce held one-on-one meetings with stakeholders, as requested. Stakeholders could also provide input and feedback using the online comment form, emails to Ecology or Commerce, or at Advisory Board or public meetings.

Advisory Board members

The Advisory Board members are listed in Appendix B. They represent:

- Businesses and industry organizations
- Environmental justice organizations
- Environmental organizations
- Labor organizations
- Local government
- Ports
- Tribal governments (Makah Tribe and Puyallup Tribe)
- Utilities

The Advisory Board met monthly from October 2021 through November 2022. Participation in the Advisory Board did not infer support or concurrence with proposed recommendations. The siting study Advisory Board webpage[10] includes information on meetings, agendas, summaries, presentations and recordings. Members provided direct feedback and recommendations that are documented in meeting summaries and recordings, as well as in written comments.

[10] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard/Low-carbon-energy-siting/Advisory-board

Breakout sessions with small groups were utilized to provide time for all members to speak and provided the agencies with multiple perspectives on a range of topics.

The agencies developed recommendations iteratively using feedback from all parties involved, so they are based on multiple sources. Feedback on areas out of scope of this report per the legislative mandate are not included here but are part of the administrative record. Ecology and Commerce strove to incorporate feedback into recommendations that Advisory Board members could support but did not seek consensus. Where there was not agreement for the recommendations, the general issues and concerns raised are noted for that recommendation.

Board members helped Ecology and Commerce understand issues across sectors and interests and helped identify potential ideas to improve siting and permitting of clean energy projects in ways that maintain environmental standards, consider overburdened communities and protect Tribal rights and resources.

Members helped identify approaches that could support Washington's continued economic success and increase its competitiveness. They highlighted opportunities and challenges for addressing historical inequities for highly impacted communities and vulnerable populations and provided ideas for mitigating inequities as part of the planning and permitting processes of clean energy facilities.

Advisory Board objectives

Members were asked to provide information to affiliated groups and share views from those they represent. Because each Tribe is a sovereign government, Tribal government representatives participating in the Advisory Board only represented their individual Tribal government. The objective of the Board was to identify and document concerns, perspectives and recommendations for consideration by Ecology and Commerce related to:

- Systemic issues related to siting projects, environmental review and permitting processes, Tribal rights and resources, and consideration of overburdened communities.
- Opportunities as well as roadblocks in current processes.
- Potential options for resolving systemic issues and characterizing high-level implications, trade-offs and opportunities associated with implementing proposed options.
- Developing guidance and tools for developers to improve siting processes.
- Additional studies or actions needed.

Board meetings provided a collaborative forum so members could provide insights and feedback on improving low-carbon energy project permitting and siting processes.

Key areas of Advisory Board discussion

Advisory Board meetings allowed Ecology and Commerce to gain input and feedback on potential recommendations from a range of perspectives. Board members were asked to provide insights at meetings based on their area of expertise and experience. Presentations from a variety of experts provided a common knowledge base for topic discussions.

Topics the Advisory Board discussed included:

- Clean energy transformation needs and regulations
- Environmental regulations
- Growth Management Act requirements
- Environmental impacts and mitigation
- Tribal consultation and engagement
- Environmental justice
- Community engagement
- Financial impacts and considerations
- Federal and state agency responsibilities and permit requirements
- Local government roles and responsibilities
- Advanced planning
- Siting and pre-application phases
- Environmental review process
- Permitting processes and resources
- Appeal processes
- Mapping tools

All board members were invited to provide input and feedback on the topics as well as on draft documents for Ecology and Commerce to consider. The agencies sought alignment on the language for the recommendations, but board members were not asked to reach consensus or approve the recommendations.

Advisory Board members brought direct siting and permitting experience and expertise in many areas to the study, however, a single group cannot represent the breadth and diversity of stakeholders and communities that may be affected by clean energy projects. Many of the recommendations acknowledge further work is needed to engage with Tribes, communities and stakeholders in an equitable and comprehensive manner.

Tribal consultation and engagement on the siting study

Indian Tribal governments are sovereign, self-governing entities. Washington state has established several agreements with federally recognized Indian Tribes to facilitate government-to-government relations, including the Centennial Accord (1989) and New Millennium (1999) agreements.

Under state law, in establishing a government-to-government relationship with federally recognized Tribes with traditional lands or territories in Washington, state agencies must make

reasonable efforts to collaborate with Tribes in the development of policies, agreements and program implementation that directly affect Tribes. Chapter 43.376[11] RCW Government-to-Government Relationship with Tribes establishes requirements for state agencies.

Government-to-government consultation provides Tribes and state agencies a means of sharing perspectives, identifying points of agreement and disagreement, and reconciling differences through respectful dialogue to arrive at mutually acceptable understandings and agreements through good faith efforts. Formal consultation occurred between individual Tribes, Ecology and Commerce according to Ecology and Commerce's consultation policies. Engagement with Tribal leadership and Tribal staff occurred throughout the process.

Participation in siting study forums or meetings did not mean Tribal concurrence on issues. The meetings were intended to provide a place to consider and discuss ideas. Some Tribes met individually with Ecology and Commerce through formal government-to-government consultation to discuss concerns. Where there was not agreement for the recommendations, issues and concerns raised by Tribes are noted for that recommendation.

Siting study Tribal consultation and engagement plan

For the study, Ecology and Commerce developed a Tribal Consultation and Engagement Plan. The draft plan was shared with Tribes in September 2021. The intent was to engage Tribal leadership, Tribal natural resource and cultural resource directors, Tribal technical staff, and Tribal organizations and affiliations.

The plan was intended to:

- Provide multiple options where Tribes could share information, concerns and perspectives on low-carbon energy project permitting process improvements and the siting of these projects.
- Identify and document Tribal concerns, perspectives and recommendations for consideration in the legislative reports.
- Offer multiple meaningful consultation and engagement opportunities throughout the process.
- Meet with Tribal government representatives, Tribal organizations and affiliations and Tribal technical staff in a forum of their choosing.
- Identify and define preferred communication points of contact and frequency.
- Identify level, type, structure and topics of consultation and engagement.

Options provided for Tribal consultation and engagement

Government-to-Government consultation

[11] https://app.leg.wa.gov/rcw/default.aspx?cite=43.376

Ecology and Commerce invited formal government-to-government consultation with Tribes through emails, phone calls and at meetings to discuss issues and concerns about industrial clean energy project siting, permitting and the siting study. Consultation and engagement with Tribes, Ecology and Commerce were held throughout the study, as requested by Tribes.

Siting Advisory Board meetings

Ecology and Commerce invited all Tribes to be on the Advisory Board. This provided opportunities for early and continued input and feedback from, and involvement by, Tribes potentially affected by industrial low-carbon projects or interested in permitting or siting issues. Tribal government representatives from the Makah Tribe and the Puyallup Tribe participated as members of the Advisory Board.

Tribal informational sessions

In September 2021, Ecology and Commerce provided information to Tribes at two information sessions on the study approach and the draft Tribal Consultation and Engagement Plan. The meetings discussed the purpose and goals of the study, the timeline, and options for Tribal leadership and Tribal representatives to participate in the process.

Tribal forums

Ecology and Commerce offered five focused Tribal forums between April 2022 and October 2022. A sixth forum in November 2022 was offered to answer questions on the draft report and receive feedback. Tribes and Tribal organizations participated. The forums provided agencies with the opportunity to hear from Tribes on Tribal issues and concerns related to the study and discuss recommendations as they were developed. The intent of the forums was to encourage early and continued feedback from and involvement by Tribes potentially affected by projects to ensure their input was considered in developing the final legislative report.

Tribal/State meetings on clean energy siting

In October 2022, Governor Inslee met with elected leaders from a number of Tribes in Port Angeles and Toppenish. The meetings were designed to foster leadership discussion on issues of mutual interest and concern related to siting clean energy generation and manufacturing to reduce pollution, build Washington's low-carbon future and combat climate change.

Affiliated Tribes of Northwest Indians conference presentation

Makah Tribe Vice-Chairman Patrick DePoe provided a presentation on the siting study at the May 2022 Affiliated Tribes of Northwest Indians conference. Staff from Ecology and Commerce were present to listen and answer questions.

Tribal feedback and input for recommendations and report

The agencies shared information on issues they heard during the siting study meetings and high-level recommendations at the July 2022 Tribal forum. From August through October, draft sections of the report were made available for Tribal review and input and the entire draft

report was also provided for review in October 2022. Recommendations were developed from July through October 2022 using an iterative process. A question-and-answer forum on the draft report was held in November 2022. Tribes, as well as Advisory Board and Interagency Team members, provided input and feedback to Ecology and Commerce.

Documenting Tribal concerns and issues

Ecology and Commerce invited Tribes to include letters about their issues and concerns in this legislative report. These letters are included as submitted in Appendix C.

Recommendations were developed using feedback from all parties involved and were developed iteratively, so they are based on multiple sources. Feedback on areas that were out of scope of this report per the legislative mandate are not included but are part of the administrative record. Ecology and Commerce strove to incorporate feedback into recommendations that Tribes could support but did not seek consensus. Where there was not agreement, issues and concerns Tribes raised are noted for that recommendation.

Tribal participation in siting study

Below is a list of Tribes and Tribal organizations whose Tribal representatives, staff, members or lobbyists participated in the Tribal information sessions, Tribal forums, Affiliated Tribes of the Northwest Indians conference presentation, one-on-one meetings or at Advisory Board meetings.

- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of the Chehalis Reservation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Umatilla Indian Reservation
- Hoh Indian Tribe
- Jamestown S'Klallam Tribe
- Kalispel Tribe of Indians
- Lummi Nation
- Makah Tribe
- Muckleshoot Indian Tribe
- Nez Perce Tribe
- Nisqually Indian Tribe
- Port Gamble S'Klallam Tribe
- Puyallup Tribe
- Quinault Indian Nation

- Samish Indian Nation
- Sauk-Suiattle Indian Tribe
- Snoqualmie Indian Tribe
- Stillaguamish Tribe of Indians
- Steilacoom Tribe
- Squaxin Island Tribe
- Suquamish Tribe
- Swinomish Indian Tribal Community
- Tulalip Tribes
- Affiliated Tribes of Northwest Indians
- Northwest Indian Fisheries Commission

State agency participation

State agencies have key roles in environmental review and permitting processes. Input and feedback from agencies were important in identifying issues and developing recommendations. Ecology and Commerce led an Interagency Team that met monthly from August 2021 through November 2022. The Interagency Team members are listed in Appendix B.

Agencies provided direct feedback and ideas for recommendations documented in meeting summaries and recordings, as well as written comments. Agency representatives helped Ecology and Commerce understand regulatory requirements, processes and issues. They helped identify recommendations to improve siting and permitting of clean energy projects that maintain environmental standards, consider overburdened communities and protect Tribal rights and resources.

The siting study Interagency Team webpage[12] includes information on the interagency meetings, agendas, summaries and presentations. Agencies also provided updates on current and planned state efforts related to clean energy projects. These state efforts are discussed in the Related Federal and State Clean Energy Efforts section of the report.

Agency team objectives

Agency representatives were asked to provide information and share views from their agencies informed by their regulatory authority, agency responsibilities and their areas of expertise. The objective was to identify and document concerns, perspectives and recommendations for consideration by Ecology and Commerce related to the same items described in the Advisory

[12] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard/Low-carbon-energy-siting/Interagency-Policy-Team

Board section. Team meetings provided a collaborative forum for agency representatives to provide insights and feedback on improving low-carbon energy project permitting and siting processes.

Key areas of Interagency Team discussion

Interagency Team meetings and discussions served as a key forum for Ecology and Commerce to gain agency input and insight on potential recommendations from a range of perspectives. Representatives were asked to provide insights at meetings based on their area of expertise and experience. The team discussed the same items as described in the Advisory Board section.

All team members were invited to provide input and feedback on the topics and on draft documents for Ecology and Commerce to consider. Agency representatives were not asked to reach consensus or approve the recommendations.

Public participation

Starting in July 2021, Ecology posted a siting study webpage[13] with information on meetings, an online comment form and a sign-up registry for an email distribution list. Information on the webpage was also available in Spanish. The webpages for the Advisory Board and Interagency Team included meeting agendas, summaries and presentations. The Advisory Board meetings were open to the public with time provided for public comment. In additions, recordings of Advisory Board meetings were also posted online.

Three public meetings were held in April, May and September 2022. Spanish translators were available at the public meetings. In addition to posting information on the webpage and public calendar, the agencies asked Advisory Board members to reach out to their stakeholders to let them know about the meetings. All comments received via the online comment form, at public meetings and by email were considered for the study.

Recommendation development process

As directed by the Legislature, Ecology and Commerce convened businesses, local governments, community organizations and environmental and labor stakeholders, and consulted and engaged with Tribes as part of the process to develop recommendations for this report.

The agencies established an Advisory Board and Interagency Team to provide input and feedback for the study as described in the preceding sections. Tribal forums and information sessions were held to provide information and hear directly from Tribes on issues and ideas for recommendations.

[13] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard/Low-carbon-energy-siting/

Siting study timeline

Work on the study began in July 2021. Starting in the fall 2021, the Advisory Board and Interagency Team began meeting monthly. These continued through November 2022.

At the start of the study, scoping was done to identify issues and concerns. During meetings in 2021 and 2022, the groups further discussed issues and provided feedback on potential recommendations. Meetings were also intended to develop a common knowledge base on key topics, such as awareness of environmental justice considerations, Tribal consultation, and current state and local agency processes for environmental review and permitting.

Tribal information sessions were held in September 2021, with six Tribal forums held from April through November 2022. Governor Inslee met with elected leaders from a number of Tribes in October 2022. Three public meetings were held in 2022 to provide awareness of the study and updates on recommendation development.

Figure 1. Siting study timeline

Development of recommendations

The recommendations were developed using an iterative process where draft concepts and language were shared with all interested parties for discussion, input and feedback. Beginning in July 2022, Ecology and Commerce compiled the issues heard during the study and proposed categories of potential solutions for discussion with the groups. The issues are detailed in the Key Issues for Siting, Environmental Review and Permitting of Industrial Clean Energy Projects section.

The potential solutions were used to develop high-level potential recommendations. In July and August, the agencies briefed the Interagency Team, Advisory Board and Tribes on these ideas and asked for input and feedback. The groups were also asked to prioritize the ideas they thought would be most impactful.

At the August and September 2022 meetings, the high-level recommendations were revised based on feedback. More detailed recommendations were then discussed with the groups in September, October and November 2022 and provided for review and feedback.

The agencies evaluated all input and considered comments and feedback from all groups. The final recommendations are described in the Recommendations section. While consensus was not required, recommendations were discussed and revised to develop language with the greatest level of support. The recommendations also identify where Advisory Board members, Tribes or agencies had concerns with the language.

These recommendations form another step in ongoing discussions about how to improve siting, environmental review and permitting for industrial clean energy facilities. Other state efforts, as described in the Related Federal and State Clean Energy Efforts section, will also be included in the continuing conversations about systemic improvements.

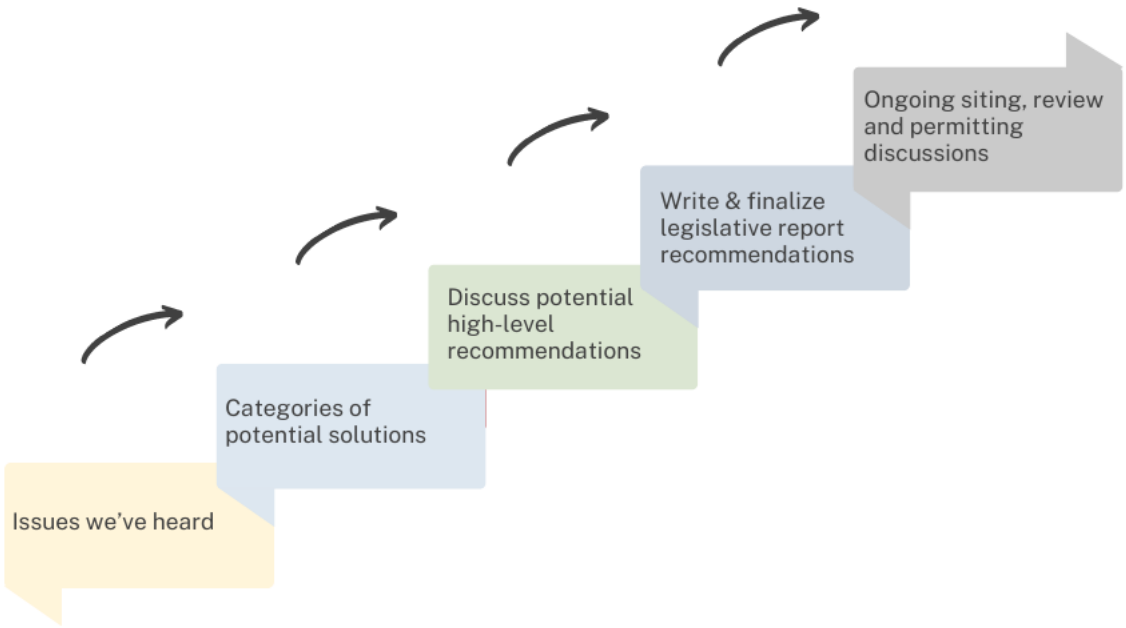

Figure 2. Flowchart of recommendation development

Regulatory Context

Governor Inslee and the Legislature are committed to ensuring the state does its part to reduce contributions to global climate change and help facilitate the clean energy transition in Washington.

The state has a suite of laws, strategies and policies aimed at reducing greenhouse gas emissions below state emission limits and supporting the clean energy transition, while protecting the natural environment, communities, and Tribal rights and resources. These

include the 2021 State Energy Strategy[14], Clean Energy Transformation Act[15] (CETA), Clean Fuel Standard[16] (CFS), Climate Commitment Act[17] (CCA), Zero Emissions Vehicle program[18] and others. Equity and environmental justice considerations are required by these rules and programs and are being incorporated into climate work under the Healthy Environment for All (HEAL) Act[19] requirements. State agencies have a government-to-government relationship with Tribes with responsibilities as described in the Tribal Treaties, Consultation Statutes and Accords section.

The federal government recently passed legislation supporting clean energy development, equity and Tribal treaty rights. These include the Infrastructure Investment and Jobs Act[20] (IIJA) and the Inflation Reduction Act[21] (IRA). In addition, the White House issued a Permitting Action Plan[22] for infrastructure projects. The plan sets goals for:

- Improving permitting through early cross-agency coordination.
- Establishing clear timeline goals and tracking key project information.
- Engaging in early and meaningful outreach and communication with states, Tribes and communities.
- Improving technical support.

Federal statutes related to clean energy facilities

Clean Air Act

Under the federal Clean Air Act[23], greenhouse gases (GHGs) are regulated as an air pollutant and are subject to several air regulations administered by the U.S. Environmental Protection Agency (EPA). GHG emissions from large stationary sources are covered by the Prevention of Significant Deterioration and Title V Operating Permit programs.

National Environmental Policy Act

NEPA[24] ensures federal agencies assess and consider the environmental effects of a proposed project prior to making decisions. The range of actions covered by NEPA is broad and includes

[14] https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/
[15] https://www.commerce.wa.gov/growing-the-economy/energy/ceta/
[16] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard
[17] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Climate-Commitment-Act
[18] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/ZEV
[19] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2.SL.pdf
[20] https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf
[21] https://www.congress.gov/bill/117th-congress/house-bill/5376/text?q=%7B%22search%22%3A%5B%22inflation+reduction+act%22%2C%22inflation%22%2C%22reduction%22%2C%22act%22%5D%7D&r=1&s=2
[22] https://www.whitehouse.gov/wp-content/uploads/2022/05/Biden-Harris-Permitting-Action-Plan.pdf
[23] https://www.law.cornell.edu/uscode/text/42/7401
[24] https://www.ecfr.gov/current/title-40/chapter-V

making decisions on federal permit applications, adopting federal land management actions and constructing publicly-owned facilities.

The NEPA process requires federal agencies evaluate the environmental and related social and economic effects of proposed projects or actions. This is done through an environmental assessment; if the action could significantly affect the environment, then an environmental impact statement (EIS) is done. Agencies must provide opportunities for public review and comment on NEPA documents.

The role of a federal agency in the NEPA process depends on the agency's expertise and relationship to the proposed project or action. For example, the agency responsible for a federal permit decision is responsible for complying with the requirements of NEPA. In some cases, there may be more than one federal agency involved in the proposed action, with one agency designated as the lead.

Washington state statutes and strategies related to clean energy facilities

Clean electricity will allow Washington residents and businesses to power their buildings, homes, vehicles and appliances while reducing GHG emissions. Reductions in fossil fuel use will improve the health of communities, grow the economy, create family-sustaining jobs and enable the state to achieve its long-term climate goals. Below are some key statutes and strategies related to industrial clean energy facilities and GHG emission reductions.

Washington state GHG reduction limits

Washington enacted legislation in 2008 that set a series of limits on the emission of GHGs within the state. Those limits were modified by legislation[25] enacted in 2020, such that Washington must limit anthropogenic emissions of GHGs to achieve the following reductions for the state:

- By 2020, reduce overall emissions of GHGs to 1990 levels, or 90.5 million metric tons.
- By 2030, reduce overall emissions of GHGs to 45% below 1990 levels, or 50 million metric tons.
- By 2040, reduce overall emissions of GHGs to 70% below 1990 levels, or 27 million metric tons.
- By 2050, reduce overall emissions of GHGs to 95% below 1990 levels, or 5 million metric tons, and achieve net-zero GHG emissions.

[25] https://apps.leg.wa.gov/rcw/default.aspx?cite=70A.45.020

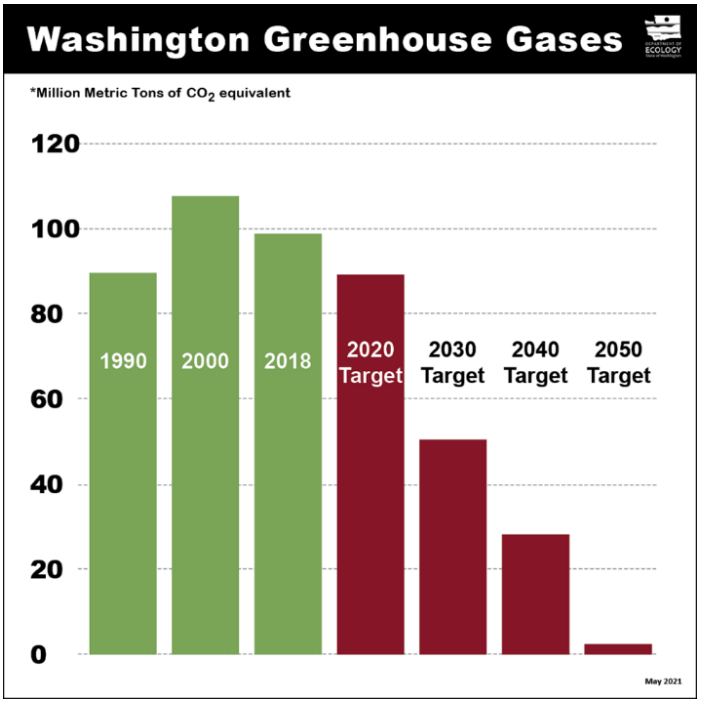

Figure 3. Washington greenhouse gas limits

The official measure of Washington's overall GHG emissions is the Greenhouse Gas Inventory[26], which is based on all emissions within the state, as well as all emissions produced as a result of the state's electricity use. The inventory is published every two years.

2021 State Energy Strategy

The 2021 State Energy Strategy[27] provides a roadmap for meeting the state's GHG emission limits and identifies a path to a clean energy economy. It points out the need for more efficient buildings, vehicles using low-carbon energy, investments in industrial processes and a stronger electrical grid. The strategy identifies policies and actions that will achieve the state's climate protection goals, puts it on the road to reducing emissions to net zero by 2050, and improves quality of life and economic vitality. It emphasizes the strategy must benefit people, businesses, and rural, urban, and highly impacted and Tribal communities throughout the state.

A comprehensive assessment of the options for achieving the state's emissions limits showed that in 2018, transportation makes up 44.9%, buildings 23.4% and electricity 16.3% of GHG emissions (Figure 4). To meet the state's GHG limits, electricity in Washington must be 100% clean by 2030, and by 2050 must roughly double its output while continuing to provide reliable power. This increase in demand will come from electrifying passenger, truck and freight vehicles and transitioning buildings and industry from fossil fuel use to electricity. There will be a need to invest in infrastructure to support this increased demand for electricity.

[26] https://ecology.wa.gov/Air-Climate/Climate-change/Tracking-greenhouse-gases/GHG-inventories
[27] https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/

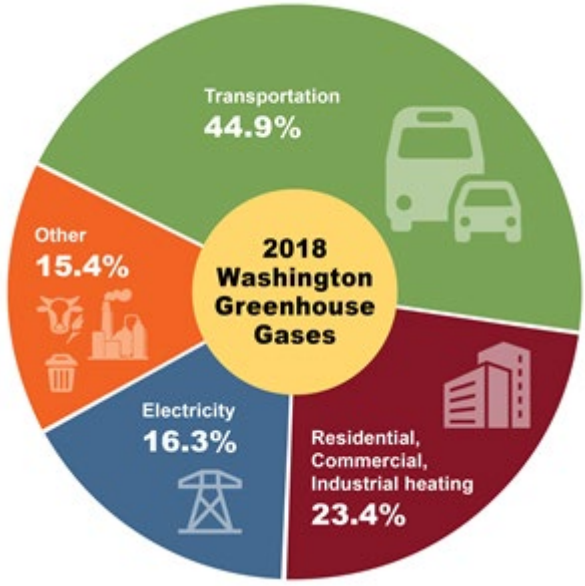

Figure 4. Washington 2018 greenhouse gas emissions by sector

Clean Energy Transformation Act

In 2019, the Legislature passed CETA[28], which requires all Washington's electric utilities to meet 100% of their retail electric load using non-emitting and renewable resources by January 1, 2045. CETA requires electric utilities to eliminate coal-fired resources by December 31, 2025 and make all retail sales of electricity GHG neutral by January 1, 2030. CETA requires that equity considerations become an explicit part of utility planning. Utilities must assess the potential impacts of their decisions on vulnerable populations and highly impacted communities.

Commerce regulates consumer-owned utilities, and the state Utilities and Transportation Commission (UTC) regulates investor-owned utilities. Both agencies are working together closely to implement CETA.

Utilities may adopt a slower transition path if necessary to avoid rate shock. The law also provides for short-term waivers of the clean energy standards if needed to protect reliability. CETA supports Washington workers and businesses by providing tax incentives for clean energy projects that employ women, minority or veteran-owned businesses, businesses that have a long history of complying with federal and state wage and hour laws and regulations, and employers who hire local workers or offer apprenticeship programs.

Climate Commitment Act

The Legislature directed Ecology to design and implement a cap-and-invest program to reduce statewide GHG emissions. This program works by setting an emissions limit, or cap, then

[28] https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5116-S2.SL.pdf?q=20210822161309

lowering that cap over time to ensure Washington meets the GHG reduction limits. The CCA[29] caps and reduces GHG emissions from Washington's largest emitting sources and industries, allowing businesses to find the most efficient path to lower carbon emissions.

The cap-and-invest program includes provisions to mitigate the impact on Emissions-Intensive, Trade-Exposed (EITE) industries and on electric and natural gas utilities and their customers. EITE industries are core industries, primarily manufacturing, that release large amounts of GHG emissions and face significant national or global competition for their products.

Clean Fuel Standard

The CFS[30] will curb pollution from transportation, which is the largest source of GHG emissions in Washington. Within the transportation sector, personal cars and trucks account for almost half of overall emissions. Reducing the carbon intensity of the fuels that power these vehicles is an important tool for cutting GHG emissions and other types of air pollution. The CFS requires fuel suppliers to reduce the carbon intensity of their products 20% below 2017 levels by 2038. This will cut GHG emissions by 4.3 million metric tons a year by 2038 and stimulate economic development in low carbon fuel production.

The CFS works with the CCA, Zero Emission Vehicle standard and CETA to accelerate the transition to electric or fuel-cell vehicles. The CFS has several provisions designed to expand the supply of clean fuels produced in Washington, including:

- Requiring a 15% net increase in in-state liquid biofuel production using feedstocks sourced within the state.
- Requiring an expansion of biofuel production capacity in the state by at least 60 million gallons, including at least one new facility with a capacity of at least 10 million gallons.

Growth Management Act

The GMA[31] is the comprehensive land use planning framework for counties and cities in Washington. It requires certain counties, and the cities within those counties, engage in planning for future population growth. Currently, 18 counties are required to plan, 10 have chosen to plan, and 11 are not subject to the full GMA planning requirements.

A comprehensive plan is the central part of the GMA planning process. The Legislature established 14 goals to act as the basis of all comprehensive plans. Examples of goals include reducing sprawl, providing for affordable housing and protecting property rights. The comprehensive plan must address these goals and set out the policies and standards that are meant to guide the city or county's actions and decisions in the future.

Comprehensive plans must contain certain elements, such as a land use element, a transportation element and a capital facilities plan element. As part of the planning process, all

[29] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Climate-Commitment-Act
[30] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.535
[31] https://www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/

counties and cities must adopt development regulations to protect critical areas. All counties must designate natural resource lands, including agricultural, forest and mineral lands. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute, for example, urban growth, housing and economic development.

Fully planning GMA counties and cities must adopt development regulations that implement comprehensive plan policies. The primary implementation tool is zoning, which governs how land can be used. Zoning regulations will identify the process by which renewable energy projects may be permitted and will identify areas where renewable energy projects are not allowed. Some regulations may require a public hearing where the proposal could be approved with special conditions or denied if the impacts cannot be fully mitigated.

GMA revisions require legislative action from the county or city. The county and cities must establish a public participation program that provides notice to interested or impacted individuals and organizations who can become involved in the process.

Chapter 252, Laws of 2022[32] (Substitute House Bill (SHB) 1717), requires local governments, upon receiving notice from a federally recognized Indian Tribe, to enter into negotiations on a memorandum of agreement for collaboration and coordination with the Tribe for participation in the planning process under the GMA. The statute also provides for mediation if an agreement is not reached. It further requires that a Tribe with reservation or ceded lands within a county be invited to participate in the countywide planning process. If the Tribe does participate, the planning process will include policies that address the protection of Tribal cultural resources.

Environmental review and permitting regulations

State Environmental Policy Act

SEPA[33] is intended to provide information to state and local agencies, applicants and the public to encourage the development of proposals that avoid, minimize and mitigate potential impacts. The proposals may be for private or public projects and for planning actions, such as rulemaking or comprehensive plans.

The environmental review process involves identifying and evaluating probable environmental impacts and proposing the development of mitigation measures to reduce adverse environmental impacts. This environmental information, along with other documents, is used by agency decision makers to decide whether to approve a proposal, approve it with conditions or deny the proposal. SEPA also provides opportunities for public review and comment.

SEPA applies to actions made at all levels of government within Washington state. The SEPA environmental review process requires a project applicant, or the lead agency, identify and evaluate probable environmental impacts. Each year, more than 6,000 proposals in Washington are reviewed under SEPA. The majority of SEPA reviews are completed by local governments

[32] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1717-S.SL.pdf?q=20220818120939
[33] https://apps.leg.wa.gov/WAC/default.aspx?cite=197-11

acting as the SEPA lead agency. 98% of SEPA reviews are done using an environmental checklist with a 14-day public comment period.

Projects that have probable significant adverse environmental impacts must undergo a more comprehensive environmental analysis in the form of an EIS. These are typically done for more complex or larger projects, for new technologies or when potential significant impacts have been identified by an applicant.

Permitting regulations

The required permits for a project depend on its location, type and the construction and operations involved. A project may need local, state or federal permits and each permit has its own regulatory authority and regulatory agency. Information about specific permits can be found in the Regulatory Handbook[34]. In addition, each agency identified in Table 2 also provides information on the specific permits for which they are responsible.

Local permits are issued by local government agencies, state permits by state agencies and federal permits by federal agencies. In some cases, the state is delegated authority to issue permits for federal agencies, like the Section 401 water quality certification under the Clean Water Act. Developers may use a Joint Aquatic Resources Permit Application[35] which was created to consolidate applications for local, state and federal permits related to aquatic resources in one form.

[34] https://apps.oria.wa.gov/permithandbook/

[35] https://www.epermitting.wa.gov/Portals/_JarpaResourceCenter/VersionedDocuments/JARPA_Documents/JARPA.pdf

Table 2: State permits clean energy projects may need

Permit Type	Agency
Air Operating Permit[36]	Ecology or Clean Air Agency
Air Quality Notice of Construction Permit[37]	Ecology or Clean Air Agency
Archaeological Site Alteration and Excavation Permit[38]	Washington State Department of Archaeology and Historic Preservation (DAHP)
Biosolids Management Permit[39]	Ecology
Coastal Zone Management Consistency[40]	Ecology
Dam Construction Permit[41]	Ecology
Dangerous Waste Treatment Storage and Disposal Facility[42]	Ecology
Exploration Reclamation Permit[43]	Washington State Department of Natural Resources (DNR)
Forest Practices Approval/Notification[44]	DNR
General Order of Approval for Concrete Batch Plants[45]	Ecology
General Order of Approval for Dairy Manure Anaerobic Digesters[46]	Ecology
General Order of Approval for Small Boilers Using Natural Gas/ Propane/ or Diesel Fuel[47]	Ecology
Hydraulic Project Approval[48]	Washington Department of Fish and Wildlife (WDFW)

[36] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Air-operating-permits
[37] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Notice-of-Construction-permit
[38] https://dahp.wa.gov/archaeology/archaeological-permitting
[39] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Biosolids-permit-system
[40] https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Coastal-zone-management/Programs-policies/Federal-consistency
[41] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Dam-safety-permit
[42] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Dangerous-waste-permits
[43] https://www.dnr.wa.gov/programs-and-services/geology/energy-mining-and-minerals/surface-mining-and-reclamation#when-do-i-need-a-surface-mine-reclamation-permit?
[44] https://www.dnr.wa.gov/programs-and-services/forest-practices/review-applications-fpars/forest-practices-forms-and
[45] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Air-quality-general-orders
[46] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Air-quality-general-orders
[47] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Air-quality-general-orders
[48] https://wdfw.wa.gov/licenses/environmental/hpa

Permit Type	Agency
Industrial National Pollutant Discharge Elimination System (NPDES) Individual Permit[49]	Ecology
NPDES Construction Stormwater General Permit[50]	Ecology
NPDES Industrial Stormwater General Permit Coverage[51]	Ecology
NPDES Sand & Gravel General Permit for Non-Portable Facilities[52]	Ecology
Prevention of Significant Deterioration (PSD) Air Quality Permit[53]	Ecology
Reservoir Permit[54]	Ecology
Section 401 Water Quality Certification[55]	Ecology
State Wastewater Discharge Permit to Discharge Industrial Wastewater to Ground Water by Land Treatment or Application[56]	Ecology
State Wastewater Discharge Permit to Discharge Industrial Wastewater to a Publicly-Owned Treatment Works[57]	Ecology
Water Right Change[58]	Ecology
Water Right New[59]	Ecology

[49] https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits
[50] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Construction-stormwater-permit
[51] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Industrial-stormwater-permit
[52] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Sand-Gravel-General-Permit
[53] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Air-Quality-permits/Prevention-of-Significant-Deterioration-PSD
[54] https://apps.ecology.wa.gov/publications/documents/ecy040160.pdf
[55] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/401-Water-quality-certification/non-hydropower-401-certifications
[56] https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits
[57] https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits
[58] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Water-right-permits/Changes-to-existing-water-rights
[59] https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Water-right-permits/Changes-to-existing-water-rights

Tribal treaties, consultation statutes and accords

Treaties

Indigenous Tribes and populations have been in the Northwest since time immemorial. There are 29 federally recognized Tribes in Washington state. Each of these Tribes continues to have close connections to its aboriginal territories. Tribes in Washington have reserved rights to fish and harvest other natural resources throughout much of the state. Additionally, several out-of-state Tribes have treaty rights and usual and accustomed territories within the state.

Under treaties[60] negotiated by Territorial Governor Isaac Stevens on behalf of the United States, Tribes ceded 64 million acres of land to the U.S. for non-Indian settlement and the subsequent establishment of Washington state. Tribes retained about six million acres of reservation land and specifically reserved the right to take fish in their "usual and accustomed" areas, including ceded territories, along with the right to harvest and hunt on "open and unclaimed lands," among other things. Tribes retained reserved rights to gather and access cultural foods and religious sites in their treaties with the federal government.

Tribes are recognized as unique sovereign people that exercise self-government rights that are guaranteed under treaties and federal laws. Each Tribal reservation in the state constitutes a bordering sovereign jurisdiction subject to federal and Tribal environmental laws.

Chapter 43.376 RCW Government-to-Government Relationship with Indian Tribes

Chapter 43.376[61] RCW sets requirements for state agencies in establishing a government-to-government relationship with Tribes. This includes making reasonable efforts to collaborate with Tribes in the development of policies, agreements and program implementation that directly affect Tribes and develop a consultation process that is used by the agency for issues involving specific Tribes.

Centennial Accord

The Centennial Accord[62] between the federally recognized Indian Tribes with interests in Washington state and the State of Washington provides a framework for government-to-government relationship and implementation procedures. Each Party to the Accord respects the sovereignty of the other. The respective sovereignty of the state and each federally recognized Tribe provide paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by Tribal governments.

[60] https://goia.wa.gov/resources/treaties
[61] https://app.leg.wa.gov/rcw/default.aspx?cite=43.376
[62] https://goia.wa.gov/relations/centennial-accord

Executive Order 21-02: Archaeological and cultural resources

Governor Inslee directed agencies to consult with DAHP and affected Tribes on the potential impacts of projects on cultural resources proposed in state-funded construction or acquisition projects that will not undergo Section 106 review under the National Historic Preservation Act of 1966. This includes grant or pass-through funding that culminates in construction or land acquisitions, to determine potential effects to cultural resources.

Executive Order 21-02[63] directs agencies to initiate consultation with DAHP and affected Tribes early in the project planning process, which must be completed prior to the expenditure of any state funds for construction, demolition or acquisition. State agencies must take all reasonable action to avoid, minimize or mitigate adverse effects to archeological and historic archaeological sites, historic buildings or structures, traditional cultural places, sacred sites or other cultural resources. Mitigation strategies for archaeological, cultural and sacred sites are identified through consultation with DAHP and the affected Tribes.

Climate Commitment Act

Chapter 70A.65.305[64] RCW establishes requirements for Tribal consultation for projects receiving funding from CCA accounts. It requires agencies that allocate funding or administer grant programs appropriated from these accounts to offer early, meaningful and individual consultation with any affected federally recognized Tribe on all funding decisions and funding programs that may impact Tribal resources. Resources may include Tribal cultural resources, archaeological sites, sacred sites, fisheries or other rights and interests in Tribal lands and lands within which a Tribe or Tribes possess rights reserved or protected by federal treaty, statute or executive order. The goal of the consultation process is to identify Tribal rights and resources potentially affected by the funding decisions and funding programs, assess their effects and seek ways to avoid, minimize or mitigate any adverse effects on Tribal rights and resources.

Healthy Environment for All Act

The HEAL Act[65] requires covered agencies to develop a consultation framework in coordination with Tribal governments that includes best practices, protocols for communication, and engagement and collaboration with federally recognized Tribes. In addition, the act requires covered agencies to assess the impact of significant agency actions on overburdened communities and vulnerable populations. Part of the assessment includes identification of whether a proposed action will impact federally reserved Tribes' rights and resources. Following an assessment of significant agency actions, covered agencies are directed to seek to reduce or eliminate environmental harms, to the extent feasible under the law. Environmental harm includes loss or impairment of ecosystem functions or traditional food resources, or loss of access to gather cultural resources or harvest traditional foods.

[63] https://www.governor.wa.gov/sites/default/files/exe_order/eo_21-02.pdf
[64] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.65.305
[65] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.100

Energy Facility Site Evaluation Council modification

Chapter 183, Laws of 2022[66] (Engrossed Second Substitute House Bill (ESSHB) 1812), directs EFSEC to consult with all federally recognized Tribes that possess resources, rights or interests reserved or protected by federal treaty, statute or executive order in the area where an energy facility is proposed to be located to provide early and meaningful participation and input during siting review and compliance monitoring.

The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by a Tribe. The goal of the consultation process is to identify Tribal resources or rights potentially impacted by the proposed energy facility and to seek ways to avoid, minimize or mitigate any adverse effects on Tribal resources or rights. The report from the council to the governor must include a summary of the government-to-government consultation process.

Council staff must review any pre-applicant's draft application materials and provide comments on either additional studies or stakeholder and Tribal input, or both, that should be included in the formal application for site certification. Council staff must inform affected federally recognized Tribes of the pre-application review. DAHP shall coordinate with the affected federally recognized Tribes and the applicant in order to assess potential impacts to tribal cultural resources, archaeological sites and sacred sites.

Environmental justice and equity

HEAL Act

The Legislature passed the HEAL Act[67] in 2021. The law is a historic step toward eliminating environmental and health disparities among communities of color and low-income households. It is the first statewide law in Washington to create a coordinated state agency approach to environmental justice. It defines the term “environmental justice” (EJ) in state law. The act establishes a permanent EJ Council and Interagency Work Group. This section describes how the act addresses environmental justice. Aspects of the act related to Tribal consultation and engagement are discussed in the Tribal Treaties, Consultation Statutes and Accords section.

The law covers seven state agencies including the state departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation and the Puget Sound Partnership. It allows other agencies to opt-in. The HEAL Act outlines how agencies should incorporate environmental justice into agency strategic plans, develop community engagement plans and Tribal consultation frameworks and conduct environmental justice assessments for certain significant agency actions.

[66] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[67] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2.SL.pdf

The law promotes the equitable sharing of environmental benefits and investing in communities that have experienced and continue to experience the greatest environmental and health burdens. Key priorities of the HEAL Act include reducing exposure to environmental hazards within overburdened communities and Tribal lands and eliminating environmental and health disparities in disadvantaged, vulnerable and low-income populations. Agencies must focus expenditures toward creating environmental benefits for overburdened communities and vulnerable populations.

Regulatory agencies with potential environmental review and permitting roles for clean energy facilities

State government roles in siting, environmental review and permitting clean energy facilities

State agencies ensure project proposals comply with state regulations. Agencies are responsible for protecting, preserving and enhancing Washington's environment and protecting people and communities. State agencies have a government-to-government relationship with Tribes and responsibilities as described in the Tribal Treaties, Consultation Statutes and Accords section.

Permits and certifications ensure that businesses understand and comply with all applicable state environmental standards to protect land, air, water and people. State agencies provide data and information about potential site impacts and issues for developers preparing proposals. Local governments are typically the lead for SEPA environmental reviews, but in some cases, state agencies may be the lead or a co-lead.

State agencies are responsible for issuing permits; but the type of permit will vary based on the location and project construction and operation. Table 2 includes state agency permits that may be needed for clean energy projects. For most permits, agencies recommend a pre-application meeting to discuss permit requirements and the process.

State agencies also provide technical support to local governments in their areas of expertise. State agencies are often involved in planning and coordination efforts at the state, local and federal level. They may also manage, own or lease lands or right-of-ways that may be involved in project siting decisions. Projects on or affecting these state lands would involve these state agencies.

Energy Facility Site Evaluation Council

EFSEC has a unique state role with a single siting process for major energy facilities located in Washington. The agency coordinates all environmental evaluation and consolidated permitting steps for siting certain energy facilities and specifies the conditions of construction and operation. As part of its review, EFSEC determines whether the proposal is consistent with local land use and zoning ordinances.

After evaluating an application, EFSEC submits a recommendation either approving or rejecting an application to the governor, who makes the final decision on site certification. If approved by

the governor, a site certification agreement is issued in lieu of any other individual state or local agency permits. EFSEC then monitors and ensures the facility complies with the agreement and environmental permits through its operation, decommissioning and site restoration.

Energy facilities that are required to use the EFSEC process include:

- Certain electrical transmission facilities
- Nuclear power plants of any size
- Thermal electric power plants with a generating capacity of 350 megawatts or greater
- Biorefineries

For opt-in facilities, developers may choose to permit through EFSEC rather than local governments. Clean energy facilities that may opt-in to the EFSEC process include:

- Energy facilities of any size that exclusively use alternative energy resources, such as wind or solar
- Clean energy product manufacturing facilities
- Clean energy storage facilities
- Renewable natural gas facilities
- Certain transmission lines
- Renewable and green electrolytic hydrogen energy facilities
- Refined biofuel facilities

Local government roles in siting, environmental review and permitting clean energy facilities

Cities and counties ensure project proposals comply with local plans and regulations, such as comprehensive plans, shoreline master programs, critical areas ordinances and zoning and building ordinances. Local governments are typically the lead for SEPA environmental reviews. For clean energy projects, projects that are required to use the EFSEC process and those that can choose to opt-in are described in the EFSEC section.

The GMA gives city and county governments the primary responsibility for regulating land use. Local land use requirements and economic development plans are important considerations for clean energy developers in siting decisions. Cities and counties are often contacted early about siting projects and provide information and assistance.

Local agencies are responsible for issuing permits and ensuring compliance with city and county regulations. Many city or county departments regulate development, and planning departments usually coordinate the process. The types of permits will vary based on the project location, construction and operation and may include building permits, land grading, electrical, plumbing and building construction. Certain types of energy projects may be permitted outright by city or county zoning regulations while others may require a conditional use permit, which typically includes a public hearing. Some local governments may use consolidated or integrated permitting processes.

Federal government roles in siting, environmental review and permitting clean energy facilities

Federal agencies have responsibilities under federal law for project siting, environmental review and permitting. If a project is on federal lands or needs a federal permit or license, then it requires review under NEPA. The agency carrying out the federal action is responsible for complying with the NEPA requirements. In some cases, there may be more than one federal agency involved in the proposed action, but one agency will be the lead. Federal agencies have a trust obligation to federally recognized Tribes to uphold and protect federal treaties with recognized Tribes.

Four major federal land management agencies are responsible for managing about 95% of federal public lands: the U. S. Department of Agriculture's Forest Service, the U.S. Department of the Interior's Bureau of Land Management, the U.S. Fish and Wildlife Service (USFWS), and the National Park Service. Projects on or affecting these federal lands would involve these agencies.

The project location, construction and operations determine the federal permits needed. A variety of agencies are responsible for managing and protecting federal land and water resources. The U.S. Army Corps of Engineers is involved with the enforcement of laws protecting wetlands and permits affecting rivers and harbors. The USFWS and the National Marine Fisheries Service enforce the Endangered Species Act. In some cases, federal authority has been delegated to Washington state agencies for permits, such as the Section 401 water quality certification and PSD permits.

Some federal agencies are responsible for federal regulation of specific types of clean energy. The Federal Energy Regulatory Commission (FERC) licenses hydroelectric projects, including pumped storage hydropower facilities. The Bureau of Ocean Energy Management (BOEM) is responsible for managing renewable energy resources on the Outer Continental Shelf, including offshore wind energy, ocean wave energy, ocean current energy and offshore solar.

Types of Industrial Clean Energy Facilities

The study is focused on industrial low-carbon energy, or clean energy, facilities. The legislative directive uses the term industrial; these facilities may also be called large-scale or utility-scale.

These facilities would provide electricity to the state electrical system, produce low-carbon fuels for uses like transportation, or manufacture clean energy components. These facilities would help meet CETA's requirements for a GHG-neutral electricity supply by 2030 and 100% renewable or clean electricity by 2045. These facilities would help support the CFS by creating fuels with lower carbon intensities. The CFS requires fuel suppliers to reduce the carbon intensity of transportation fuels to 20% below 2017 levels by 2038.

Electricity will play a transformative role in meeting Washington's GHG reduction limits. The state will need to grow and manage clean, reliable electricity generation to meet increasing

demand from buildings, industry and transportation. An equitable transformation must reflect community priorities for resilience and affordability and ensure that all benefit from Washington's clean energy transition.

While there are many types of small-scale clean energy facilities, distributed energy facilities and community or residential low-carbon facilities that are part of the State Energy Strategy, this study focused on industrial low-carbon energy facilities. Types of clean energy facilities are described briefly in this section to provide context and are not intended to limit or restrict projects. Clean energy is developing quickly, and not all technologies and combinations are covered here.

Solar energy facilities

Solar cells, or photovoltaic (PV) cells, convert sunlight directly into electricity. Industrial solar energy facilities are large-scale facilities that use a collection of PV panels to generate power and distribute that power to transmission lines for the electrical grid. These may also be referred to as solar farms or solar systems.

Typically, solar power facilities are ground-mounted installations, but they can also be floating installations over water or combined with other types of land use. For example, an agrivoltaic facility is one that has a dual use, simultaneously using land for both power generation and agriculture. Solar energy facilities may also be combined with clean energy storage.

Wind energy facilities

Wind energy is used to generate electricity using wind turbines, or windmills. The kinetic energy created by wind is transformed into electrical energy using turbines or wind energy conversion systems. Wind turbines are typically mounted on a tower to capture the most energy and take advantage of faster and less turbulent wind.

Wind turbines can be connected to a utility power grid, combined with energy storage or combined with another energy system. For industrial wind energy, a large number of wind turbines are usually built close together to form a wind farm. Wind turbines and wind farms can be a multi-use site with agricultural land, as they are considered an incidental use on the land. Offshore wind energy facilities are described later in this section.

Green hydrogen or renewable hydrogen facilities

Hydrogen does not exist freely in nature and is known as an energy carrier because it is only produced from other sources of energy. When electricity is passed through water, it breaks the water into its constituent components of hydrogen and oxygen. The hydrogen can then be stored and moved in a gas or liquid form.

When combined with oxygen in a fuel cell, hydrogen produces heat and electricity with only water vapor as a by-product. Green hydrogen, or renewable hydrogen, is produced through electrolysis using renewable resources both as a source for the hydrogen and as the source for

the energy to produce it. Green hydrogen and renewable hydrogen do not use a fossil fuel feedstock.

Green hydrogen is a relatively new clean energy type. The Legislature recently enacted laws related to green hydrogen facilities. It established Commerce's Office of Renewable Fuels to encourage the economic development of green hydrogen and supporting infrastructure. The office will develop a plan and recommendations on renewable fuels and green hydrogen policy and public funding, by December 1, 2023. Chapter 292, Laws of 2022[68] (Substitute Senate Bill (SSB) 5910) incentivizes the production of green hydrogen facilities and exempts them from the retail sales tax, use tax and leasehold excise tax. The state Department of Revenue was directed to issue guidance to advise county assessors on how best to appraise renewable energy facilities. The Legislature authorized public utility districts and municipal utilities to produce and sell green hydrogen.

Biorefineries and refineries producing alternative fuels

A biorefinery is a facility where biomass (organic or plant material) is converted to biofuels and other products. Biofuels may be liquid or gaseous fuels. They include, but are not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas and renewable propane. These fuels may be used in a dedicated system that burns a single fuel, or in a mixed system with other fuels like gasoline or diesel, such as in hybrid-electric or flexible fuel vehicles.

Producing biofuels typically involves a multi-step process which starts by breaking down the plant cell walls. This often requires extreme heat and pressure, but low-temperature processes can also be used. The intermediate products, like crude bio-oils, sugars or syngas, must be upgraded to produce a finished product. This step can involve mechanical processing, biological processing (using microorganisms), chemical processing (using catalysts) or thermochemical processing (high pressure and temperature, with or without catalysts).

The two most common types of biofuels in use today are ethanol and biodiesel. Ethanol is typically produced by fermenting biomass, such as grains. Biodiesel is a liquid fuel produced from combining alcohol with renewable sources, such as new and used vegetable oils and animal fats.

Pumped storage hydropower facilities

A pumped storage hydropower facility is a type of hydroelectric energy storage. It consists of water reservoirs at different elevations and turbines. It generates power as water moves down from one reservoir to the other, passing through a turbine. The system also requires power as it pumps water back into the upper reservoir. A pumped storage hydropower facility acts similarly to a giant battery because it can store power and then release it when needed.

[68] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5910-S.SL.pdf?q=20221018190816

Pumped storage hydropower may be open-looped or closed-looped. Open loop means there is a hydrologic connection to a natural body of water. With a closed loop system, reservoirs are not connected to an outside body of water, except for the initial filling with water and periodic refills.

Battery energy storage facilities

Battery energy storage facilities use batteries that can be charged and discharged many times to store energy. Batteries are electrochemical devices that store energy by converting electric power into chemical energy. This chemical energy can then be released when needed to produce power. Lithium-ion batteries are currently the most common storage technology for large-scale facilities. Other types of batteries may also be used or developed. For example, the U.S. Department of Energy (DOE) is testing flow batteries, which use externally stored electrolytes.

Battery energy storage facilities are often used with solar or wind energy facilities. The batteries are charged using electricity generated by the renewable energy. These facilities may also be called battery energy storage systems.

Clean energy manufacturers, including electric vehicle batteries

Clean energy manufacturers include facilities that exclusively or primarily create products or components for clean energy facilities or low-carbon transportation. Examples of these include manufacturers of products or components for:

- Charging and fueling infrastructure for electric, hydrogen or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor
- Electric vehicle batteries
- Equipment and products used to produce energy from alternative energy resources
- Equipment and products used at storage facilities

Offshore wind and tidal facilities

Facilities in waters off the coast use ocean tides and wind to produce electricity. Typically, a series of cable systems buried or laid on the sea floor are used to transmit the electricity to the electrical grid.

Tidal energy uses ocean tides, waves and currents to generate electricity. The rise and fall of the tides and the movement of currents and waves causes energy that can be converted to electricity.

Offshore wind facilities use ocean winds to generate electricity. Offshore wind facilities may use floating or fixed platforms. Floating platforms are often used in deeper water and may be located on the top of the ocean or semi-submersible. Fixed foundation wind turbines are generally found in waters less than 200 feet deep.

Emerging technologies

The need for clean energy is driving innovation and development of new and advanced technologies. These emerging ideas may be proposed as clean energy facilities in Washington. This study focused on existing types of clean energy facilities, but the recommendations would apply to all types of clean energy facilities, including emerging technologies.

Related Federal and State Clean Energy Efforts

As part of the nation's and Washington's clean energy transformation, many agencies, universities and organizations are conducting studies or doing work to support the effort. Below are some key federal and state efforts related to improving siting, environmental review and permitting of clean energy facilities in Washington.

Infrastructure Investment and Jobs Act

The IIJA[69] includes investments to modernize the power grid by building and upgrading transmission lines, energy efficiency and energy improvements in homes and businesses. It invests in the development, demonstration and deployment of clean energy technologies while creating jobs and investing in communities.

Some of the actions include establishing regional clean hydrogen hubs, battery manufacturing and advanced energy manufacturing grants, creating a clean hydrogen electrolysis program, energy improvement in rural and remote areas, as well as research and development for marine energy, wind energy, solar energy and pumped storage hydropower.

The DOE's Building a Better Grid Initiative[70] will accelerate the deployment of new transmission lines and the DOE will fund demonstration projects for innovative technologies. Investments in supply chains for clean energy technologies will support clean energy and manufacturing jobs.

Inflation Reduction Act

The IRA[71] includes investment in clean energy to cut GHG emissions in half by 2030, create clean energy jobs and invest in environmental justice. The act directs $370 billion to speed the clean energy transition through tax credits, investing in renewable technologies and clean energy manufacturing, and support for the domestic manufacture of the clean energy technologies and components.

The Clean Energy Sustainability Accelerator creates a green investment fund focused on deploying clean energy with 40% of investments targeted to disadvantaged communities. It includes funding for agencies to do smart planning for clean energy and other projects. This

[69] https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf
[70] https://www.energy.gov/oe/articles/building-better-grid-initiative
[71] https://www.congress.gov/bill/117th-congress/house-bill/5376/text?q=%7B%22search%22%3A%5B%22inflation+reduction+act%22%2C%22inflation%22%2C%22reduction%22%2C%22act%22%5D%7D&r=1&s=2

includes improving project transparency, better engagement with communities in project decision making and providing clearer timelines and certainty to developers.

Transmission Corridor Work Group

EFSEC led a TCWG[72] as mandated by Section 25 of CETA. The work group consisted of representatives from eight state agencies, affected utilities industry and public utility districts, renewable energy industry, labor, Association of Washington Cities, Association of Washington Counties, Tribal governments and statewide environmental organizations. Representatives from the Bonneville Power Administration and Department of Defense (DOD) were ex-officio members. The work group held six meetings from September 2021 through June 2022.

The TCWG was formed to:

- Review the need for upgraded and new electricity transmission and distribution facilities to improve reliability, relieve congestion, and enhance the capability of the transmission and distribution facilities in the state to deliver electricity from electric generation, non-emitting electric generation or renewable resources to retail electric load.
- Identify areas where transmission and distribution facilities may need to be enhanced or constructed.
- Identify environmental review options that may be required to complete the designation of such corridors and recommend ways to expedite review of transmission projects without compromising required environmental protection.

The work group reported[73] its findings to the governor and Legislature in 2022. Some members of the siting study Interagency Team and Advisory Board also participated as members of the TCWG. Ecology, Commerce and EFSEC met to ensure there was strong agency coordination throughout both processes. Where this study aligns with recommended principles from the TCWG report, the specific TCWG principle is noted.

Carbon and electricity markets stakeholder work group

In summer 2022, UTC and Commerce adopted new rules for electric utilities to provide guidance on several key requirements in CETA, which requires electric utilities to source 100% of their electricity from renewable or non-carbon-emitting sources by 2045. These rules will help ensure that utilities meet intermediate targets of eliminating coal-fired generation by 2025 and transition to a greenhouse gas-neutral supply of electricity by 2030.

Included in the rules are initial standards to ensure that utilities comply with CETA's clean electricity requirements when they buy and trade power in wholesale electricity markets. Another new rule clarifies that utilities may use energy storage systems, such as batteries and pumped hydro storage plants, to manage renewable energy supply and demand.

[72] https://www.efsec.wa.gov/energy-facilities/transmission-corridors-work-group
[73] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

The rules also contain protections to make sure companies do not double-count renewable energy used to comply with the clean electricity standard, customers get clean energy as required by law, and other companies who buy and sell power are not counting the same clean energy toward requirements in another state. Commerce rules[74] clarify how utilities may count power purchases and sales under this requirement. The UTC is still developing its rules regarding this requirement and expects final rules in early 2023.

Clean Energy Fund and Rural Clean Energy Innovation Program

Commerce's Rural Clean Energy Innovation Program supports clean energy research, development and implementation in Washington's rural communities. Through Washington's Clean Energy Fund, this program allocates funds to advance clean energy through new grant programs, carve outs for bioenergy and Tribal energy projects, and a new Rural Clean Energy Working Group.

The Rural Clean Energy Working Group met in 2021 and 2022 to identify programs, investments and policy changes that will inform the plan's goal of advancing rural clean energy access and availability. Approximately $4.6 million will be available for projects supporting rural clean energy starting in fall 2022. This funding is divided into two distinct grant opportunities: Dairy Digester Bioenergy Grants and Rural Clean Energy Innovation Grants. The Dairy Digester Bioenergy Program provides funding for projects that enhance the viability of dairy digesters.

The Rural Clean Energy Innovation Grants solicitation will be open to Washington-based entities pursuing rural clean energy projects. Approximately 20% is allocated to Tribal governments, designated subdivisions and agencies. The remaining grant funds are available for any projects supporting rural clean energy, such as those advancing energy efficiency, resilience and sequestration.

Supporting strategic growth in key sectors

The Legislature has directed Commerce to identify and invest in strategic growth areas, support key sectors and align existing economic development programs and priorities, many of which dovetail with clean energy production. Commerce must consider Washington's position as the nation's most trade-dependent state when identifying priority investments. It must engage states and provinces in the Pacific Northwest as well as associate development organizations, small business development centers, chambers of commerce, ports and other partners to leverage the funds provided. Sector leads must include the industries of aerospace; clean technology and renewable and nonrenewable energy; wood products and other natural resource industries; information and communication technology; life sciences and global health; maritime; and military and defense.

[74] https://www.commerce.wa.gov/wp-content/uploads/2022/06/CR-103-adopted-rules-and-explanatory-statement.pdf

Climate Commitment Act

Ecology is conducting several efforts under the CCA related to clean energy siting, environmental review, and permitting. The Tribal carbon offset assistance program[75] provides funding for Tribes to support developing carbon offset projects on federally recognized Tribal lands in Washington. A total of $5 million is available for this competitive grant program in the 2021-23 biennium.

The Tribal capacity grant program[76] offers non-competitive grants to eligible Tribes to consult on spending decisions from accounts created in the CCA. Chapter 253, Laws of 2022[77] (Engrossed Substitute House Bill (ESHB) 1753) establishes an enhanced process for Tribal consultation on spending decisions from accounts created in the CCA. The grant program is intended to support Tribes with funds to engage in these consultation processes.

Clean Fuel Standard

The CFS[78] will curb carbon pollution from transportation, which accounts for almost 45% of GHG emissions in Washington. By requiring fuel suppliers to reduce the carbon intensity of transportation fuels, the CFS will cut statewide GHG emissions by 4.3 million metric tons a year by 2038 and stimulate economic development in low carbon fuel production. Ecology is conducting several efforts, including rulemaking, under the CFS related to clean energy siting, environmental review and permitting.

The Clean Fuels Program rulemaking began in July 2021 and a rule is expected to be adopted in winter 2022. The program will begin in January 2023. This new rule will establish carbon intensity standards for transportation fuels used in Washington. Carbon intensity accounts for GHG emissions throughout the full life cycle of the fuel and is calculated using a tool provided by Ecology. There are multiple options for high-carbon fuel suppliers to comply with the standard, including improving the efficiency of their fuel production processes, blending low-carbon biofuels into their fuels or purchasing credits from low-carbon fuel suppliers.

Growth Management Act

Commerce has several efforts underway related to GMA and clean energy. The GMA Reform Task Force[79] will make recommendations regarding needed reforms to the state's growth policy

[75] https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Tribal-Carbon-Offset-Assistance-Program
[76] https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Tribal-Capacity-Grants
[77] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1753-S.SL.pdf?q=20220623112249
[78] https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/Clean-Fuel-Standard
[79] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5092-S.SL.pdf?q=20220829112507

framework. The group will report on its activities and recommendations prior to the 2023 legislative session.

An interagency group will draft GMA climate guidelines[80] for use in county and city comprehensive plans and development regulations. The guidelines will describe actions to reduce GHG emissions and per capita vehicle miles traveled and may be used for developing and implementing climate change and resiliency plans and policies. The guidelines will be published no later than June 30, 2023.

Commerce is working with stakeholders and the public to update the GMA rules to provide cities and counties clear guidance before the next round of comprehensive plan updates. Among other things, this process could consider the designation and protection of resource lands of long-term commercial significance which could affect the siting of energy facilities (see chapter 365-190[81] WAC, Minimum Guidelines to Classify Agricultural, Forest and Mineral Lands and Critical Areas). Commerce will complete this project by the end of 2022.

HEAL Act

The Legislature passed the HEAL Act[82] in 2021. The law is a historic step toward eliminating environmental and health disparities among communities of color and low-income households. The law establishes a clear definition of environmental justice for Washington: "Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm."

The act provides a framework for equitable community engagement and public participation and consideration of environmental justice. It directs covered agencies to create and adopt a community engagement plan that includes the use of special screening tools that integrate environmental, demographic and health disparities data. The plan will evaluate and understand the nature and needs of the people who the agency expects to be impacted by significant agency actions to overcome barriers to participation and processes. This will facilitate and support the inclusion of members of communities affected by agency decision making.

[80] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5092-S.SL.pdf?q=20220829112507
[81] https://apps.leg.wa.gov/wac/default.aspx?cite=365-190
[82] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true

The law also creates an EJ Council[83] to provide recommendations and guidance to the state and an Interagency Work Group to assist with technical coordination among the state agencies. Specific council duties are to:

- Provide recommendations on implementing environmental justice requirements such as environmental justice assessments, community engagement plans and strategic plans.
- Develop guidance on identifying overburdened communities and the use of the environmental health disparities map.
- Track progress toward increasing health equity and ensuring environmental justice throughout Washington.
- Provide recommendations on the development and implementation of climate programs, including programs funded from carbon revenues.
- Serve as a forum for environmental justice concerns and priorities.
- Provide recommendations to the governor and Legislature on actions that advance environmental justice.

EFSEC streamlined solar energy facility application

EFSEC developed an application form tailored for solar projects to meet requirements for the EFSEC process and SEPA. The form identifies relevant information and uses screening questions to identify if detailed analysis is needed.

Climate and Rural Energy Development Center

The Legislature authorized the Climate and Rural Energy Development Center[84] at Washington State University (WSU) to provide technical expertise to the state Department of Revenue in certifying solar photovoltaic, small wind, and anaerobic digestion energy-generating systems that qualify for incentives. Technical experts provide guidance to businesses in Washington manufacturing energy system components, electric utilities and energy system installers. WSU also provides technical assistance and support on alternative fuels and vehicles to a wide variety of local and state agencies.

Clean Energy Institute

The Legislature authorized the CEI[85] at the University of Washington. Its mission is to accelerate the adoption of a scalable and equitable clean energy future that will improve the health and economy of the state. CEI supports the advancement of next-generation solar energy and battery materials and devices, as well as their integration with systems and the electrical grid.

[83] https://waportal.org/partners/home/environmental-justice-council
[84] https://www.energy.wsu.edu/CleanFuelsAltEnergy/ClimateCenter.aspx
[85] https://www.cei.washington.edu/about/

Mapping tools

Mapping tools include applications like interactive maps to provide information based on a certain geographic area, or mapping data to provide specific types of information, like habitat or land use. Mapping tools can help developers decide where projects might be sited to avoid and minimize impacts and identify points of contact for early engagement on projects. They can provide information for engaging in early and effective communication to understand an area's uses and potential use conflicts. They can also provide information for local governments, stakeholders, Tribes and state agencies to consider for planning and permitting processes. Organizations, other state agencies and state universities are developing mapping tools and information.

There are different types of mapping applications that could be used for clean energy project siting. Informational mapping tools provide data or points of contact for a geographic area. Least-conflict mapping identifies areas where siting conflicts are less likely to occur based on input from people and groups.

Throughout the siting study, some Tribes have expressed concerns about the type of information included in these maps, the purpose of the maps and potential confidentiality issues. These concerns are discussed in the Key Issues and Recommendations sections.

Columbia Plateau least-conflict solar siting pilot project

The Legislature provided $500,000 for fiscal year 2023 for WSU to conduct a least-conflict priority solar siting pilot project[86] in the Columbia basin of eastern and central Washington. The project is looking at where large-scale solar can be developed in the Columbia Plateau region while also ensuring important habitat, productive farmlands and rangelands and Tribal treaty rights and cultural resources are protected. WSU is leading a voluntary, collaborative effort that brings stakeholders together to identify areas in the Columbia Plateau region where the siting of utility-scale solar is less likely to generate significant conflict. This non-regulatory, people-centered process is modeled after similar projects, such as in California's San Joaquin Valley[87]. It is expected to produce high-resolution GIS maps of stakeholder evaluations by June 30, 2023, which can be combined to determine areas where significant siting conflicts are less likely to occur.

Compatible Energy Siting Assessment

Commerce led work for CESA to promote early and ongoing civilian-military coordination to support renewable energy development and preservation of the military's essential testing/training ranges in Washington and its marine waters. Early and ongoing coordination protects military functional capacity and can save developers from possible delays or late-stage investment loss. Consultation throughout development is critical to addressing risk within areas where the military operates.

[86] https://energy.wsu.edu/RenewableEnergy/LeastConflictSolar.aspx
[87] https://sjvp.databasin.org/

In 2019 Commerce began the CESA project with grant funding from the DOD and partnered with EFSEC to support early and ongoing civilian-military coordination for compatible siting decisions. As an outcome, Commerce created an interactive CESA mapping tool prototype[88] that provides information about who to contact for a selected site.

Marine Spatial Plan

The MSP[89] for Washington's Pacific coast is a management process to address the complex issue of managing a growing number of potential ocean uses. Ecology leads the interagency team that addresses the MSP, to ensure Washington maintains a resilient, healthy coastal marine ecosystem. This process supports sustainable economic, recreational and cultural opportunities for coastal communities, visitors and future generations.

It provides a framework for state agencies and local governments to evaluate new proposed ocean uses. It also includes enforceable policies and guidelines that regulate new ocean uses to help protect the coast's unique and sensitive ecological areas and supports sustainable economic, recreational and cultural opportunities. The MSP uses an online mapping application[90] to provide information specific to marine planning needs.

Solar mapping project for DNR trust lands

DNR is analyzing its state trust lands to identify potential solar development lease opportunities[91]. The agency is creating an interactive map of DNR-managed lands for potential solar energy development leases to fulfill DNR's obligations to support schools, universities and other public services throughout the state. The mapping project is designed to identify the preferred properties for solar that would have the least impact and is designed to evaluate site leasing potential only. The map will be available by the end of 2022.

Shrubsteppe habitat mapping

WDFW provides priority habitat and species maps and information. Shrubsteppe habitat is an arid ecosystem found in eastern Washington that could be potentially impacted by large-scale clean energy projects, such as solar. With an estimated 80% of historic shrubsteppe lost or degraded to development and agriculture since the arrival of non-native settlers, protecting remaining shrubsteppe habitats is important for native, migratory and special status species. WDFW is developing a shrubsteppe mapping layer to provide information on habitat which will assist developers in choosing sites that avoid or minimize impacts.

[88] https://cesa-wacommerce.hub.arcgis.com/pages/tool
[89] https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Ocean-management/Marine-spatial-planning
[90] http://mapview.msp.wa.gov/default.aspx
[91] https://www.dnr.wa.gov/solarmap

Key Issues for Siting, Environmental Review and Permitting of Industrial Clean Energy Facilities Identified in the Siting Study Process

Improving the siting, environmental review and permitting of industrial clean energy facilities will require coordinated and collaborative effort by all levels of government, business, industry, Tribes and communities. Opportunities for economic growth and investment are significant and vital to support the clean energy transition in Washington. This transformation must also ensure protection of the environment, Tribal rights and resources, and reduce impacts to overburdened communities.

During the siting study, Ecology and Commerce solicited input from the Advisory Board, Tribes, Interagency Team and the public to prioritize key issues that should be addressed in siting and permitting clean energy projects in Washington. The agencies asked questions and discussed topics with the groups to learn about a broad range of issues related to siting, environmental review and permitting of industrial clean energy facilities. The agencies received written comments as well as verbal feedback during Tribal forums, public meetings, Advisory Board and Interagency Team meetings.

Discussions were substantive and provided multiple perspectives on a diverse set of issues, including differing perspectives on the root causes and challenges around the siting and permitting processes. They formed the basis for identifying categories of potential solutions and the subsequent development of goals, strategies and recommendations in this report. Advisory Board members, Tribes and agency representatives were not asked to reach consensus or formally approve the description of identified issues in final form.

Below are priority issues that Tribes, stakeholders, agencies and members of the public have identified as needing to be addressed to improve the siting and permitting of industrial clean energy projects. The organization of the issues does not imply any order of priority. These categories are not intended to convey all comments or input on issues. Recommendations in this report may not resolve all aspects of the issues identified. Systemic improvements will require an iterative process to make changes over time. These recommendations form another step in ongoing discussions about how to improve siting, environmental review and permitting for industrial clean energy facilities.

Key Issue: Insufficient consultation, engagement and information sharing with Tribes

Tribes expressed concerns about engagement and information sharing, lack of adequate time for Tribal review, late notification and communication about potential projects, and a box-checking approach to government-to-government consultation during the siting, environmental review and permitting processes. As described in the Regulatory Context section of this report, state agencies and federal agencies have requirements for consulting with Tribes; however, some Tribes stated this was not being done in a timely and meaningful manner. Government-

to-government consultation is between state agencies and Tribes; there is no similar structure between Tribes and local governments, or between Tribes and project developers.

Some developers may not be aware of Tribal treaty rights, trust obligations or cultural resource protection requirements in Washington. Some Tribes said developers may not share adequate project information early with them. They also said agencies may not set expectations for communication and transparency from developers with Tribes or provide education to developers on engaging with interested and affected Tribal governments. Many Tribes emphasized the developer's responsibility of sharing information and demonstrating that Tribal rights, resources and interests will not be affected.

Each Tribe has its own sovereign government structure and expectations for formal government-to-government consultation and staff coordination and engagement. Throughout this study, Tribes repeatedly emphasized they are not meaningfully included in siting, environmental review and permitting processes. If Tribes are consulted at the earliest stages of project development and before developers select a final project site, they may be able to provide information about siting or project design elements to avoid because of potential impacts. They may also be able to identify alternative sites. Tribes expressed concern that many local governments lack Tribal liaisons. Many Tribes said the agencies leading federal, state and local environmental reviews and making permit decisions do not adequately consult or engage Tribes during their processes. As a result, Tribes can be seen as a barrier to low-carbon energy projects because of inadequate consideration of impacts to Tribal natural and cultural resources, even as they may support the state's clean energy and climate goals.

Tribal representatives emphasized Tribal interests extend beyond Tribal lands and include, for example, sites with cultural significance and migration pathways for species important to Tribes. They emphasized the siting process in Washington is often focused on mitigating impacts when it should prioritize avoiding impacts altogether. To protect Tribal rights and resources, Tribes asserted that siting decisions need to be reviewed through a hierarchy in which avoiding impacts is the first and best option. Many Tribes stated they are not included early enough in the processes to provide input on impacts to Tribal rights and resources. They also stated a need for information earlier about projects to provide adequate time to review and respond.

Most Tribes said they have insufficient Tribal staff capacity for consultation and engagement on planning and project review. The number of projects Tribes are being asked to review has been increasing and many Tribes said they do not have enough Tribal staff or technical expertise in clean energy technologies. Tribes expressed that efficiency in and of itself should not be the objective of improving siting. Instead, protection of Tribal right and resources must be a central priority, even if it increases the time needed to appropriately site and permit a project.

Key Issue: Siting and permitting of industrial clean energy facilities can be inefficient and time consuming

Several Advisory Board members raised concerns that the time and cost needed to permit clean energy projects in Washington prevents projects from being built. Some said permitting takes longer in Washington than in other states and the processes vary too much between the local, state and federal agencies. Some Advisory Board members noted that state agencies are not adequately staffed and do not have the resources to meet the growing needs of clean energy permitting. In addition, federal, state and local review and permitting timelines are often not aligned. Developers raised concerns about the lack of predictability regarding process steps and timelines for project permitting. Some Advisory Board members noted there is inconsistent and often incomplete information provided by developers during the processes which also leads to delay and confusion. They said the processes would work better if developers provided more comprehensive and accurate information early in the process and engaged more proactively with agencies, Tribes and communities.

Some Advisory Board members cautioned Washington may not reap the economic and jobs benefits of its climate and energy goals if clean energy facilities are not sited here and energy is imported from out-of-state. Some stated companies need more consistency and certainty about permitting processes to move forward on projects. Others countered the system is working as designed and steps that may be perceived as delays are in place to protect natural resources, Tribal rights and cultural resources and to provide for adequate public participation. Some Advisory Board members acknowledged both perspectives, the importance of maintaining environmental and community safeguards, while encouraging the acceleration of clean energy projects to meet Washington state's ambitious clean energy and emissions reduction targets.

Environmental review and permitting processes can vary depending on the location of the facility, potential impacts and type of construction and operations, as well as the regulatory authority. The length of the processes also depends on factors such as the level of public interest, number of comments and the complexity of the proposal. Large industrial facilities often require permits from multiple agencies that have different regulatory authorities. Agencies may determine developers did not provide adequate information at the beginning of the processes and require further work be done before making a decision. An appeal of a permit decision may identify a need for more information and require it to be sent back for additional analysis and review.

In Washington, SEPA environmental reviews are mainly done by local governments. There are circumstances when state agencies may be the SEPA lead, such as when required by statute or for the EFSEC process. Some projects may also require federal environmental reviews under NEPA. Throughout the study, some people expressed concern that overlapping federal, state and local review and permitting processes can result in duplication of effort or inconsistent outcomes. Other Advisory Board members said these processes work in tandem and while there is opportunity to better coordinate across regulatory agencies, each agency holds its own focus and role in the process. A lack of information from developers about a project's technology, construction or operations can also mean delays in environmental review and permitting.

Staff availability at the local and state levels is also an issue. If multiple proposals are submitted concurrently, there may be only a limited number of employees to work on them. In addition, local governments and state agencies may not have the needed expertise for reviewing proposals involving new clean energy technology or unique operations and may require technical assistance to determine impacts. Both of these circumstances can add to a project's overall timeline.

Key Issue: Lack of information related to industrial clean energy projects

Work is needed to make processes more transparent, equitable and accessible. Having adequate information about potential issues is critical for developing a clean energy project that avoids or reduces potential impacts. Knowing whom to contact is also important for early engagement with agencies, Tribes and communities. Some Advisory Board members stated there is a lack of tools to provide information on potential issues and identify who should be informed and engaged for a project. Developers new to Washington may lack adequate understanding of state laws, processes for environmental review and permitting, and Tribal treaty rights in Washington.

Information about siting considerations, environmental reviews, permit requirements and timelines can provide critical information for project development schedules. Some people noted this is not readily available or is inconsistent at a statewide level. Developers are expected to conduct due diligence when siting a project to evaluate the environmental conditions and risks associated with a property. Projects may be affected if developers are not aware of issues when choosing sites.

When information about projects is not available in one location, it can be hard to determine cumulative impacts as well as impacts to overburdened communities. A lack of information on project proposals may affect cumulative impact analysis if multiple projects are proposed in the same area. Some Advisory Board members expressed concern that some impacts may not be truly reduced because there is inadequate information about appropriate mitigation options.

When a proposed project is in the early phase of siting, developers may consider project information confidential. Detailed project information may not be available during the environmental review period. In addition, a project design may change over time and people may not be notified of the changes. Many said they wanted detailed information about a clean energy project proposal earlier in the process. They also noted there is currently no consistent method to share project design changes or changes about impacts. Some Tribes stated developers have the responsibility of providing Tribal governments with complete and accurate information about project siting and design at the earliest possible stages and throughout the project. Some Advisory Board members noted a concern about how project developers address and include feedback from Tribal and community engagement. They also said developers may not adequately communicate changes about a project.

Key Issue: Uncertainties over industrial clean energy project impacts and benefits

Some people raised concerns that impacts from an industrial clean energy project may not be adequately analyzed due to missing baseline information, inadequate scientific understanding, lack of guidelines or inconsistent assessment methods. Baseline information about resources is important for determining if a proposed project will cause potential impacts. If this data is not available for a site, a developer may need to conduct monitoring over a period of time to provide sufficient information for analysis. In addition, analytical methods may not be standardized or required in statute, so they can vary or lack key information for thorough evaluation.

The data sources for determining impacts and benefits may vary widely. Some Tribes and Advisory Board members identified a lack of consolidated data sources for analysis as an issue for environmental review and permitting processes, because it can result in inconsistent or inadequate analysis. People raised concerns that some information about a clean energy project may be sensitive and not shared publicly. This lack of information is an issue for Tribes and for communities to adequately understand impacts to their resources.

Lack of information about impacts is particularly acute for emerging technologies where agencies, Tribes and stakeholders may not have the technical expertise to adequately conduct and review impact assessments. Several Tribal representatives and Advisory Board members expressed concerns about the lack of adequate cumulative impact analysis for proposed projects. They stated there should be ongoing monitoring or adaptive management required of projects.

Decision makers may consider multiple sources of information, but there is no consistent approach for sharing impact and benefit analysis with communities and Tribes. The environmental review and permitting processes focus on identifying and disclosing potential impacts and mitigation options. Local communities may perceive impacts outweighing the benefits from clean energy projects. Some Advisory Board members identified concerns about the lack of local benefits from clean energy projects, such as job creation, economic development, consistency of tax revenue streams and resulting impacts on local taxpayers.

Best practices for engaging overburdened communities and considering environmental justice and equity issues are not well understood or consistently applied. This limits a full understanding of community-level impacts and benefits.

Recommendations

This section describes goals, strategies and recommendations covering the breadth of issues raised during the study. They were developed by Ecology and Commerce based on input and feedback from the Advisory Board, Tribes, agencies and the public. Many of the recommendations are interrelated and should not be considered in isolation. This section also includes a list of potential additional studies. These studies could provide information to

support the clean energy transition while protecting natural resources, communities and Tribal rights and resources.

For most recommendations, there was general alignment. For areas where there were significant differing or dissenting views, the issues or concerns are described for the applicable recommendation. Additional information related to the goals, strategies and recommendations is also provided for context.

The siting study helped surface challenges and concerns, and the diverse groups involved helped develop potential solutions. These recommendations are a further step in ongoing discussions, and additional work will be needed with broader sets of stakeholders and Tribes to further refine and implement them.

Table 3: List of recommendations

Reference	Recommendation
Environmental Justice (EJ) Goal: Develop and Implement Equitable Community Engagement and Ensure Overburdened Communities Are Not Disproportionately Impacted by Industrial Clean Energy Projects	
EJ-1	Develop detailed guidelines for agencies and local governments to engage overburdened communities as part of planning processes in equitable and accessible ways.
EJ-2	Consider how local government could coordinate with communities to develop guidelines on how best to engage with representative organizations.
EJ-3	Coordinate with communities on options to provide longer timelines for review and comment on permits.
EJ-4	Develop best practices for developers on meaningful community engagement, including optimal timing for early engagement, holding accessible meetings, providing feedback and direct engagement with members of impacted communities.
EJ-5	Consider providing funding for local governments, Tribes and communities to provide information and training directly to developers on meaningful engagement.
EJ-6	Identify communications and engagement strategies for working with overburdened communities and provide data on participation rates.
EJ-7	Require environmental justice impact analysis be conducted as part of a state environmental review process or other related review process.
EJ-8	Consider developing guidance and best practices for conducting impact analysis for overburdened communities.

Reference	Recommendation
EJ-9	Incorporate equity consideration in requests for proposals for consumer-owned utility projects, similar to Washington Utilities and Transportation Commission requirements.
EJ-10	Agencies not covered by the HEAL Act should review the benefits of opting in.
EJ-11	Opt-in agencies with a nexus to clean energy siting or permitting should consider participating in the HEAL Interagency Work Group.
Tribal Consultation and Engagement (TRIBAL) Goal: Improve Engagement and Information Sharing with Tribes and Government-To-Government Consultation	
TRIBAL-1	Designate a lead point of contact in each state agency to provide information and coordinate between Tribes and developers on clean energy projects upon notification of a potential project.
TRIBAL-2	Determine which Tribal technical staff to contact for early project planning.
TRIBAL-3	Consider how to meaningfully include Tribes as part of the siting decision-making processes at the state and local levels and develop a mechanism for determining which Tribes may be impacted.
TRIBAL-4	Consider how developers could contact Tribes early in the siting process, ideally before land is acquired for a project or before permit applications are developed and offer information relevant to Tribal technical staff.
TRIBAL-5	Consider how to consistently track and document Tribal engagement activities and findings related to siting, environmental review and permitting processes.
TRIBAL-6	When assessing Tribal lands and interests that may be directly, indirectly or cumulatively affected by a project, the evaluation should include Tribal treaty reserved rights, Tribal reservations, off-reservation rights, Trust lands, other Tribal-owned land and other areas of significance to Tribes.
TRIBAL-7	Fund and request individual Tribes to self-identify their areas of interest.
TRIBAL-8	Develop map layers for routes of migratory species, vessel traffic routes or other information of interest to Tribes.
TRIBAL-9	Consider creating high-level map layers where a Tribe could self-identify areas of interest and provide contact information for early communication regarding potential projects.
TRIBAL-10	Consider requiring a Tribal monitor for archaeological survey crews to provide input on traditional cultural properties, sacred site and culturally significant sites.
TRIBAL-11	Require ongoing monitoring of facilities for impacts to treaty resources.

Reference	Recommendation
TRIBAL-12	Consider options to provide state funding for Tribal staff for clean energy planning and project reviews.
TRIBAL-13	Consider approaches for applicants to fund work by Tribal staff or consultants to support Tribal pre-application engagement and project review.
TRIBAL-14	Support sufficient federal funding for Tribal staff to meet federal requirements for project reviews.
TRIBAL-15	Consider how the state could assist Tribes to develop clean energy projects.
TRIBAL-16	Consider how to provide additional funding and staffing to state agencies and Tribal Historic Preservation Officers to support Tribal consultation and engagement work related to clean energy projects.
TRIBAL-17	Build on existing Tribal consultation and Tribal treaty rights training by offering a variety of training to developers, state agencies and local governments.
Local Government (LOCAL) Goal: Assist Local Governments to Support Coordinated Clean Energy and Economic Development	
LOCAL-1	Consider how to assist counties and cities in updating local codes for emerging clean energy technology by providing template language that could be modified locally.
LOCAL-2	Expand training opportunities for local governments on clean energy processes and regulations, emerging technologies and on Tribal affairs and relations.
LOCAL-3	Consider how to provide state funding for local government staff for clean energy planning, project reviews and permitting.
LOCAL-4	Consider how to assist local government in accessing federal funding for clean energy.
LOCAL-5	Consider developing GMA guidance on land conversion for clean energy projects, including for rural and resource lands.
LOCAL-6	Update the Rural Element Guidebook.
LOCAL-7	Develop guidance for local governments about aligning GMA requirements for rural character and resource land protection with potential clean energy projects.
LOCAL-8	Assist local planning agencies with community engagement regarding long-term planning for low-carbon energy projects.
Equitable Economy (EE) Goal: Support Clean Energy Transition Through Equitable Economic Development	

Reference	Recommendation
EE-1	Consider how to facilitate opportunities for high-quality, family-wage local jobs and small businesses from clean energy projects.
EE-2	Consider how to include community benefit agreements or good neighbor agreements as part of planning or environmental reviews, if appropriate.
EE-3	Consider options for workforce development opportunities, including understanding workforce availability and opportunities for training, apprenticeships and high-quality jobs.
EE-4	Consider how to include labor standards, workforce agreements and local hiring provisions for clean energy projects.
EE-5	State agencies develop rural clean energy economy roadmaps in collaboration with local governments.
EE-6	Consider incentives to develop projects at sites identified through least-conflict studies or through planned actions or programmatic EISs to avoid or minimize impacts.
EE-7	Consider requirements for bonds for decommissioning facilities of all sizes, including those for which decommissioning is not a normal component of development agreements.
EE-8	Consider statutory change to strengthen requirements that communities receive benefits when new energy resources are developed.
EE-9	Consider how to incentivize use of already developed industrial areas, infrastructure and brownfields, including opportunities to overcome financing barriers.
EE-10	Provide assistance to local governments related to documentation required for utilizing brownfield or Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) sites for clean energy projects.
EE-11	Provide funding and technical assistance for cleanup activities and reuse planning for siting on contaminated brownfields.
EE-12	Consider modifications or revisions to tax language to address different or concurrent uses of land, such as when land could be used for agricultural purposes and also for clean energy purposes.
EE-13	Consider developing guidelines for county assessors about how the income capitalization approach could be used to value clean energy facilities to avoid shifting tax burden due to depreciating assets.
EE-14	Develop information on tax incentive options for local government, developers and Tribes.

Reference	Recommendation
EE-15	Consider and explore financial tools for mitigating impacts of clean energy facilities.
Upfront Planning (PLAN) Goal: Conduct Upfront Planning to Make Siting and Permitting Projects More Effective and Ensure Protection of Natural Resources, Communities, and Tribal Rights and Resources	
PLAN-1	Conduct additional least-conflict mapping for specific geographic areas or energy types.
PLAN-2	Conduct coordinated and early planning to identify, evaluate and address potential impacts for possible sites of clean energy projects.
PLAN-3	Provide funding for local governments, Tribes, agencies and communities for early planning.
PLAN-4	Develop guidance on how local governments can utilize least-conflict processes and upfront planning to provide information and reduce timelines for review and permitting of projects.
Provide Assistance (ASSIST) Goal: Improve Guidance, Training and Tools for Clean Energy Projects and Planning	
ASSIST-1	State agencies should consider developing publicly accessible roadmaps for specific types of energy projects.
ASSIST-2	Develop pre-application guidance for developers to consider when designing and siting clean energy projects.
ASSIST-3	Provide greater clarity about state agency, local government, and Tribal government roles and responsibilities, and processes for making siting, review and permitting decisions.
ASSIST-4	Conduct internal process improvement analysis for state agency permitting processes.
ASSIST-5	Agencies should consider developing lessons learned for the public about the review and permitting processes for projects.
ASSIST-6	Develop guidance on the type of information needed for environmental reviews and permitting.
ASSIST-7	Build state-level expertise on clean energy facilities and impacts to provide technical assistance for reviews and permitting.
ASSIST-8	Conduct studies and develop guidance to provide updated data and information for use by state agencies, local governments, Tribes and developers in environmental assessments.

Reference	Recommendation
ASSIST-9	Develop tools to support consistent policies, standards and guidance on mitigation of impacts.
ASSIST-10	Designate and fund an agency to manage and maintain an informational mapping tool to provide points of contact for engagement and to identify issues to consider for siting clean energy projects.
Agency Coordination (COORD) Goal: Improve Coordination at Federal, State and Local Levels for Clean Energy Projects	
COORD-1	Develop landscape-level plan for federal lands that includes impact analysis and mitigation with state and federal agencies to be used for permitting of projects.
COORD-2	Consider developing a template for NEPA and SEPA integration that could be used by local governments to help make state and federal environmental review processes more effective.
COORD-3	Consider the development of standard MOUs or cooperative agreements to establish consistent federal and state coordination for environmental reviews.
Statewide Support (STATE) Goal: Improve State Organizational Structure to Implement Recommendations, Provide Information and Coordinate Efforts	
STATE-1	Establish an interagency policy coordination team to implement recommendations and align siting, review and permitting processes.
STATE-2	Develop a dashboard to provide one stop for information on proposed clean energy projects.
STATE-3	Establish “clean energy navigators” at a state agency to provide guidance and expertise on state agency processes.
STATE-4	State agencies should assess current project-level interagency coordination for potential improvements to siting, environmental review and permitting roles and actions.
STATE-5	State agencies assess needs for staff dedicated to working on clean energy projects, planning and providing technical assistance.

Environmental Justice (EJ) Goal: Develop and implement equitable community engagement and ensure overburdened communities are not disproportionately impacted by industrial clean energy projects

All Washington residents, regardless of income, race, ethnicity, color or national origin, have a right to live, work and recreate in a clean and healthy environment. Low-income communities, communities of color and Indigenous people often bear the brunt of pollution and the impacts

of climate change. Communities that are the most severely and frequently impacted by projects have often lacked clear and effective options for engaging on project siting, environmental review and permitting.

The HEAL Act[92] states: "'Environmental justice' means the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, rules and policies. Environmental justice includes addressing disproportionate environmental health impacts in all laws, rules and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits and eliminating harm."

Public involvement and community engagement has often used a one-size-fits-all approach to gather public input, resulting in a lack of options to engage directly with different types of communities. The recommendations in this section are intended to avoid disproportionate impacts from environmental and health hazards and promote equal access to decision-making processes so people have a healthy environment in which to live, learn and work. This goal aligns with TCWG principles[93] D.4 and G.4.

Strategy: Improve meaningful engagement with overburdened communities to address environmental justice considerations in the siting, review and permitting processes

Identifying and understanding the needs of a community as a whole is important for understanding potential impacts to overburdened communities. Meaningful engagement includes public dialogue with the communities potentially impacted by a proposal, listening to what they have to say, using their input to inform the process, responding to their comments and concerns, and incorporating their feedback as part of the decision-making processes. Meaningful engagement with Tribes includes government-to-government consultation.

Recommendation EJ-1: Develop detailed guidelines for agencies and local governments to engage overburdened communities as part of planning processes in equitable and accessible ways.

When developing guidelines, input should be sought from a broad and diverse public. Accessible approaches should be used, including improved technology and providing information in multiple languages. Financial incentives for low-income participants should be considered to improve equitable access and engagement. The most recent HEAL Act requirements or guidance on environmental justice, including for Tribal communities, should be incorporated.

[92] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true
[93] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

Recommendation EJ-2: Consider how local government could coordinate with communities to develop guidelines on how best to engage with representative organizations.

Information sharing about plans and projects with potentially affected communities can be implemented inconsistently. Local governments have the best understanding of their communities and should identify the best points of contact for coordination. These points of contact can help share information broadly and in a timely manner. Local governments can also work with the groups to determine the best methods for engagement. This would help ensure communities are better aware of potential projects or plans that could affect them.

Recommendation EJ-3: Coordinate with communities on options to provide longer timelines for review and comment on permits.

Review times may be limited by regulations. Options for extending comment periods should be considered. Information could also be provided in advance to allow for additional review time. Permitting agencies should work with communities to develop options for review and comment.

Strategy: Emphasize early engagement in projects and planning to address concerns, including prior to siting decisions

Early engagement is critical to identify issues so they can be avoided or minimized before final project decisions are made. Engagement should begin before the formal environmental review process begins. This can help reduce potential impacts and the need for additional mitigation for a project and ensure community concerns are understood and addressed.

Recommendation EJ-4: Develop best practices for developers on meaningful community engagement, including optimal timing for early engagement, holding accessible meetings, providing feedback and direct engagement with members of impacted communities.

Developers may not understand the need and value of early engagement. Providing best practices from the EJ Council would help clarify expectations for both industry and communities. Meaningful community engagement is essential for environmental justice and relies on communicating directly with impacted communities in a manner that meets their unique needs and provides a way for them to inform decision-making. Engagement should include the developer providing feedback to communities about how input was incorporated, as well as changes to a project as a result of engagement.

Recommendation EJ-5: Consider providing funding for local governments, Tribes and communities to provide information and training directly to developers on meaningful engagement.

The best sources for understanding how to engage with communities and Tribes are those potentially affected. Local governments may have insights into how to provide information for their communities. Funding would allow local governments, Tribes and communities to actively

participate in developing information and training on meaningful engagement for developers that they could apply to their projects.

Recommendation EJ-6: Identify communications and engagement strategies for working with overburdened communities and provide data on participation rates.

Developers and agencies could use this data to show how they engaged with overburdened communities as part of their processes. Information on the types of strategies and participation rates would help determine the most effective methods of engagement or gaps. This information could be gathered at the project level and then consolidated statewide to see overall trends, which would be beneficial for other work.

Strategy: Require environmental justice impact analysis in decision making for projects

The HEAL Act directs covered state agencies to incorporate environmental justice assessments into agency actions. The EJ Council may develop requirements or guidelines for environmental justice assessments as part of their work. However, there are currently no HEAL requirements for local governments and non-covered agencies, potentially resulting in inconsistent inclusion of environmental justice assessment in project decisions.

Lead agencies can conduct an environmental justice impact analysis as part of the state environmental review process, but it is not required. An environmental justice evaluation can also be done separately and used by decision-makers along with an environmental review, but this is not done consistently. This means environmental justice impacts may not be considered for decisions on every industrial clean energy project.

Recommendation EJ-7: Require environmental justice impact analysis be conducted as part of a state environmental review process or other related review process.

Agencies and local governments could require environmental justice impact analysis as part of the state environmental review or as a separate study to be considered for permit decisions.

Recommendation EJ-8: Consider developing guidance and best practices for conducting impact analysis for overburdened communities.

Communities can be affected through direct, indirect and cumulative impacts from one project or from several. These impacts may include environmental, health, safety or economic aspects. Guidance and information on best practices would provide greater consistency and awareness of requirements for this type of impact analysis.

Recommendation EJ-9: Incorporate equity consideration in requests for proposals for consumer-owned utility projects, similar to the Washington Utilities and Transportation Commission requirements.

Purchases of Electricity Rules, chapter 480-107[94] WAC, requires investor-owned utilities use requests for proposals that consider equity. The project proposals must identify energy and non-energy benefits or burdens to highly impacted communities and vulnerable populations as part of each bid. This rule does not apply to consumer-owned utility projects. Including this consideration in requests for proposals for consumer-owned utilities would improve consistency between clean energy projects and ensure equity is considered as part of a project in the early stages.

Strategy: Recommend agencies not required to follow the HEAL Act consider options for participating

HEAL requires the state departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation and the Puget Sound Partnership identify and address environmental health disparities in overburdened communities and vulnerable populations. The act requires environmental assessments of significant agency actions, equitable distribution of funding and expenditures to benefit overburdened communities, measures to reduce exposure to environmental hazards on Tribal lands and track and measure implementation of environmental justice in state agencies. Other agencies may choose to opt in.

Recommendation EJ-10: Agencies not covered by the HEAL Act should review the benefits of opting in.

Agencies not covered in the HEAL Act can choose to opt-in under chapter 70A.02.030[95] RCW. These agencies should review and consider the benefits of opting-in to the HEAL Act to ensure consistency in agency considerations of environmental justice.

Recommendation EJ-11: Opt-in agencies with a nexus to clean energy siting or permitting should consider participating in the HEAL Interagency Work Group.

HEAL created an Interagency Work Group to coordinate work among the seven HEAL agencies and others that decide to follow its guidelines. Participating in this group would improve consistency among agencies and the adoption of environmental justice considerations.

Tribal Consultation and Engagement (TRIBAL) Goal: Improve engagement and information sharing with Tribes and government-to-government consultation

Indigenous Tribes and populations have existed in the Northwest since time immemorial and Tribes have inherent connections to the land. Tribes retained about six million acres of reservation land and specifically reserved the right to take fish in their "usual and accustomed" areas, including ceded territories, along with the right to harvest and hunt on "open and unclaimed lands," among other things. Tribes retained reserved rights to gather and access cultural foods and religious sites in their treaties with the federal government. Additionally,

[94] https://apps.leg.wa.gov/WAC/default.aspx?cite=480-107&full=true
[95] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.030

several out-of-state Tribes have treaty rights and usual and accustomed territories within the state.

Tribal people, lands, rights and resources of significance to Tribes may be impacted by clean energy projects. Tribes have clearly stated they are not involved early enough in siting, environmental review and permitting processes or in meaningful ways.

The sovereignty of Tribes and the presence of Tribal rights and resources throughout the state create a unique relationship between Tribes and agencies responsible for managing and protecting the state's natural resources and other shared interests. Under the Centennial Accord, state agencies maintain a government-to-government relationship with Tribes. The Centennial Accord establishes a process and responsibilities for consultation and collaboration as part of this government-to-government relationship. State agencies may participate in consultation, engagement or information sharing with Tribes. There is no equivalent consultation framework between Tribes and local governments or with private industry. Local governments and industry may offer to engage or share information with Tribes.

The recommendations in this section are to support early and meaningful engagement and information sharing with Tribes and government-to-government consultation on industrial clean energy projects and planning. This goal aligns with TCWG principles[96] D.3, F.5, F.6, F.7, F.8, F.10, G.1 and G.2 and the Columbia River Inter-Tribal Fish Commission Energy Vision[97] recommendation 31.

Strategy: Improve early engagement and information sharing with Tribes and government-to-government consultation for projects and planning

Consultation means government-to-government relations with Tribes and state agencies as described in the Tribal Treaties, Consultation Statutes and Accords section. Informal engagement and information sharing may occur with agencies, local governments or developers to provide or exchange information.

Early and meaningful engagement and information sharing with Tribes and consultation with agencies and Tribes on a project or for planning may provide opportunities to discuss potential impacts and mitigation. Early engagement and awareness of issues in the process may allow impacts to be avoided or minimized in early project proposal stages. Tribal input is critical during planning processes to identify issues and concerns.

Tribes have stated that adequate time is required to appropriately review projects. This time may vary by each Tribe; some have said they would need three months and others up to one year. The reviews would be dependent on the information provided about a project and its

[96] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf
[97] https://critfc.org/wp-content/uploads/2022/09/CRITFC-Energy-Vision-Full-Report.pdf

technology. Some Tribes said communication and engagement between local governments and Tribes needs to be improved for the environmental review and permitting processes.

Recommendation TRIBAL-1: Designate a lead point of contact in each state agency to provide information and coordinate between Tribes and developers on clean energy projects upon notification of a potential project.

It would be helpful for Tribes and developers to have a single point of contact at each state agency with whom to coordinate and communicate with initially and throughout the processes. This role would provide technical assistance and coordinate with the agency Tribal liaison and other agency staff.

Recommendation TRIBAL-2: Determine which Tribal technical staff to contact for early project planning.

Contacting the appropriate Tribal technical staff will help the review process and engagement on a project. Each Tribe determines their appropriate contacts. The staff may vary based on the Tribe involved and the type of project or impacts. For example, Tribal cultural staff would be involved if there were potential impacts to Tribal cultural resources while Tribal fisheries staff would be involved if there were potential impacts to fish. There would be benefit to working with individual Tribes to identify appropriate points of contact.

Recommendation TRIBAL-3: Consider how to meaningfully include Tribes as part of the siting decision-making processes at the state and local levels and develop a mechanism for identifying which Tribes may be impacted.

Tribes stated they must be part of the siting decision-making processes at the state and local levels, and more meaningful ways to include Tribes in siting projects should be developed. There is no manner to determine which resources Tribes might have concerns about or interests in, as this varies by each Tribe. Developing a mechanism for identifying Tribes with interests or concerns will support meaningful engagement in the siting, environmental review and permitting processes.

Each Tribe determines if their Tribal rights and resources would be affected by a proposed project. This determination should be included in all decision-making processes.

There was a divergence of perspectives related to this recommendation. Some Tribes stated they want Tribal consent to be a requirement for a project to move forward when there is a possibility for encroachment or diminishment of their reserved rights or sovereign interests. Local government representatives voiced concerns this could affect regulatory requirements for cities and counties. In the case of local governments, land use authority is the responsibility of elected officials.

Recommendation TRIBAL-4: Consider how developers could contact Tribes early in the siting process, ideally before land is acquired for a project or before permit applications are developed and offer information relevant to Tribal technical staff.

Tribal technical staff need sufficient information about a project, its technology and potential impacts to determine how it could affect Tribal interests and resources. Developers could provide information about a project early to Tribal technical staff. In the early phases of a project, developers may consider information about their proposal to be confidential. Establishing a non-disclosure agreement (NDA) with each potentially affected Tribe may allow important information to be shared with Tribal technical staff. Each Tribe determines if an NDA would be appropriate. NDAs must be consistent with federal laws, each Tribe's laws and regulations and relevant to specific circumstances of each project.

Tribes may be able to provide information prior to site selection to avoid or minimize impacts to Tribal rights or resources. Tribes will determine if this information can be shared. This information may be sensitive and also require a NDA.

Engagement should include the developer providing feedback to Tribes about how input was incorporated, including changes to a project as a result of engagement.

Some Tribes stated that they prefer information about projects to come through state agencies as part of a government-to-government process and do not want to engage directly with developers before that happens. Other Tribes stated they want to get information as early as possible for review and that it could come from a developer.

Recommendation TRIBAL-5: Consider how to consistently track and document Tribal engagement activities and findings related to siting, environmental review and permitting processes.

There is no consistent method for tracking Tribal engagement or responses for siting, environmental review or permitting. Having this data would be useful to show how Tribes were engaged at a project level, identify Tribal concerns and interests and recognize trends.

Strategy: Improve understanding of Tribal rights and resources

Recognition of Tribal rights and resources will help provide a baseline for avoiding and mitigating impacts as well as help identify cumulative impacts. This information can assist Tribes and agencies in impact analysis during siting, review and permitting processes. Obtaining and identifying this information in advance would provide a more robust picture of potential issues and could also make impact analysis more consistent.

Recommendation TRIBAL-6: When assessing Tribal lands and interests that may be directly, indirectly or cumulatively affected by a project, the evaluation should include Tribal treaty reserved rights, Tribal reservations, off-reservation rights, Trust lands, other Tribal-owned land and other areas of significance to Tribes.

Impact analysis must consider Tribal lands and interests. This could be site-specific, such as for a cultural resource, or broad-based, such as the migratory path for a species of Tribal interest. This information may be sensitive and not publicly available.

Recommendation TRIBAL-7: Fund and request individual Tribes to self-identify their areas of interest.

Only Tribes can determine their Tribal areas of interest. In addition to Tribal rights, these could include cultural, natural and ethnographic resources. Funding should be provided to Tribes to conduct their own ethnographic and cultural resource surveys to provide information for their Tribe's use and for the confidential DAHP database (not for public use).

Recommendation TRIBAL-8: Develop map layers for routes of migratory species, vessel traffic routes or other information of interest to Tribes.

Mapping the routes of migratory species of interest to Tribes, such as salmon, birds, orcas and other species, would provide useful information for determining impacts to Tribal resources. Mapping should include federal Endangered Species Act-listed species and their critical habitat, as well as Washington state listed species of concern and sensitive areas such as eastern Washington's shrubsteppe habitat. This information would also be important for considering cumulative impacts. Other types of information of interest to Tribes, such as vessel traffic routes, could be included.

Recommendation TRIBAL-9: Consider creating high-level map layers where a Tribe could self-identify areas of interest and provide contact information for early communication regarding potential projects.

Maps can provide information at a general level about areas where Tribes may have interests. Tribes may choose to provide information on areas where they have an interest so developers and agencies know they should be engaged. This information would not be site-specific and would simply be a way for developers and agencies to know Tribes have a concern for a given area and want to be contacted. Different layers would be developed for each individual Tribe.

Some Tribes stated they do not want to share this information on any publicly available map.

Recommendation TRIBAL-10: Consider requiring a Tribal monitor for archaeological survey crews to provide input on traditional cultural properties, sacred sites and culturally significant sites.

Having a Tribal monitor on site with archaeological survey crews would provide immediate input about areas of interest to Tribes. These areas could include traditional cultural properties, sacred sites and culturally significant sites.

Recommendation TRIBAL-11: Require ongoing monitoring of facilities for impacts to treaty resources.

Once a project is constructed and operating, there is often no requirement for ongoing monitoring of impacts to treaty resources. Monitoring would allow for adaptive management to be done to address treaty resource impacts early on during operations.

Strategy: Fund dedicated staff (such as Tribal staff or consultants) to support Tribal capacity, consultation and engagement on clean energy projects and planning

Adequate and appropriate funding for dedicated staff is critical to support Tribal work, consultation and engagement on clean energy projects and planning. Tribes stated the number of projects needing review is increasing and many Tribes said they do not have sufficient staff capacity for this work. Different types of funding could be provided to support Tribal consultation and engagement in clean energy project and planning. This funding would also improve accessibility for Tribal governments.

Recommendation TRIBAL-12: Consider options to provide state funding for Tribal staff for clean energy planning and project reviews.

The state could provide funding for Tribal staff or consultants working for Tribes. Though beyond the scope of this report, several Tribes supported development of an approach to centralize state funding for all clean energy and climate work and to provide multi-year funding.

The state could provide compensatory funding for Tribes for clean energy project proposals. Several Tribes supported determining formulas for non-competitive grants based on lessons learned from similar approaches, such as the CCA Tribal Capacity Grant program[98].

Funding for work that does not violate confidentiality to conduct cultural resource reviews, ethnographic studies and cultural surveys would provide information that Tribes, developers and agencies could use for project siting, review and permitting. Funding for Tribal staff as well as local and state government staff would be needed to do this work. This data would provide an understanding of potential impacts early in the process.

Recommendation TRIBAL-13: Consider approaches for applicants to fund work by Tribal staff or consultants to support Tribal pre-application engagement and project review.

Applicants could fund Tribes to support staff or consultant work on pre-application engagement for siting and for project review.

Some Tribes may have internal policies that do not allow for this type of funding by developers.

Recommendation TRIBAL-14: Support sufficient federal funding for Tribal staff to meet federal requirements for project reviews.

There is not sufficient federal funding available to support project reviews by Tribal staff to meet federal requirements. The state should support efforts to adequately fund requirements at the federal level.

[98] https://ecology.wa.gov/About-us/Payments-contracts-grants/Grants-loans/Find-a-grant-or-loan/Tribal-Capacity-Grants

Recommendation TRIBAL-15: Consider how the state could assist Tribes to develop clean energy projects.

Clean energy projects proposed by Tribes or located on Tribal lands can help Tribal governments meet their needs for economic development and for resource protection. The state should explore how it can assist Tribes who may want to develop their own clean energy projects, such as providing assistance for accessing federal funding or for site pre-development.

Recommendation TRIBAL-16: Consider how to provide additional funding and staffing to state agencies and Tribal Historic Preservation Officers to support Tribal consultation and engagement work related to clean energy projects.

State agencies and THPOs provide support for Tribal consultation and engagement. This funding could also support permitting assistance and coordination specific to Tribal resources and interests.

Strategy: Develop training for state agencies, local governments and developers about Tribal engagement and government-to-government consultation to improve communication and understanding

Basic training about Tribal treaty rights, Tribal consultation with state agencies, and options for information sharing and engagement is available but additional training could provide improved understanding of requirements and expectations in Washington state. While developers or local governments do not have a government-to-government relationship with Tribes, they could offer to engage or share information with Tribes.

Recommendation TRIBAL-17: Build on existing Tribal consultation and Tribal treaty rights training by offering a variety of training to developers, state agencies and local governments.

While GOIA provides introductory government-to-government training, additional training would grow relational knowledge and awareness about Tribal consultation and Tribal treaty rights in Washington. Training should be provided in a variety of formats to address different types of learners and remote learning. The effectiveness of different types of training should also be evaluated. Training for developers and state and local governments should include awareness of Tribal sovereignty and treaty rights and consultation requirements for state agencies.

Some Tribes expressed interest in helping develop this training to include information specific about their Tribal processes and interests.

Local Government (LOCAL) Goal: Assist local governments to support coordinated clean energy and economic development

Cities and counties have responsibilities for economic development and comprehensive planning under the GMA or as part of long-range planning for non-GMA cities and counties. They are also typically the lead agencies for state environmental reviews under SEPA and are

responsible for issuing local permits. The overlap between these responsibilities requires coordination for consistency and to prevent conflicting decisions. Local governments may be limited in staffing and funding which can lead to challenges in managing reviews and permitting of complex or multiple clean energy proposals. They may also lack technical capacity to address complex proposals or new clean energy technologies. The recommendations in this section are to assist local governments in clean energy and economic development for their communities. This goal aligns with TCWG principle[99] D.3.

Strategy: Improve guidance, training and information for local governments

Providing tools and information specifically for local governments would improve consistency in processes and awareness and inclusion of local issues and concerns. The types of tools and the focus of training may vary among different local governments and should be tailored to what will work most effectively and provide the most accessibility.

Recommendation LOCAL-1: Consider how to assist counties and cities in updating local codes for emerging clean energy technology by providing template language that could be modified locally.

Local zoning and building regulations may not address emerging clean energy technology, such as battery storage facilities and green hydrogen. This can lead to delays because projects would not be covered by regulations and a code update may be needed before a project can be permitted. The state could provide technical support in updating codes by providing template language that could be modified locally. Then cities or counties could choose what to use and revise the language as needed. This language should include health and safety protections.

Recommendation LOCAL-2: Expand training opportunities for local governments on clean energy processes and regulations, emerging technologies and on Tribal affairs and relations.

Training provides a critical role in setting expectations and providing understanding about issues. Local government officials and staff may not have experience in working with processes related to siting, review or permitting of clean energy projects or with Tribes and treaty rights.

The state could support local governments by providing training opportunities about requirements for environmental review, permitting, clean energy technologies and potential impacts. Information on emerging technologies would improve understanding of potential projects and their impacts.

Safety training, including technology-specific training for local fire officials, would support permitting of new technologies like battery storage. Training about the state energy strategy and related clean energy regulations would help local governments understand requirements and options. Training on Tribal affairs and relations, including sovereignty and treaty rights,

[99] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

would also benefit local governments, including assisting with the development of their own Tribal engagement policies and identify specific concerns and issues of Tribes whose resources could be impacted.

Strategy: Fund dedicated staff for local government to support siting, review and permitting clean energy projects and planning

Adequate and appropriate funding for staff is critical to support cities and counties working on clean energy project permitting and planning. Local governments stated the number of projects needing review is increasing and many do not have sufficient staff capacity for this work.

Recommendation LOCAL-3: Consider how to provide state funding for local government staff for clean energy planning, project reviews and permitting.

The state could provide funding for local government staff or consultants dedicated to clean energy planning, project reviews and permitting.

Recommendation LOCAL-4: Consider how to assist local government in accessing federal funding for clean energy.

Obtaining federal funding may require specific types of data, and the documentation requirements can be challenging. The state should consider how to assist cities and counties in meeting the requirements to apply for federal funding for clean energy and provide technical support for completing the paperwork.

Strategy: Develop long-range guidance on planning for clean energy facilities

Cities and counties develop long-range planning documents to consider growth in a consistent and thoughtful manner. Long-range planning should consider work done through comprehensive plans, climate action plans, and other energy and economic plans. Some long-range planning is required under the GMA. Additional GMA guidance from Commerce about planning for clean energy facilities would improve consistency in how local governments address clean energy projects and facilities. Support for engaging communities in long-term planning can help them envision clean energy opportunities and address concerns before projects are proposed.

Recommendation LOCAL-5: Consider developing GMA guidance on land conversion for clean energy projects, including for rural and resource lands.

Converting rural and resource lands for clean energy projects is not described in detail in existing GMA guidance. Developing updated guidance on how to address conversion would improve consistency and clarify expectations for developers.

Recommendation LOCAL-6: Update the Rural Element Guidebook.

The Rural Element Guidebook does not address industrial clean energy facilities. Updating this guidance would improve consistency and provide clarity for local governments and developers.

Recommendation LOCAL-7: Develop guidance for local governments about aligning GMA requirements for rural character and resource land protection with potential clean energy projects.

Developing up-to-date information and GMA planning guidance about how local governments can prepare for clean energy projects before project application would reduce confusion by aligning GMA requirements for rural character and resource land protection.

Recommendation LOCAL-8: Assist local planning agencies with community engagement about long-term planning regarding low-carbon energy projects.

State agencies can help local planning agencies engage communities about long-term opportunities for low-carbon energy projects by providing financial, technical and convening assistance. This could involve a replicable process of information sharing and engagement supported by a trained outreach team.

Equitable Economy (EE) Goal: Support clean energy transition through equitable economic development

The clean energy transition will be instrumental in developing economic opportunities, but it is critical it be done in an equitable manner. CETA requires that equity considerations become an explicit part of utility planning. It also requires an equitable distribution of benefits and burdens to all customers. Utilities must assess the potential impacts of their decisions on vulnerable populations and highly impacted communities.

Economic growth can create and retain jobs, strengthen the tax base and improve a community's economic well-being. Equitable economic development is when the policies and programs used to encourage this growth ensure that vulnerable populations and highly impacted communities share in the benefits. This goal aligns with TCWG principle[100] G.5.

Strategy: Consider ways to enhance local jobs and economic development opportunities for Tribal and non-Tribal communities

Economic development drives economic growth and facilitates an improved quality of life that includes increased access to opportunities for existing and future residents. Having good-paying local jobs is critical to strong cities and counties, both urban and rural. As clean energy facilities are proposed, constructed and operated, considering how they can help improve local jobs and economic development opportunities will be important to providing equitable opportunities for Tribal and non-Tribal communities.

Recommendation EE-1: Consider how to facilitate opportunities for high-quality, family-wage local jobs and small businesses from clean energy projects.

[100] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

When clean energy facilities are constructed and operated, supporting equitable economic development could include providing opportunities for local small businesses and options for high quality jobs that provide family-wages with benefits. For example, agencies or local governments could develop guidance for involving small, local businesses in projects through mentoring, start-up incentives or labor contracts.

State agencies and developers for clean energy projects should consider how to support equitable economic development by collaborating with unions, trade organizations and Tribal Employment Rights Offices to support job creation.

Recommendation EE-2: Consider how to include community benefit agreements or good neighbor agreements as part of planning or environmental reviews, if appropriate.

CBAs and good neighbor agreements are legal agreements between community benefit groups and developers, stipulating the benefits a developer agrees to fund or furnish, in exchange for community support of a project. The U.S. Department of Energy has a toolkit[101] about developing CBAs. This type of approach could be an option for a mitigation measure to address community impacts as part of planning processes or environmental reviews. Developers could also submit these as part of a project application.

Recommendation EE-3: Consider options for workforce development opportunities, including understanding workforce availability and opportunities for training, apprenticeships and high-quality jobs.

Support for workforce development opportunities would ensure local workers develop skills to obtain high-quality, family-wage jobs in the clean energy sector. State and local governments could consider developing programs and funding to help individual workers currently employed in carbon-intensive energy jobs transition to employment in low-carbon energy jobs, with similar wages and in the communities where those workers currently live or work.

Recommendation EE-4: Consider how to include labor standards, workforce agreements and local hiring provisions for clean energy projects.

Developers for clean energy projects should consider how to support the local economy and equity by including labor standards, workforce agreements and local hiring provisions during construction and operations. Projects should include workforce agreements that recognize the value of local businesses and facilitate their participation in projects.

Recommendation EE-5: State agencies develop rural clean energy economy roadmaps in collaboration with local governments.

A roadmap is a strategic guide that could be used to develop the rural clean energy economy. This process can promote the development of innovative clean energy projects in rural

[101] https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit

communities. The state should collaborate with local governments to ensure local interests and needs are met.

Recommendation EE-6: Consider incentives to develop projects at sites identified through least-conflict studies or through planned actions or programmatic EISs to avoid or minimize impacts.

The state or local governments could consider incentives to site projects in areas with the least conflicts as identified through a least-conflict study or through early planning, such as a planned action or programmatic EIS. These processes should include environmental justice considerations, protection of Tribal rights and resources, and compliance with environmental standards. By using information from this type of study, developers could avoid identified impacts, resulting in a more efficient process.

Recommendation EE-7: Consider requirements for bonds for decommissioning facilities of all sizes, including those for which decommissioning is not a normal component of development agreements.

Preparing to decommission a facility as part of the project proposal reduces impacts and ensures local communities do not bear the burden of disposal costs. While some projects must include bonds for decommissioning as part of development agreements, not all facilities are required to have them. A consistent approach should be used for clean energy projects.

Recommendation EE-8: Consider statutory change to strengthen requirements that communities receive benefits when new energy resources are developed.

CETA requires that utilities address the impacts of their resource-related actions on highly impacted communities. This law does not address impacts on other communities that are affected by development of new resources, though these are often addressed through existing licensing and siting processes. Consider a statutory change to require provision of benefits for any community where new energy resources are developed.

Strategy: Evaluate existing industrial areas, infrastructure and brownfields for clean energy projects

Existing industrial areas and infrastructure could be modified or replaced with clean energy facilities. Brownfields are abandoned or underutilized properties that may have environmental contamination and require remediation. Brownfields are common in communities of all sizes and may be old gas stations, drycleaners, industrial facilities, smelters, or former agricultural land. Existing industrial areas, infrastructure and brownfields could provide options for siting clean energy projects. These existing built-out areas could be less ideal from a business perspective, but support and incentives could encourage developers to choose them. State agencies also support work to develop some of these areas for affordable housing, and the best use of these spaces for communities should be considered in local planning.

Other states and the EPA have taken steps to increase technical assistance specific to energy siting on brownfield properties. This report does not cover infrastructure such as transmission

lines, pipelines or roadways; these are addressed in other planning documents and in the TCWG report.

Recommendation EE-9: Consider how to incentivize use of already developed industrial areas, infrastructure and brownfields, including opportunities to overcome financing barriers.

There can be multiple funding sources for different circumstances unique to existing industrial sites, infrastructure and brownfield properties. The state could provide technical assistance for redevelopment planning, contaminant investigation and cleanup and provide tools such as mapping and additional technical assistance.

Recommendation EE-10: Provide assistance to local governments related to documentation required for utilizing brownfield or Comprehensive Environmental Response, Compensation and Liability Act sites for clean energy projects.

Brownfield and CERCLA funding can be obtained via EPA, Ecology and Commerce. Each funding source has its own eligibility criteria. The state could provide additional technical assistance for investigation and cleanup as well as navigating grant options throughout the state for each stage of the process. Additional assistance could include working with the EPA regarding their grants and grantees.

Recommendation EE-11: Provide funding and technical assistance for cleanup activities and reuse planning for siting on contaminated brownfields.

There is a wide range of federal and state funding and technical assistance opportunities for brownfields. The state has found that targeted funding and being readily available to provide in-depth technical assistance are key to successfully redeveloping a brownfield property. Providing additional assistance for cleanup activities and reuse planning could help developers site clean energy projects on brownfields.

Strategy: Evaluate taxes for clean energy and provide guidance

Recommendation EE-12: Consider modifications or revisions to tax language to address different or concurrent uses of land, such as when land could be used for agricultural purposes and also for clean energy purposes.

When land currently used for agriculture is converted to build a clean energy project, prior tax savings plus interest must be repaid and the tax incentives for agricultural land use ends. New approaches for solar energy, such as agrivoltaics, can mean solar energy structures can share the land and preserve the agricultural uses of the land. The state should consider modifying or revising tax language to address different or concurrent uses of land if the agricultural value is maintained.

Recommendation EE-13: Consider developing guidelines for county assessors about how the income capitalization approach could be used to value clean energy facilities to avoid shifting tax burden due to depreciating assets.

County assessors mainly treat renewable energy equipment and assets as personal property. This means revenue can increase initially from new clean energy projects, but then it falls as their value depreciates. The state should consider developing guidelines for county assessors on how the income capitalization approach could be used to value clean energy facilities to avoid shifting tax burden due to depreciating assets.

Recommendation EE-14: Develop information on tax incentive options for local government, developers and Tribes.

Tax incentives are intended to encourage the creation and preservation of high-quality, family-wage jobs. In Washington there are more than 50 tax incentive programs available for businesses. The state should develop information about tax incentive options for clean energy development that can be used by local government, developers and Tribes. In particular, the Inflation Reduction Act now makes these federal tax incentives refundable so that these amounts can be accessed by entities, such as governments, with zero tax burden. This information can be confusing to understand, so communications about options should focus on being accessible.

Recommendation EE-15: Consider and explore financial tools for mitigating impacts of clean energy facilities.

State and local agencies should consider and explore tools for assessing impacts of developing clean energy facilities, including impacts on habitat systems, and financial tools that could be used to mitigate impacts.

Impact fees are one of these tools. They are a financing tool for developing system improvements that will serve new development. Under current law, impact fees can only be used for public streets and roads, publicly owned parks, open space, recreation facilities, school facilities and fire protection facilities in fully planning GMA cities and counties.

Using the current impact fee model under GMA would likely require new legislation to make it applicable to habitat and other impacts not currently included. A broader array of financial tools should also be explored for how to mitigate impacts and share benefits of clean energy projects with local governments and residents, particularly in rural Washington.

Upfront Planning (PLAN) Goal: Conduct upfront planning to make siting and permitting projects more effective and ensure protection of natural resources, communities, and Tribal rights and resources

Robust planning helps reduce uncertainty, improve transparency and allows agencies, local governments, Tribes and developers to consider direct, indirect and cumulative impacts. Environmental analysis at the planning stage can form the basis for later project review and provide greater predictability. The more detailed and complete the environmental analysis during the planning stage, the less review is needed during project review. Project review is then able to focus on those environmental issues not addressed during the planning stage.

Planning is critical for engaging communities and Tribes early in the process to identify issues and concerns. It addresses cumulative impacts and identifies possible alternatives and mitigation measures on a wider scale. This helps ensure the protection of natural resources, communities, and Tribal rights and resources. Recommendations in this section provide options to support effective and deliberative planning. This goal aligns with TCWG principles[102] D.2, D.3 and F.1.

Strategy: Utilize least-conflict mapping for specific geographic areas or energy types to provide information on potential impacts early so project developers can design and site projects that avoid or reduce impacts

Least-conflict mapping is a collaborative effort that engages stakeholders, Tribes and agencies in a process to identify and reduce land use conflicts and help avoid and minimize impacts to natural, Tribal and working lands and to resources. This process also offers opportunities to engage Tribes and communities early to address concerns. Developers can then choose to use this information for siting decisions to avoid areas with the most concerns and to understand potential issues for sites.

Recommendation PLAN-1: Conduct additional least-conflict mapping for specific geographic areas or energy types.

WSU is leading a least-conflict study for utility-scale solar development on the Columbia Plateau. Additional projects could be done for other areas where clean energy projects may be sited or for specific types of clean energy facilities. Planning could also focus on emerging technologies and infrastructure to help anticipate future siting needs and opportunities. The focus of these studies could be prioritized by the Legislature.

The process should clearly identify the purpose of the least-conflict mapping and coordinate with appropriate groups before starting work. It should include early engagement with Tribes and communities on issues. Tribes should be consulted about mapping or other methods to identify areas of Tribal concern at a broad level, and the data should not include specific sensitive information about Tribal resources. Communities can identify areas of concern, as well as areas that could provide opportunities for development.

Some Tribes stated they do not want to be involved in this type of process until maps have been developed by stakeholders and agencies. Other Tribes have expressed interest in participating early in these types of processes.

Some Advisory Board members suggested that least-conflict planning focus on technologies and infrastructure new to the state to help anticipate future siting needs and opportunities,

[102] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

while others said least-conflict processes are more appropriate for technologies whose impacts are better understood.

Strategy: Complete coordinated and early planning (such as a programmatic EIS or planned action) to identify, evaluate and address potential impacts for possible sites of clean energy projects

SEPA provides several options for early planning, such as a programmatic EIS or planned action for a city or county fully planning under GMA. The more comprehensive the environmental analysis during the planning stage, the less review is needed during project review. In the case of planned actions, the project review is already done as part of that process. Projects would be able to use the analysis already completed and conduct additional analysis for environmental issues not addressed during the planning stage. This could represent a large time savings for projects if the applicable work has already been done and potential build-ready sites identified.

Coordinated planning would engage communities, agencies, Tribes and stakeholders in the process to identify and consider potential impacts for a given area. SEPA also provides a mechanism to identify appropriate mitigation measures as part of the planned action process that could then be used by developers for projects.

Some advisory board members said planning should focus on site-specific impacts or be limited to specific types of energy facilities.

Recommendation PLAN-2: Conduct coordinated and early planning to identify, evaluate and address potential impacts for possible sites of clean energy projects.

This planning should include early engagement with Tribes and communities on both broad and site-specific issues, as appropriate. The planning should provide a consistent and coordinated approach that informs developers, Tribes, communities and agencies. A goal of the planning should be to identify potential impacts early so project developers can design and site projects that avoid or reduce the impacts.

Planning could focus on specific types of clean energy or areas identified with fewer impacts during least-conflict studies. For new sources of clean energy, the planning should include considerations of transmission lines, existing and planned.

Recommendation PLAN-3: Provide funding for local governments, Tribes, agencies and communities for early planning.

Planning provides multiple benefits, including engaging Tribes and communities early, providing information for developers to consider when choosing sites, and coordinating among agencies to address issues consistently. It can be difficult to fund staff to conduct and coordinate planning, especially at the local and Tribal levels. The state should consider providing funding for planning clean energy development to help improve the effectiveness of project reviews and permitting overall. The funding should be tied to timelines and goals for each type of planning effort.

Recommendation PLAN-4: Develop guidance on how local governments can utilize least-conflict processes and upfront planning to provide information and reduce timelines for review and permitting of projects.

State agencies should develop guidance that explains the benefits of advanced planning for local governments. The guidance should provide a blueprint for effectively managing these processes and include lessons learned from previous planning. The guidance should discuss the opportunities and challenges in planning. It should also include best practices for engaging with communities, Tribes and stakeholders to ensure equity and accessibility throughout the process.

Provide Assistance (ASSIST) Goal: Improve guidance, training and tools for clean energy projects and planning

Guidance, training and tools can help develop consistent and transparent processes for clean energy project siting, review and permitting and for planning. These are typically developed by state or local agencies based on their areas of expertise. Recommendations in this section support improved guidance, training and tools to facilitate clean energy transition while improving opportunities for engagement, including understanding and developing robust data for analysis. This goal aligns with TCWG principle[103] G.6.

Strategy: Improve processes to be more transparent, efficient and effective

It is important that processes are transparent, so all groups involved understand what is required. Processes should also be improved to be more efficient and meet regulatory requirements in more effective ways, without reducing the robustness of each process.

For all the recommendations below, guidance or tools should be developed in languages for the communities most likely to be affected by clean energy projects to help them know about the processes, their role in review and their opportunities to be involved. State agencies are required to use accessible language and communication tools. All agencies should use guidance from the EJ Council in their communication and guidance. Agencies should consider how to engage diverse groups of stakeholders to assist in developing or reviewing guidelines.

Recommendation ASSIST-1: State agencies should consider developing publicly accessible roadmaps for specific types of energy projects.

Roadmaps could provide an overview of the major environmental review and permitting actions needed for specific types of energy projects (such as solar, wind and offshore). The information would include the review process and all typical state and local permits, as well as federal permits, if needed. A timeline based on past experience would provide useful information for planning by developers and agencies. Roadmaps should also include points of

[103] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

contact for each agency. If there are issues typically associated with a type of energy project, the roadmap could identify this information as well.

Recommendation ASSIST-2: Develop pre-application guidance for developers to consider when designing and siting clean energy projects.

Pre-application guidance would provide information that agencies consider important for developers to consider when designing and siting projects. This type of information would help developers choose sites to avoid or minimize impacts and to prepare thorough and adequate applications.

The guidance could discuss:

- What developers should consider before selecting a site.
- The environmental review and permitting processes, including information on time and cost.
- Risks, like when project information changes after the application process has begun.
- When mitigation could be challenging; for example, if there are potential impacts to cultural resources, historic property, overburdened communities, or to core habitat for state or federal endangered species.

The state should develop introductory training and guidance on:

- Tribal treaty rights, consultation and Tribal sovereignty.
- Engaging with local governments.
- The SEPA environmental review process.
- Environmental justice considerations consistent with the HEAL Act.

This training should be provided in a variety of formats, including remote learning, to provide the greatest flexibility for attendees.

Recommendation ASSIST-3: Provide greater clarity about state agency, local government, and Tribal government roles and responsibilities, and processes for making siting, review and permitting decisions.

Agencies could provide additional information about roles and responsibilities for state and local governments related to siting, review and permitting. This should provide clarity on anticipated timelines for each permit or process, including which agency is the lead. Information could be provided on criteria used for determining the significance of impacts and the feasibility of mitigation options. Best practices could be developed on providing feedback on permit status at specific times and throughout processes, including the reasons for denying a permit.

Recommendation ASSIST-4: Conduct internal process improvement analysis for state agency permitting processes.

State agencies should conduct process improvement analysis for individual permitting processes. They could also consider the benefits and risks of conducting concurrent permitting versus sequential permitting for different types of clean energy projects.

Recommendation ASSIST-5: Agencies should consider developing lessons learned for the public about the review and permitting processes for projects.

Agencies should conduct post-permit analysis on lessons learned and provide this information publicly. Information on lessons learned can provide valuable information for agencies and developers and can lead to improvements in processes and in application submittals.

Strategy: Support use of consistent information and access to best available science for analysis

Environmental impact assessments and permitting decisions should use the best available science. Scientific knowledge is continually changing, and new data, studies or methods should be utilized to provide thorough evaluation of impacts.

Recommendation ASSIST-6: Develop guidance on the type of information needed for environmental reviews and permitting.

Guidance should address the following items:

- What information applicants should provide for the environmental review and permitting phases.
- Use and inclusion of best available science for impact analysis.
- Use of relevant programmatic EIS, where applicable with information informed by current data and science.

Recommendation ASSIST-7: Build state-level expertise on clean energy facilities and impacts to provide technical assistance for reviews and permitting.

State agency experts may not have experience with emerging or proprietary clean energy technologies and their potential impacts. Building expertise would allow state agencies to provide local governments with technical assistance and enable consistent understanding across agencies. Universities, national laboratories or third-party experts could also provide information on technologies and potential impacts. This expertise should also include health, safety and environmental aspects related to the technologies.

Strategy: Develop consistent guidance and tools for assessing key impacts and developing mitigation options

Impact analysis predicts impacts that can be reasonably expected to occur based on scientific studies, knowledge of resources and input from subject matter experts. Impact assessment requires an understanding of baseline conditions to determine what effect a project may have on resources. For some resources, baseline information may not be available, and studies may

need to be done to provide this information. Guidance on methodologies or how to evaluate impacts may also be needed to ensure consistency in the assessments.

Mitigation is the avoidance, minimization, rectification, compensation, reduction or elimination of adverse impacts to resources. Mitigation may also involve monitoring and use of adaptive management and contingency plans to correct problems if they occur. Some Tribes and stakeholders emphasized there are some types of impacts that cannot be effectively mitigated, such as impacts to some cultural resources.

Recommendation ASSIST-8: Conduct studies and develop guidance to provide updated data and information for use by state agencies, local governments, Tribes and developers in environmental assessments.

During the siting study, several areas were identified where additional information would be beneficial and provide baseline data, risk assessments or impact analysis for clean energy projects. Studies may be needed, or rules or guidance developed, including:

- A risk study on the impacts of increased vessel traffic on transportation, Tribal and non-Tribal fisheries, orcas, and other species of interest.
- Studies on shrubsteppe habitat and options for mitigation.
- Studies on migratory species important to Tribes, including offshore species.
- Emerging technologies and potential impacts and mitigation options.
- Rule or guidance for GHG analysis and mitigation options.
- Studies on economic impacts and benefits from clean energy projects, including comprehensive information about costs and benefits, including health and safety.
- Guidance on how to conduct analysis of cultural and Tribal treaty right impacts while maintaining confidentiality of sensitive information.
- Amend and implement Ocean Resource Management Act requirements.
- Guidance on impacts and mitigation for decommissioning a facility.
- Guidance on how to consider right-of-way requirements and permitting.
- Best practices on how to assess and consider potential cumulative impacts in planning and project reviews and permitting.
- Study of cumulative impacts in main transportation corridors.

Recommendation ASSIST-9: Develop tools to support consistent policies, standards and guidance on mitigation of impacts.

The approach and options for developing mitigation measures to avoid, minimize, reduce or compensate for impacts from a project may vary between jurisdictions and based on the resource affected. During the siting study, several areas were identified where additional guidance or tools would help improve consistency between projects and jurisdictions.

- Provide guidance on using a Community Benefit Agreement approach to develop mitigation with communities for impacts to them from a project. This approach is used by FERC and BOEM as part of their review and permitting processes.
- Identify feasible biologically-based mitigation banks for habitat and species impacts that could be an option for mitigation.
- Develop mitigation options for greenhouse gas impacts.

Some Tribes and Advisory Board members stated that some impacts cannot be mitigated. They suggested projects with these types of impacts should not move forward. They provided examples including Tribal treaty resources, cultural resources and endangered species. Some stakeholders stated mitigation banks should only be used for non-endangered species.

Strategy: Utilize an informational mapping tool or application to support early issue identification and engagement for siting projects, with the goal of avoiding locations with significant impacts

Maps can provide information to developers to support early engagement with communities, agencies and Tribes. They can provide information about potential issues so that siting decisions could be made that avoid or minimize impacts at the outset. This type of information could utilize a mapping tool or mapping application. Commerce and DOD have developed a CESA prototype mapping tool that illustrates this type of application.

Recommendation ASSIST-10: Designate and fund an agency to manage and maintain an informational mapping tool to provide points of contact for engagement and to identify issues to consider for siting clean energy projects.

An agency could be designated to manage and maintain a mapping tool with information on points of contact for engagement and potential issues to consider for siting. Funding would also be needed to develop, manage and maintain the mapping tool. Data would be publicly accessible, and sources of information would be identified. Initial work has been done on mapping prototypes by Commerce and Ecology.

The tool could provide information on land ownership, land use, natural resources and energy capacity information. Non-site-specific data on cultural, natural and historic resources and overburdened communities could also be identified. Additional information could be provided if identified as necessary and useful.

Agency Coordination (COORD) Goal: Improve coordination at federal, state and local levels for clean energy projects

Federal, state and local agencies operate under regulatory requirements for conducting environmental reviews and permitting. These requirements vary by the type of permit and affect timelines, public comment periods and criteria. In many cases, the processes at the different levels do not align. Recommendations in this section identify options for cooperative

and coordinated efforts to conduct concurrent reviews or permitting, share data or agree upon assessment methodologies. This goal aligns with TCWG principle[104] F.1.

Strategy: Establish joint federal/state/local processes to coordinate efforts on planning, environmental review and permitting of clean energy projects

There are a variety of ways that federal, state and local agencies can coordinate efforts. These options should be discussed in advance and put into place on a consistent basis, so they are not redone for each project or planning effort.

Recommendation COORD-1: Develop landscape-level plan for federal lands that includes impact analysis and mitigation with state and federal agencies to be used for permitting of projects.

Planning could be conducted for federal lands in Washington to consider siting at the landscape and regional level to support clean energy development while conserving ecosystems. A collaborative effort between state and federal agencies, Tribes and local governments would support identifying and addressing issues in a comprehensive manner. This type of process was conducted for 10.8 million acres of public lands in California as part of the California Renewable Energy Conservation Plan[105].

Recommendation COORD-2: Consider developing a template for NEPA and SEPA integration that could be used by local governments to help make state and federal environmental review processes more effective.

SEPA and NEPA regulations allow various options for integrating processes. Templates could be developed for use by local governments to demonstrate how this could be done and agreed upon in advance. These templates would provide options for the environmental review processes and improve consistency by having a standard approach.

Recommendation COORD-3: Consider the development of standard Memorandums of Understanding (MOUs) or cooperative agreements to establish consistent federal and state coordination for environmental reviews.

Federal and state agencies can work together on environmental reviews, but this usually requires a MOU or agreement. Time could be saved by developing standard MOUs or cooperative agreements with specific federal agencies in advance.

Statewide Support (STATE) Goal: Improve state organizational structure to implement recommendations, provide information and coordinate efforts

[104] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf
[105] https://www.energy.ca.gov/programs-and-topics/programs/desert-renewable-energy-conservation-plan

To implement recommendations in this report, provide information and coordinate efforts specifically for clean energy projects and planning, state agency staff would need to perform additional work and make changes to organizational structures. Consistency and transparency in providing data and guidance improves awareness of issues and potential impacts. The amount of work will depend on the recommendations that move forward. Recommendations in this section are intended to support the actions detailed in this report. This goal aligns with TCWG principle[106] D.3.

Strategy: Develop organizational structures and tools to provide consistent, statewide coordination and information about clean energy projects and planning

Recommendation STATE-1: Establish an interagency policy coordination team to implement recommendations and align siting, review and permitting processes.

During the siting study, an Interagency Team met monthly to discuss issues and coordinate efforts. This process was very effective, and it is recommended that this type of team be formed to implement recommendations. The expertise of the group should address environment, economic, energy, land use, health, safety and environmental justice.

Work groups established by the interagency team could focus on specific energy type such as solar or wind, or on emerging technologies. These groups could provide information for use by local governments, Tribes and communities.

The team should assess options for establishing a coordinated process for clean energy projects that meet specific criteria and have provided sufficient information in the pre-application phase to be considered for prioritized agency review.

Recommendation STATE-2: Develop a dashboard to provide one stop for information on proposed clean energy projects.

There is no single source of information on proposed clean energy projects, and information is inconsistent and difficult to track. A dashboard approach could provide information on proposed clean energy projects in Washington, including the status of projects and options for public engagement. The dashboard could also provide general awareness of impacts and mitigation proposed for each project.

Recommendation STATE-3: Establish "clean energy navigators" at a state agency to provide guidance and expertise on state agency processes.

Clean energy navigators could be established at a state agency to coordinate and liaison with other agencies. People in these roles would provide an understanding of environmental, economic, health and safety concerns at the state level and support Tribal consultation and engagement protocols. Clean energy navigators would provide neutral information to

[106] https://www.efsec.wa.gov/sites/default/files/181034/Final_TCWG_Report%20_2022_0801.pdf

developers for siting decisions and improve awareness of state processes. As needed, they could make referrals to other agencies and entities. They could also assist local governments and Tribal staff.

Recommendation STATE-4: State agencies should assess current project-level interagency coordination for potential improvements to siting, environmental review and permitting roles and actions.

State agencies should conduct readiness checks of their existing systems for managing clean energy permit applications and environmental reviews. This would allow them to assess state agency permitting capacity needs now and in the future. Issues identified during the assessment should be followed up and resolved.

Strategy: Dedicate agency staff to improve state agency capacity to provide enhanced permitting assistance, improved coordination and customer service for clean energy projects and planning

State agencies could dedicate staff to focus on support for clean energy projects and planning.

Recommendation STATE-5: State agencies assess needs for staff dedicated to working on clean energy projects, planning and providing technical assistance.

Agencies should assess staffing needs, including the need for expertise and capacity in specific types of clean energy. State agencies with roles and responsibilities related to siting, environmental review and permitting should consider designating a single point of contact for clean energy projects, interagency coordination and coordination of internal permit processes. They should also consider the need for staff at regional offices who could provide local knowledge of issues, potentially affected communities and engagement options. Agencies should consider the staffing needs for work developed from the interagency team recommendation in recommendation STATE-1, including for a potential process for prioritized state review of clean energy projects which meet specific criteria.

Identify additional studies needed

As directed by the Legislature, additional potential studies have been identified that could support the clean energy transition while protecting natural resources, communities, and Tribal rights and resources. These studies should evaluate a broad spectrum of potential costs and benefits, including to the environment, Tribes and overburdened communities and economic development. They include:

- Pilot projects for multi-benefit clean energy projects (such as agrivoltaics or solar over irrigation canals) to study, evaluate and provide information on advantages, disadvantages, costs, impacts and mitigation.
- Cost-benefit analysis of new and emerging technologies for overburdened communities.
- A study to determine the feasibility of redeveloping landfills, abandoned mines and contaminated sites or modifying existing facilities for siting clean energy projects to

minimize or avoid impacts to Tribal rights and resources, important fish and wildlife and their habitat and working landscapes (such as agriculture, forest and rangeland).

- A study on Tribal and community engagement for clean energy projects and lessons learned.
- Regional studies focused on energy planning, needs, generation and use, which could be integrated into state level energy assumptions and planning. This should consider options for a coordinated approach to incentivize industrial clean energy projects, distributed energy production and community energy.
- Evaluation of regional clean energy manufacturing and supply chain or disposal needs.
- Assessment of potential offshore energy development impacts, including Tribal treaty rights, Tribal and non-Tribal fishing and crabbing, migratory species and cumulative impacts considering West Coast-wide development with regional partners.

Conclusion

It is critical that the state prepare for the clean energy transition in a coordinated and inclusive manner, and improve processes for siting, review and permitting of industrial clean energy projects. These improvements must also protect Tribal rights and resources, overburdened communities and the environment.

To that end, Ecology and Commerce conducted a study on how to improve siting, environmental review and permitting processes for low-carbon energy projects in Washington. The siting study helped surface challenges and concerns related to the siting and permitting of industrial clean energy projects. An Advisory Board, Tribes, the public and an Interagency Team provided input and feedback used to develop recommendations.

The solution-oriented goals crafted by Ecology and Commerce resulted in 73 recommendations to improve siting, review and permitting of clean energy projects. These recommendations are a further step in ongoing discussions about clean energy. Additional work will be needed with broader sets of stakeholders and Tribes to further refine and implement them.

Appendix A. Revised Code of Washington 43.21A.738 Improvements to permitting processes for industrial projects and facilities—Recommendations—Greenhouse gas emissions limits.

(1) The department, in coordination with the department of commerce and other agencies as appropriate, must develop recommendations for potential improvements to the permitting processes for industrial projects and facilities in Washington that would contribute to achieving greenhouse gas emissions limits established under RCW 70A.45.020[107] while maintaining standards for the protection of the environment and the preservation of tribal consultation and treaty rights. The department must provide increased clarity on areas in the state that may be suitable for siting projects that have a lower potential for negative environmental impacts, especially to highly impacted communities as defined in RCW 19.405.020[108] and identify strategies for minimizing and mitigating negative environmental impacts where possible. The department must provide clear guidance and direction intended to improve project proposals, recommend policy and administrative improvements necessary to improve the permitting process, and recommend any additional studies needed. The department shall convene businesses, local governments, community organizations, and environmental and labor stakeholders, and consult with tribes.

(2) The department and the department of commerce shall produce and submit to the governor and the legislature an interim progress report with initial policy proposal recommendations for the 2022 legislative session by December 1, 2021, and a final report including findings, recommendations, and further policy proposals by December 1, 2022.

(3) This section expires June 30, 2023.

[107] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.45.020
[108] http://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020

Appendix B. Advisory Board and Interagency Team Members

Advisory Board Members

Advisory board members include *(alphabetically by organization):*

- Association of Washington Business[109], Peter Godlewski
- Audubon Washington[110], Adam Maxwell
- City of Spokane[111], Breann Beggs
- Climate Solutions[112], Kelly Hall
- Front and Centered[113], Mariel Thuraisingham
- Invenergy[114], Laura Miner
- Klickitat County[115], Dave McClure
- Latino Community Fund[116], Giovanni Serverino
- Makah Tribe[117], Vice-Chairman Patrick DePoe
- NextEra Energy, Inc.[118], Christopher Powers
- Port of Benton[119], Diahann Howard
- Port of Grays Harbor[120], Gary Nelson
- Puget Sound Energy[121], Cassie Bordelon
- Puyallup Tribe[122], Lisa Anderson
- Renewable Energy Group[123], Kent Hartwig

[109] https://www.awb.org/
[110] https://wa.audubon.org/
[111] https://my.spokanecity.org/
[112] https://www.climatesolutions.org/
[113] https://frontandcentered.org/
[114] https://invenergy.com/
[115] https://www.klickitatcounty.org/
[116] https://www.latinocommunityfund.org/
[117] https://makah.com/
[118] https://www.nexteraenergy.com/
[119] https://portofbenton.com/
[120] https://www.portofgraysharbor.com/
[121] https://www.pse.com/
[122] http://www.puyallup-tribe.com/
[123] https://www.regi.com/

- Renewable Northwest[124], Max Greene
- Sierra Club[125], Stephanie Hillman
- Washington Environmental Council[126], Rebecca Ponzio
- Washington State Association of Counties[127], Paul Jewell
- Washington State Building and Construction Trades Council[128], Mark Riker
- Washington State Labor Council[129], Joe Kendo
- Whatcom County[130], Amy Keenan

Interagency Team Members

Ecology[131] and Commerce[132] were co-leads for the Interagency Team.

Other participating state agencies:

- Governor's Office for Regulatory Innovation and Assistance (ORIA)[133]
- Governor's Office of Indian Affairs (GOIA)[134]
- Office of the Governor[135]
- State of Washington Energy Facility Site Evaluation Council (EFSEC)[136]
- Washington Department of Fish and Wildlife (WDFW)[137]
- Washington State Department of Agriculture (WSDA)[138]
- Washington State Department of Archaeology & Historic Preservation (DAHP)[139]
- Washington State Department of Natural Resources (DNR)[140]
- Washington State Department of Transportation (WSDOT)[141]

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[124] https://renewablenw.org/
[125] https://www.sierraclub.org/washington
[126] https://wecprotects.org/
[127] https://www.wsac.org/
[128] https://wabuildingtrades.org/
[129] https://www.wslc.org/
[130] https://www.whatcomcounty.us/
[131] https://ecology.wa.gov/
[132] https://www.commerce.wa.gov/
[133] https://www.oria.wa.gov/
[134] https://goia.wa.gov/
[135] https://www.governor.wa.gov/
[136] https://www.efsec.wa.gov/
[137] https://wdfw.wa.gov/
[138] https://agr.wa.gov/
[139] https://dahp.wa.gov/
[140] https://www.dnr.wa.gov/
[141] https://wsdot.wa.gov/

- Washington Utilities and Transportation Commission (UTC)[142]

[142] https://www.utc.wa.gov/

Appendix C. Tribal Letters

Confederated Tribes and Bands of the Yakama Nation Letter

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 7, 2022

Sent via Electronic Mail

Joenne McGerr, Program Manager
Shorelands and Environmental Assistance Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: LOW-CARBON ENERGY PROJECT SITING IMPROVEMENTS REPORT AND RECOMMENDATIONS FOR IMPROVING SITING AND PERMITTING OF INDUSTRIAL CLEAN ENERGY FACILITIES

Dear Program Manager McGerr:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") in response to the Low-carbon Energy Project Siting Improvements Report request for comments regarding its draft Report and Recommendations for Improving Siting and Permitting of Industrial Clean Energy Facilities by the Department of Ecology. The Yakama Nation appreciates the Department of Ecology's effort to address impacts to tribal cultural and natural resources within Washington State, Columbia River, and the marine environment.

The lands discussed in this report include the Yakama Nation Ceded Territories where the Yakama Nation continues to practice their traditional way of life which includes fishing, hunting, gathering, and conducting ceremonial practices. There are many important cultural resource sites and traditional use areas the Yakama Nation has vested interest in to protect for all tribal members and the future generations of the tribe.

Since time immemorial, the original, free, and independent tribes and bands that later confederated as the Yakama Nation have depended on the Columbia River and Ceded Territories for cultural, spiritual, and economic well-being. In Article III of the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 ("Treaty of 1855"), the Yakama Nation expressly reserved the right to fish at "usual and accustomed places," which includes sites on the Columbia River.[1] The Yakama treaty negotiators knew that securing these rights was crucial to guaranteeing the vitality of

[1] *See, e.g., U.S. v. Winans*, 198 U.S. 371 (1905).

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their people. For the Yakama Nation, the exercise of fishing rights in particular was "not much less necessary…than the atmosphere they breathed."[2]

During this period of climate change and this "Renewable Energy" movement, many of the tribe's sacred sites, village sites, archeological sites, and traditional use areas are located within proposed renewable energy sites. There are numerous projects (+40) proposed within Washington state between 2021-2022 with a majority of the projects sited within Yakama Ceded Territories. Yakama Ceded Territories include 1/3 of central Washington state which has a high concentration of proposed renewable energy projects.

Currently, there are two energy projects proposed on two of Yakama Nation's sacred sites. The Goldendale Water Pump Storage project is planned on the tribe's sacred site "Pushpum" which is also known as the "Mother of all Roots" located in Goldendale, Washington. Yakama Nation has been in opposition to this project since the inception of the project and it would directly desecrate the tribe's sacred site. The second proposed project is a solar project on Badger Mountain located in Wenatchee, Washington. This site is a sacred site to the Yakama Nation and a very important traditional use area. After reviewing some of the project's Environmental Impact Statements, there were a notable amount of environmental and cultural resource concerns the Yakama Nation identified in their comment letters and the tribe is still awaiting a response.

Many of the projects that are planned in eastern Washington are within shrub-steppe environments that provide important habitat for wildlife and endangered species such as the sage grouse. There is already a current decline of intact shrub-steppe habitat within the state of Washington. The Yakama Nation has concern for water resources and the amount of water needed to construct and maintain these projects. Yakama Nation would like to have the appropriate time to evaluate each project individually so the tribal technical and legal staff can evaluate potential impacts to the tribe's cultural and natural resources.

The Yakama Nation has not been involved in any of the siting processes of the 40+ renewable energy projects planned in eastern Washington state. Some of these projects include state Department of Natural Resource lands where 20 – 40 year industrial solar and wind project leases are established and exclude tribal access. Tribal access is another important concern to Yakama Nation during this Renewable Energy movement.

Inclusion of tribal involvement at the early siting and planning stages of renewable energy projects is imperative so that the tribes' have an opportunity to protect critical natural and cultural resources. Yakama Nation is in support to renewable energy

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[2] [2] *Id.* at 381.

projects; however, there is a lack of understanding of Tribal Treaty Rights with many of the renewable energy investors, state, and county staff.

Based on Yakama Nation's review of the draft Low-carbon Energy Project Siting Improvements Report, we are providing a list of recommendations (italicized).

- p. 25 -26, Growth Management Act [Chapter 252, Laws of 2022*] In addition to Commerce notifying Tribes of any city or county notice of intent to adopt comprehensive plans, updates and development regulations under RCW 36.70A.106, counties and cities must send official letter to the appropriate Tribal Council Chairman if there is an intent to adopt, update or develop regulations under the Growth Management Act (GMA) and or Comprehensive Plan. Tribes need to be notified in a timely manner to respond.*
- *P. 28. "Usual and accustomed" applies to fishing areas under the Treaties as retained areas where the Tribe has a right to fish. That language does not apply to hunting and harvesting. The document is correct in terms of hunting on "open and unclaimed lands." Tribes "possess reserved" rights to gather and access cultural foods and religious sites in their treaties with the federal government.*
- *P.30. The HEAL Act requires agencies to consider the impact of their environmental decisions on overburdened communities and vulnerable populations. After Tribal Consultation, the Agency is to identify if the proposed action will have any impact on federally reserved rights and resources, including environmental harm that results in loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods;*
- P. 31 & P. 41, *Tribes need to play an active role in providing input in determining health disparities among communities of color and low income households when the Washington Department of Health is conducting surveys and creating statewide Environmental Health Disparities.*
- P. 42, Mapping Tools- *Federal ESA listed species and their critical habitat need to be mapped as well as Washington state listed species of concern and sensitive areas such as eastern Washington's shrub-steppe habitat.*
- P. 44, Marine Spatial Plan (MSP) *Department of Ecology's interagency team needs to include tribal consultation to protect cultural resources, fishing, and impacts to the marine environment.*
- PP. 50,51. *Add that the Environmental Health Disparities map needs to be updated and amended to adequately include the health disparities of Tribal communities and their resources.*
- P.51, Tribal Recommendation #11: Consider requiring tribal monitor for archeological survey crews to provide input on traditional cultural properties, sacred site, and culturally significant sites. *Funding should be appropriated to tribes that are directly affected by renewable energy projects within their Treaty Ceded Territories, respectively.*

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- P. 51, Tribal Recommendation #13: Consider options to provide state funding for Trial staff for clean energy planning and project reviews. *Funding should be appropriated to tribes that are directly evaluating renewable energy projects within their Treaty Ceded Territories, respectively (note: majority of the current proposed projects are within the Yakama Nation Ceded Territories).*
- P.59, Strategy: Improve early engagement and information sharing with tribes and government to government consultation for projects and planning. *Consultation between local governments such as counties need to be improved since there are instances of lack of communication between the official county SEPA official in their response to the tribe's concerns.*

The Yakama Nation looks forward to further engagement with the Department of Ecology to refine the Low-carbon Energy Project Siting Improvements Report to help protect the Yakama Nation's natural and cultural resources into the future. The Yakama Nation appreciates the recent visit by Governor Inslee and his staff and the incorporation of the tribe's concerns expressed in regards to this Renewable Energy movement. If you have any questions regarding this letter, please contact Phil Rigdon, our Department of Natural Resources Superintendent, at (509) 865-5121, ext. 4655, or phil_rigdon@yakama.com.[3]

Sincerely,

PHIL RIGDON
DNR SUPERINTENDENT

[3] 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 government-to-government consultation on this matter.

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Lummi Nation Letter

LUMMI INDIAN BUSINESS COUNCIL
Office of the Chairman
2665 Kwina Road Bellingham, WA 98226
Phone: 360.312.2000 Ext: 2150

November 7, 2022

Diane Butorac
P.O. Box 47600
Olympia, WA 98504-7600
Diane.butorac@ecy.wa.gov

RE: Low Carbon Energy Project Siting Study Draft Report

Dear Ms. Butorac:

On behalf of the Lummi Nation, I am writing in response to the request for comments on the draft legislative report regarding the Low Carbon Energy Project Siting Study (Report).

Lummi Nation is a signatory to the 1855 Treaty of Point Elliot within which we retained land and certain rights to our usual and accustomed territory. Our treaty is a living document that binds the United States to the promises it made to our people. There is a common tendency to think that our Treaty is an inanimate artifact of the distant past, and this ongoing symptom of historical amnesia is not only detrimental to our rights but to Indigenous rights across the country. There is only so much educating that our Nation can do. Therefore, we deeply appreciate of the recent efforts to educate staff and learn through consultation about the government's treaty and trust obligations. Overall, we realize the intent of the draft Report, to improve the siting and permitting of facilities in a way that respects Tribal Treaty rights and honors sovereignty, mitigates adverse impacts to vulnerable population, and protect the environment. Because this endeavor is critically important, we would like to emphasize the following points:

- "Clean energy projects" often have significant local impacts. Sometimes these impacts cannot be sufficiently mitigated and in those cases the project should not move forward. For example, impacts of increased vessel traffic or offshore wind development on treaty fishing rights. Or increased air and/or water pollution. Lummi Nation will stand strong in our position of no increased vessel traffic.

- The state and project developers should be required to provide comprehensive and accurate information and engage with tribes as early as possible in the process and engage in the manner that works best for the Tribes. This can help all parties identify potential impacts and if there are ways to avoid or mitigate the impacts or not BEFORE too much time and energy goes into the project.

- The plan to use existing infrastructure or sites might appear efficient but it can perpetuate historical harms and even augment to them. For example, using the refineries' infrastructure may be appealing but it could add to local air and water pollution, and increase vessel traffic. The state should not encourage in any way perpetuating these harms.

Thank you for the opportunity to provide these comments for your consideration. We hope to continue to engage in consultation on this important matter. If you have any questions regarding these comments, please contact Karlie Kinley, (360)380-8580 or email karlyk@lummi-nsn.gov.

Sincerely,

Anthony Hillaire, Chairman
Lummi Indian Business Council

Makah Tribe Letter

MAKAH TRIBAL COUNCIL
P.O. BOX 115 • NEAH BAY, WA 98357 • 360-645-2201

IN REPLY REFER TO:

Ms. Laura Watson
Director
Washington State Department of Ecology
300 Desmond Drive SE,
Lacey, WA 98503

Dr. Lisa Brown
Director
Washington State Department of Commerce
1011 Plum Street SE
Olympia, WA 98504-2525

November 10, 2022

Re: Makah Tribal Council Comments on Low Carbon Siting Advisory Board Draft Report

Dear Director Watson and Director Brown:

Thank you for the opportunity to review the draft low carbon siting study. The Makah Tribe is on the front lines of climate change and is actively working to develop climate resilience and adaptation measures within our own community while advocating for federal, state, and international action on climate. We recognize the need for bold action on climate change, including considering development of reasonable and fully vetted renewable energy projects. However, state and federal climate mitigation initiatives, including the siting and development of renewable energy, must not come at the expense of Makah treaty rights, resources, and cultural practices, or the resilience of our community. For these reasons, we participated in the Advisory Board process.

We appreciate the changes you made to reflect our suggested edits on the high-level draft and your commitment to building in this additional review period as we discussed in our government-to-government consultation. We are concerned that the draft we received did not include an executive summary, the section of the report that will be most widely read, and request your leadership to ensure that Tribes are able to review this component prior to the report being finalized.

As requested, we have provided another round of suggested edits by the requested November 9th deadline. Additionally, we wanted to address some high-level recommendations here:

Consent Language:
The draft report mentions tribal consent to projects that could impact treaty rights, interests, and resources only once (p.62 in the draft report) and provides a longer description of local government concerns about this policy position than to the points expressed by tribal governments throughout the process. We understand this to have been a primary point of discussion in the Advisory Board process and in the tribal forums. The Makah Tribal Council recommends that the State consider tribal consent as a core criterion for siting and designing any renewable energy projects. Consent for project development from affected tribal governments will ensure that projects are developed and implemented in a way that is protective of treaty-reserved ocean uses; indigenous culture, wellbeing, and resilience; and cultural sites and values that cannot be mitigated, compensated, or replaced. This is particularly vital for renewable energy projects where technology is constantly developing and changing and impacts can be unknown or uncertain. We recommend that the report be updated to

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reflect this policy position and have provided comments expressing concerns about the current report language.

Information Burden:
We are concerned that the report reflects too great a focus on *Tribes* providing detailed geographic and sensitivity information to developers and the state to "facilitate" siting and permitting. As we have discussed throughout the Advisory Board process, the responsibility of early information sharing and of demonstrating that treaty rights, resources, and interests will not be affected by projects should fall to the *industry developers*. This includes working with Tribes to develop acceptable alternatives that avoid and/or minimize impacts to treaty interests. Part of this responsibility falls to the State to develop permitting structures and set expectations that require developers to share complete project information with Tribes at the earliest possible stage in the process and in an ongoing manner as projects evolve, including identifying options for addressing industry concerns about proprietary information. Requiring Tribes to share sensitive information about important sites with developers prioritizes industry business interests over treaty rights. We know this is not the intent of the agencies and see some of this language in the existing draft report. We hope to see this language strengthened and clarified throughout the report and have provided suggested edits to this effect.

Remove references to offshore wind
The agencies do not have siting or leasing authority for offshore wind and neither does the state legislature. The staff leads from Washington State (e.g., Jennifer Hennessey, Casey Dennehy) did not attend this meeting, only one of the four coastal tribes was engaged throughout the process, and no ocean/fisheries stakeholders were included. The report does not describe the appropriate federal statutes relating to offshore wind siting and development and the legislative direction or associated RCWs did not include this energy type. There is an existing and formal Bureau of Ocean and Energy Management (BOEM) process to address collaborative siting for offshore energy development that is outside the scope of this study. The report should be updated to remove sections pertaining to siting considerations of offshore wind energy development.

Describe methodology and objectives in greater detail.
We recommend including a methods section for the study. We acknowledge that the draft report does describe many of the methods in different sections, but for clarity, it would help to have them in one place. There are also some areas of uncertainty regarding particular methods in the study. For example, were the Advisory Board objectives (pg. 12) identified by consensus, if mentioned by at least X Advisory Board members, etc.? How were conflicting opinions resolved? How did the study authors address comments by Advisory Board members that were outside the scope of their expertise? Specify methodological approach wherever possible. We also note that the objectives and goals of the study were described differently in different parts of the report. We recommend updating this language for consistency throughout and including an explanation of where the objectives came from. If some of the objectives and goals described throughout the report came from the December 2021 interim report, this final report should note that Tribes and Advisory Board members did not have the opportunity to review or contribute to the interim report.

Increase transparency on participation rates by Tribes and stakeholders.
Throughout, we recommend including the number of participants, such as the number of Tribes represented in tribal forums, the number of Tribes represented in tribal informational sessions, the number of members of the public providing public comment, and the number of Tribes providing review on the interim and final reports.

Seek legal and tribal liaison review of your language on Tribes, trust obligation, and the government-to-government relationship.
We identified concerns and errors in the way tribal and treaty rights and the government-to-government relationships are described in several sections (e.g., pg. 31: tribal treaties are with federal and not state government, pg. 59: inaccurate definition of scope of treaty rights). We recommend that this language be reviewed by the Ecology tribal liaison and/or the state agency tribal liaison group as well as an attorney for accuracy and completeness. Furthermore, we want to clarify that formal government-to-government consultation can only occur between two governments. Industry engagement with sovereign tribal governments is not consultation. Staff-staff level coordination between state agencies and tribal staff is an important component of relationship-building and effective communication with Tribes. However, the Makah Tribe also does not consider this to be "consultation" and prefers the use of the terms staff-staff coordination, communication, or engagement to "informal consultation." We recommend clarifying this language throughout the draft report.

Tribal Consultation and Engagement (TRIBAL) Goal Recommendations:
We have provided detailed comments on each of the TRIBAL recommendations in our review of the draft report. We are happy to answer questions on any of these and anticipate seeing these changes reflected in the final report (in particular for recommendations TRIBAL-6, TRIBAL-8, TRIBAL-10, and TRIBAL-12).

Please do not hesitate to reach out if you have any questions or concerns about our comments and to discuss options for reviewing the executive summary. We were pleased to see many of the comments we submitted to the first draft incorporated into the final report and we appreciate the hard work of the Department of Ecology staff throughout this process. Please contact the Makah Tribal Council Secretary, Rosella Johnson (rosella.johnson@makah.com or 360-645-3235), with any questions or if you would like additional information. Thank you for your time and consideration.

Sincerely,

Timothy J. Greene Sr.
Chairman
Makah Tribal Council

Cc
Joenne McGerr, Ecology, Shorelands and Environmental Assistance Program Manager
Diane Butorac, Ecology, Shorelands and Environmental Assistance
Tyson Oreiro, Ecology, Executive Advisor for Tribal Affairs
Michelle Gladstone-Wade, Commerce, Tribal Liaison
Michael Furze, Commerce, Assistant Director for Energy
Marie Davis, Commerce, Senior Policy Advisor

Glossary of Terms and Acronyms

ADA: Americans with Disabilities Act

Alternative energy resource: As defined in Chapter 183, Laws of 2022[143] (ESSHB 1812), means energy facilities of the following types:

(a) Wind.
(b) Solar energy.
(c) Geothermal energy.
(d) Renewable natural gas.
(e) Wave or tidal action.
(f) Biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome arsenic.
(g) Renewable or green electrolytic hydrogen.

ATNI: Affiliated Tribes of Northwest Indians

Biofuel: A liquid or gaseous fuel derived from organic matter including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane, as defined in Chapter 183, Laws of 2022[144] (ESSHB 1812).

BOEM: Bureau of Ocean Energy Management

CBA: Community Benefit Agreement

CCA: Climate Commitment Act. The CCA is a Washington state law to cap and reduce greenhouse gas emissions from Washington's largest emitting sources and industries, as described in chapter 70A.65[145] RCW.

CEF: Clean Energy Fund

CEI: Clean Energy Institute

CERCLA: Comprehensive Environmental Response, Compensation and Liability Act

CESA: Compatible Energy Site Assessment

CETA: Clean Energy Transformation Act. CETA commits Washington to an electricity supply free of greenhouse gas emissions by 2045, as described in chapter 19.405[146] RCW.

[143] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[144] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[145] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.65
[146] https://app.leg.wa.gov/RCW/default.aspx?cite=19.405

CFS: Clean fuel standard. The CFS is a Washington state law to reduce carbon pollution from transportation, as described in chapter 70A.535[147] RCW.

Clean energy project or facility: For purposes of this report, means an industrial project or facility which uses renewable energy resources or renewable resources, and technologies that provide the greatest environmental benefit. This includes alternative energy resources and clean energy product manufacturing facilities, as defined in Chapter 183, Laws of 2022[148] (ESSHB 1812).

Clean energy product manufacturing facility: As defined in Chapter 183, Laws of 2022[149] (ESSHB 1812), a facility that exclusively or primarily manufactures the following products or components primarily used by such products:

(a) Vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor.
(b) Charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor.
(c) Renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock, or converting it to a green hydrogen carrier.
(d) Equipment and products used to produce energy from alternative energy resources.
(e) Equipment and products used at storage facilities.

Commerce: Washington State Department of Commerce

COU: Consumer-owned utility

CRITFC: Columbia River Inter-Tribal Fish Commission

DAHP: Washington State Department of Archaeology and Historic Preservation

DNR: Washington State Department of Natural Resources

DOD: United States Department of Defense

DOE: United States Department of Energy

DOH: Washington State Department of Health

Ecology: Washington State Department of Ecology

EIS: Environmental Impact Statement

Electric utility: As defined in chapter 19.29A.010[150] RCW, means a consumer-owned utility or investor-owned utility.

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[147] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.535
[148] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[149] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[150] https://app.leg.wa.gov/rcw/default.aspx?cite=19.29A.010

EPA: United States Environmental Protection Agency

EFSEC: State of Washington Energy Facility Site Evaluation Council

EITE: Energy-Intensive and Trade-Exposed. EITE facilities are facilities engaged in one or more of the processes described by the industry descriptions and codes in the North American Industry Classification System in Table 030-1, as that code is reported under chapter 173-441[151] WAC.

Environmental justice or EJ: Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm, as defined in chapter 70A.02.010[152] RCW.

ESHB: Engrossed Substitute House Bill

ESSHB: Engrossed Second Substitute House Bill

EV: Electric vehicle

FERC: Federal Energy Regulatory Commission

GHG: Greenhouse gases. Greenhouse gases include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by rule as defined in chapter 70A.45.010[153] RCW.

GMA: Growth Management Act

GOIA: Governor's Office of Indian Affairs

Green hydrogen facility: Facility where hydrogen is produced through electrolysis. It does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock, as defined in Chapter 183, Laws of 2022[154] (ESSHB 1812).

HEAL Act: Healthy Environment for All Act. The HEAL Act will reduce environmental and health disparities in Washington state and improve the health of all Washington state residents, as described in chapter 70A.02[155] RCW.

Highly impacted community: As defined in chapter 19.405.020[156] RCW, highly impacted community means a community designated by the Department of Health based on cumulative

[151] https://apps.leg.wa.gov/wac/default.aspx?cite=173-441
[152] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010
[153] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.45.010
[154] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[155] https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true
[156] https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020

impact analyses in chapter 19.405.140[157] RCW or a community located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151[158].

IIJA: Infrastructure Investment and Jobs Act

IOU: Investor-owned utility

IRA: Inflation Reduction Act

Low-carbon energy project or facility: For purposes of this report, means an industrial project or facility which uses renewable energy resources or renewable resources, and technologies that provide the greatest environmental benefit. This includes alternative energy resources and clean energy product manufacturing facilities, as defined in Chapter 183, Laws of 2022[159] (ESSHB 1812).

MOU: Memorandum of Understanding

MSP: Marine Spatial Plan

NDA: Non-Disclosure Agreement

NEPA: National Environmental Policy Act

NPDES: National Pollutant Discharge Elimination System

ORIA: Governor's Office for Regulatory Innovation and Assistance

Overburdened community: As defined in chapter 70A.02.010[160] RCW, overburdened community means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in chapter 19.405.020[161] RCW.

PSD: Prevention of Significant Deterioration

PV: Photovoltaic

RCW: Revised Code of Washington

Renewable energy resource: As used by EPA[162], means resources that rely on fuel sources that restore themselves over short periods of time and do not diminish.

Renewable hydrogen: As defined in Chapter 183, Laws of 2022[163] (ESSHB 1812), means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.

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[157] https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.140
[158] https://www.law.cornell.edu/uscode/text/18/1151
[159] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[160] http://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010
[161] https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020
[162] https://www.epa.gov/green-power-markets/what-green-power
[163] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919

Renewable natural gas: As defined in Chapter 183, Laws of 2022[164] (ESSHB 1812), gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities and anaerobic digesters.

Renewable resource: As defined in Chapter 183, Laws of 2022[165] (ESSHB 1812), means:

(a) Water,
(b) Wind,
(c) Solar energy,
(d) Geothermal energy,
(e) Renewable natural gas,
(f) Renewable hydrogen,
(g) Wave, ocean, or tidal power,
(h) Biodiesel fuel that is not derived from crops raised on land cleared from old 35 growth or first growth forests, or
(i) Biomass energy.

SEPA: State Environmental Policy Act

SHB: Substitute House Bill

SSB: Substitute Senate Bill

TCWG: Transmission Corridor Work Group

THPO: Tribal Historic Preservation Officers

Tribal rights and resources: include Tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in Tribal lands and lands within which a Tribe or Tribes possess rights reserved or protected by federal treaty, statute or executive order.

USFWS: United States Fish and Wildlife Service

UTC: Utilities and Transportation Commission

Vulnerable populations: As defined in chapter 19.405.020[166] RCW, vulnerable population means communities that experience a disproportionate cumulative risk from environmental burdens due to:

(a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and
(b) Sensitivity factors, such as low birth weight and higher rates of hospitalization.

WAC: Washington Administrative Code

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[164] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[165] https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1812-S2.SL.pdf?q=20220818164919
[166] https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020

WDFW: Washington Department of Fish and Wildlife

WSDA: Washington State Department of Agriculture

WSDOT: Washington State Department of Transportation

WSU: Washington State University