



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

August 19, 2022

Filed via Email and Hand Delivery

Klickitat County Board of County Commissioners
c/o Klickitat County Auditor
205 S. Columbus, Stop 2, Room 203
Goldendale, WA 98620
Email: boccc@klickitatcounty.org

KLICKITAT COUNTY AUDITOR

AUG 19 2022

RECEIVED

RE: Appeal of Klickitat County Planning Department's CAO DNS
File Number SEPA 2022-08

Dear Klickitat County Commissioners,

The Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") hereby administratively appeals the Klickitat County Planning Department's State Environmental Policy Act ("SEPA") Determination of Non-Significant number SEPA 2022-08 ("DNS") regarding the County's proposed draft Critical Areas Ordinance ("Draft CAO").¹ Please find enclosed a check in the amount of \$4,000.00 for the appeal fee.²

In support of Yakama Nation's administrative appeal, and in accordance with Chapter 20.28 of the Klickitat County Municipal Code, Yakama Nation states as follows:

A. Appellant's Name, Address, and Phone Number.

Confederated Tribes and Bands of the Yakama Nation
c/o Yakama Nation Office of Legal Counsel
P.O. Box 150, 401 Fort Road
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(509) 865-7268

B. Appellant's Standing to Initiate this Appeal.

Under Klickitat County Code Section 20.28.030(A)(4), a party has standing to initiate an administrative appeal if they are aggrieved by the issuance of a SEPA threshold decision. Yakama Nation is aggrieved by the DNS because the Klickitat County Planning Department

¹ In submitting this appeal, Yakama Nation does not waive, alter, or otherwise diminish its sovereign rights, its rights as a co-manager of the fisheries within the State of Washington, or its rights, privileges, remedies, or services guaranteed by the Treaty of 1855. Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 [hereinafter Treaty of 1855]. Yakama Nation timely submits this administrative appeal in accordance with the deadline set forth in the DNS and Klickitat County Code 20.28.030(5).

² Yakama Nation hereby objects to and preserves its right to protest Klickitat County's inordinately high administrative appeal fees.

failed to meet its legal obligations under Washington State environmental laws to the detriment of Yakama Nation's rights and resources reserved in the Treaty of 1855. Specifically, Yakama Nation faces a direct and substantial impact from the DNS because Klickitat County Planning Department failed to consider the likely environmental impacts of the Draft CAO on Yakama Nation's Treaty-reserved resources.

C. Specific Answers, Omissions, Conditions, or Determinations That Provide the Basis for Appellant's Appeal.

Yakama Nation is aggrieved by the following elements of the DNS and underlying SEPA Environmental Checklist:

1. The SEPA Responsible Official's issuance of the Determination of Non-Significance # SEPA2022-08.
2. The SEPA Responsible Official's statement that "Klickitat County has determined that the above described proposal, conducted in conformance with the applicable Klickitat County Codes and Ordinances, would not have a probable significant adverse impact on the environment. . . ."³
3. The SEPA Responsible Official's statement that ". . . an environmental impact statement is not required under RCW 43.21C.030(2)(c)."⁴
4. The SEPA Responsible Official's implicit assertion that it gathered and considered sufficient information before issuing its threshold determination.⁵
5. The SEPA Responsible Official's implicit assertion that it performed a sufficient review of the "completed environmental checklist and other information on file with the Klickitat County Planning Department."⁶
6. The SEPA Responsible Official's statement that "Speculative, possible, future impacts without an actual site-specific application are not probable significant adverse impacts."⁷
7. The SEPA Responsible Official's implicit determination that the underlying environmental checklist is complete.⁸
8. The SEPA Responsible Official's reliance upon a SEPA Environmental Checklist that contains insufficient and incorrect information.

³ DNS at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

9. The SEPA Responsible Official and/or Klickitat County Planning Department's deferral of environmental analysis impacts to future site-specific or project-specific proposals.⁹
10. The SEPA Responsible Official and/or Klickitat County Planning Department's assertions that the Draft CAO will not impact the environmental elements solely due to its status as a non-project action.¹⁰
11. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to analyze environmental impacts by deferring to other policies and regulations.¹¹
12. The SEPA Responsible Official's and/or Klickitat County Planning Department's assertion that the Draft CAO will have "no direct impacts" on water and air quality, plants, animals, fish, or marine life.¹²
13. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to analyze environmental impacts to threatened and endangered species.¹³
14. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to analyze environmental impacts to anadromous fish.¹⁴
15. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to analyze environmental impacts to surface and groundwater.¹⁵
16. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to adequately identify cultural resources that may be impacted by the Draft CAO.¹⁶
17. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to adequately analyze environmental impacts to cultural resources.¹⁷

⁹ See, e.g., SEPA Environmental Checklist for Critical Areas Ordinance Update, _____, 2022 ("Checklist") §§ B(1)(e)-(h), B(2), B(3), B(4), B(5)(b), B(5)(e), B(6)(b)(c), B(7)(a), B(7)(b), B(8)(d), B(8)(h), B(11)(a), B(11)(c), B(12)(c), B(13)(c), B(13)(d), B(14)(a), B(15)(b).

¹⁰ B(1)(e)-(h), B(2), B(3), B(4), B(5)(b), B(5)(d)-(e), B(6), B(7), B(8), B(9), B(10), B(11), B(12), B(13)(b), B(13)(c), B(13)(d), B(14), B(15), B(16).

¹¹ See, e.g., Checklist §§ B(3)(a),

¹² Checklist §§ (D)(1)-(2).

¹³ *Id.* § B(5)(b).

¹⁴ See, e.g., *Id.* § B(5)(c).

¹⁵ *Id.* § B(3).

¹⁶ *Id.* § B(13)(a)-(b).

¹⁷ *Id.* § B(13).

18. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to analyze environmental impacts of the Draft CAO's reliance on a permitting process in Chapter 4(2)(D) of the Draft CAO to identify fish and wildlife habitat areas.
19. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to identify and evaluate development that may occur within critical areas and is not subject to permitting requirements under current Klickitat County Code.
20. The SEPA Responsible Official's failure to analyze the environmental impacts of the Draft CAO's exclusion of a permitting process for critical areas.
21. The SEPA Responsible Official and/or Klickitat County Planning Department's failure to rely upon Best Available Science in completing the SEPA Environmental Checklist.¹⁸
22. The SEPA Responsible Officials' failure to analyze the environmental impacts of the Draft CAO's departure from Best Available Science.
23. The SEPA Responsible Officials' failure to require an Environmental Impact Statement be prepared for the Draft CAO.

D. Legal Errors Asserted by Appellant.

The DNS violates numerous requirements of SEPA¹⁹ and its implementing regulations, which have been adopted by reference into Klickitat County Code. Specifically, the DNS is improper under SEPA because:

- a. Klickitat County Planning Department violated RCW 43.21C.030 and WAC 197-11-340 by failing to properly identify, disclose, discuss, consider, or analyze the probable environmental impacts of the Draft CAO.
- b. Klickitat County Planning Department violated WAC 197-11-055 by deferring meaningful analysis of likely environmental impacts to future project-specific approval processes, rather than engaging in meaningful environmental review "at the earliest possible point in the planning and decision-making process."²⁰
- b. Klickitat County Planning Department violated WAC 197-11-060(4)(c) by failing to consider both the short-term and long-term impacts of the Draft CAO.
- c. Klickitat County Planning Department violated WAC 197-11-060(4)(d) by failing to consider both direct and indirect impacts of the Draft CAO.

¹⁸ See, e.g., *Id.* §§ B(1), B(3)-(5), B(7)-(8).

¹⁹ RCW Chapter 43.21C.

²⁰ WAC 197-11-055(2)(a)(i).

- d. Klickitat County Planning Department violated WAC 197-11-060(4) by failing to properly consider impacts on plants and animals, including salmon and steelhead populations within Klickitat County.
- e. Klickitat County Planning Department violated WAC 197-11-060(4) by failing to adequately identify and evaluate environmental impacts and threats to habitat caused by the lack of permitting process for development within critical areas.
- f. Klickitat County Planning Department violated WAC 197-11-330 and WAC 197-11-080 by failing to identify and correct incomplete or unavailable information regarding the Draft CAO's potential environmental impacts.
- g. Klickitat County Planning Department violated RCW 43.21C.030 and WAC Chapter WAC 197-11 by failing to issue a Determination of Significance and require completion of an Environmental Impact Statement for the Draft CAO.

E. The Desired Outcome or Relief Sought by the Appellant.

Yakama Nation requests that the Klickitat County Board of County Commissioners:

1. Reverse the SEPA Responsible Official's Determination of Non-Significance (SEPA 2022-08);
2. Remand the Draft CAO and SEPA Checklist back to the SEPA Responsible Official for reconsideration in accordance with applicable Washington State and Klickitat County law; and,
3. Grant any other relief that the Klickitat County Board of County Commissioners deems just and proper.

Yakama Nation is available at the Klickitat County Commissioner's discretion for an initial conference to discuss appeal scheduling and other procedural matters.

Dated and Filed this 19th day of August, 2022.



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