**Confederated Tribes and Bands of the Yakama Nation**

Established by the Treaty of June 9, 1855

February 16, 2011

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Matt McCormick
Department of Energy
Richland Operations Office
P.O. Box 550
Richland, WA 99352

RE: Response to letter of January 31, 2011 with regards to NPCE process

Dear Mr. McCormick:

Thank you for your recent letter in regards to the Department of Energy's (DOE) NPCE process. The Yakama Nation (YN) Environmental Restoration and Waste Management (ERWM) program appreciate your concern and looks forward to continued consultation on this matter.

The purpose of this letter is to clarify the concerns of ERWM. The current perception is that the DOE NPCE Process needs to be revised (as stated in your letter); however, that is not the concern of ERWM. The real issues are two-fold. First is the use of the NPCE designation for Federal projects which, "have the **potential** to cause effects on historic properties, assuming such historic properties were present (36CFR800.3(a)(1)." Any projects that create ground disturbance have the **potential** to cause effects on historic properties. Surface disturbance does not equate to disturbance 10 or 20 feet below the surface where cultural resources may be encountered. As advised by Tom McCulloch (Advisory Council on Historic Preservation) and concurred with by ERWM and Rob Whitlam, State Historic Preservation Office (SHPO), the Section 106 process needs to be followed to the point where it can be determined that there are "No Historic Properties Affected." The Section 106 identification procedure is detailed in 36CFR800.4. As you can see it is not the NPCE process that needs revision, rather it is the obligation of the DOE to comply with National Historic Preservation Act and not truncating Section 106 with its own NPCE process.

Secondly, is the concern over this use of the Hanford Cultural Resource Management Plan (HCRMP.) Thank you for enclosing the necessary pages. Page 5-4 (HCRMP) defines cultural sensitivity areas. Generally, it is the proximity to known cultural sites and the river that determines cultural sensitivity. Page 5-5 (HCRMP) defines the classification of a NPCE. The definition includes routine maintenance however, excludes activities in **cultural sensitivity zones** from being a NPCE.

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As recent discoveries show, projects classified as NPCEs are located in culturally sensitive zones. As an example, the 100-K-63 waste site was labeled NPCE, yet was within 400 meters of the river **and** was directly adjacent to a recorded archaeological site.

Perhaps you can shed some light on why DOE has not been following the criteria outlined in the HCRMP. Thank you for taking the time in your busy schedule to give this matter your personal attention. ERWM looks forward to your comments on the concerns stated above.

Sincerely,

Russell Jim
ERWM Projects Manager

Copies to:
Jill Conrad, DOE
Phil Rigdon, YN-DNR
Donald Isadore, RHW Committee
Sam Jim, Sr., RHW Committee
Warren Spencer, RHW Committee
Lavina Washines, RHW Committee
Marlene Shavehead, YN ERWM
Wade Riggsbee, YN ERWM
Rob Whitlam, DAHP
Administrative Record