



CITY OF SELAH

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WASHINGTON STATE ENVIRONMENTAL POLICY ACT MITIGATED DETERMINATION OF NONSIGNIFICANCE CITY OF SELAH, WASHINGTON May 30, 2017

PROJECT DESCRIPTION: Adoption of 2017 updates to the City of Selah Comprehensive Plan and amendments of development regulations to bring the Municipal Code into consistency with current State law. Comprehensive Plan elements are Administrative, Capital Facilities, Housing, Land Use, Natural Systems, Transportation, and Utilities.

PROPONENT: City of Selah

LOCATION: City limits and Urban Growth Area

PARCEL NUMBER(S): N/A

LEAD AGENCY: City of Selah, Washington

FILE NUMBER: 971.17.003

DETERMINATION: The City of Selah, as lead agency for this proposal, after reviewing a completed environmental checklist and other information on file with the lead agency, has determined that the project will not have a probable significant adverse impact on the environment, and an environmental impact statement (EIS) will not be required under RCW § 43.21C.030(2)(c), provided the measures listed below are used to mitigate potential adverse impacts. The information relied upon in reaching this determination is available to the public upon request at the City of Selah Community Development & Planning Division.

IDENTIFIED ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES:

This Mitigated Determination of Nonsignificance (MDNS) is hereby conditioned upon the following mitigating measures, as authorized under WAC § 197-11-660 and YMC § 6.88.160, and the Yakima Urban Area Comprehensive Plan, which contains goals, policies, and regulations which provide substantive authority to require mitigation under the State Environmental Policy Act.

FINDINGS:

A. Cultural Resources: As identified by the Yakama Nation, a large part of the City of Selah has a very high potential for undiscovered archaeological sites as shown by the Washington State Department of Archaeology and Historic Preservation's ("DAHP") predictive model. Furthermore, as the City's Comprehensive Plan does not currently contain specific goals and policies which support protection of these archaeological and cultural resources, the City proposes the below policies and goals to address, protect, and/or mitigate any potential environmental impacts to archaeological and cultural resources created by development of the built environment.

B. Natural & Water Resources: The Yakama Nation has commented that the City of Selah's Critical Area regulations does not appear to reference/incorporate the "Best Available Science" studies of:

- Hruby, T. (2013). Update on Wetland Buffers: The State of the Science, Final Report, October 2013. Washington State Department of Ecology Publication #13-06-11; and

- Hruby, T. (2014). Washington State Wetland Rating System for Eastern Washington: 2014 Update. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology, required by the Washington State Department of Commerce (WSDOC) Critical Area Checklist (April 2017). To ensure compliance with the WSDOC Critical Area and Growth Management Best Available Science requirements of WAC 365-195-900 through 365-195-925, the City has agreed to incorporate the below goals and policies, regulatory amendments, and review and revise its Critical Area Ordinance to be consistent with the above “Best Available Science”.

C. Laws, Policies, and Regulations:

1. The City of Selah’s substantive authority to require mitigation measures is derived from the State Environmental Policy Act and its implementing regulations. *See* WAC § 197-11-660.
2. The Washington State Growth Management Act (“GMA”) goals include (a) the identification and preservation of lands, sites and structures that have historic or archaeological significance; (b) the conservation of fish and wildlife habitat; and (c) the protection of the environment, including water quality and availability. *See* RCW §§ 36.70A.020, .480. The City’s Comprehensive Plan and implementing development regulations must conform to the requirements of RCW Chapter 36.70A, including these goals. *See* RCW §§ 36.70A.040, .130.
3. The GMA’s implementing regulations recommend that cities give strong consideration to including historic preservation and environmental protection elements in their Comprehensive Plans. *See* WAC §§ 365-196-445(3), -450. Further, the regulations permit and recommend that cities use available data to identify sites with a high likelihood of containing cultural resources, and include specific processes in their Comprehensive Plans to encourage the preservation of cultural resources. WAC § 365-196-450.
4. The GMA requires that the Comprehensive Plan land use element includes provisions that plan for and protect groundwater used for public water supplies. RCW § 36.70A.070(1); WAC § 365-196-405(2). Water must be both physically and legally available for proposed new development, including development proposing to use permit exempt wells, consistent with the Washington Supreme Court case, *Whatcom County v. Hirst*, 186 Wn.2d 648 (2016).

MITIGATION REQUIREMENTS

Cultural Resources: The following goals, objectives, and policies regarding historic, archaeological, and cultural resources shall be included in the Comprehensive Plan Land Use Element:

Goal: Identify, protect, preserve and restore sites that contain resources of historic, archaeological, or cultural value or significance.

Objective: Protect historic, archaeological, and cultural resources in collaboration with appropriate tribal, state, federal, and local governments, and agencies and organizations.

Policy: Consult with the Washington State Department of Archaeology and Historic Preservation (“DAHP”) and affected Indian tribes, including the Yakama Nation, in developing local policies and regulations for identifying, protecting, and preserving historic, archaeological, and cultural resources, and work with them to develop procedures for addressing potential

impacts to archaeological and cultural resources. These State and Tribal entities should be consulted whenever such resources are discovered or may be impacted.

Policy: DAHP and affected Indian tribes shall be included in any notice for the permitting or approval of projects whose areas of affect contain, or are reasonably predicted to contain, cultural or archaeological resources, or historic sites that are listed or eligible for listing.

Policy: Provide notice and an opportunity to comment to DAHP and the Yakama Nation for all projects that require environmental review, and for all development permits for projects whose areas of affect are (a) five-thousand (5,000) square feet or greater and (b) within five hundred (500) feet from a recorded cultural or archaeological site, or a listed historic site.

Objective: Establish procedures and standards for identifying, protecting, and preserving cultural, archaeological, and historic resources.

Policy: Develop and implement protective policies for groundwork in areas known or reasonably predicted as highly likely to contain cultural, archaeological, or historic resources to prevent the damage and destruction of such resources.

Policy: In areas that are known or reasonably predicted as highly likely to contain cultural, archaeological, or historic resources, require project proponents to investigate and/or survey proposed project sites for cultural, archaeological, and historic resources to the degree necessary for the City to make informed specific land use decisions. A professional archaeologist shall perform all cultural and archaeological resource field investigations and surveys.

Objective: Educate and inform project proponents about applicable laws and policies that protect cultural, archaeological, and historic resources.

Policy: Since developers and property owners are required by law to immediately stop work and notify the City, DAHP and affected Indian tribes if archaeological resources are uncovered during excavation, with no recommencement until authorized under the law, the City shall include a notification stating this on development permits and project approval documents associated with ground-disturbing activities.

Objective: Where appropriate, provide access to and educational opportunities regarding cultural, archaeological, and historic resources in a manner that is culturally sensitive and does not degrade the resource or impact the quality of the environment.

Policy: Promote the visible built environment of the City through opportunities to highlight its history, while also researching and telling the story learned from the archaeological and cultural resources. Acknowledging the long, diverse, and rich history of Selah will establish pride in the community.

Natural Resources:

1. The City and the Yakama Nation shall work together in good faith to review the Comprehensive Plan and Critical Areas Ordinance to ensure they are consistent with recently updated Washington State

Department of Commerce Critical Areas Checklist (April 2017).

<https://deptofcommerce.app.box.com/s/dy28mt5bipdznrwezyeytqkgowhqe3w>

2. The City and the Yakama Nation shall work together in good faith to review the Comprehensive Plan and Critical Areas Ordinance to ensure they are consistent with the findings and recommendations of the State of Washington Department of Ecology's ("DOE") updated Best Available Science ("BAS") resources concerning wetland buffers and wetland rating systems, including (but not limited to) the findings and recommendations of:
 - Hruby, T. (2013). Update on Wetland Buffers: The State of the Science, Final Report, October 2013. Washington State Department of Ecology Publication #13-06-11.
 - Hruby, T. (2014). Washington State Wetland Rating System for Eastern Washington: 2014 Update. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology.
3. Comprehensive Plan Table 1-3 shall be revised to include sockeye and lamprey. Sockeye have been re-introduced into the Yakima River Basin by the Yakama Nation. The Yakima and Naches Rivers are migration corridors for spawning sockeye. Lamprey are an imperiled native, anadromous fish species that are culturally significant to the Yakama Nation.
4. Section 11.50.010(2) – Purpose and Intent of the Critical Areas Ordinance shall be revised to read, in its entirety:

“Protect critical areas, in accordance with the Growth Management Act and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925 as it exists or may hereafter be amended, and in consultation with state and federal agencies, affected Indian tribes, and other qualified professionals;”

5. A new section, numbered 11.50.040(a)(4) shall be added to the Critical Areas Ordinance section 11.50.040 – Applicability – Regulated Activities, as follows:

(4) The City shall provide the Yakama Nation with notice and a reasonable opportunity to comment on development applications which propose development in a critical area or its buffer area, with the exception of projects that are exempt under Section 11.50.050 of the City's Critical Areas Ordinance.

Water Resources:

1. The reference to the Yakima County Shoreline Master Program on page 1-14 in the third paragraph of the “Surface Water” section shall be corrected to cite the final Yakima County Shoreline Master Program: (Res. 54-2010 § 2 (Att. B §§ 27, 28), 2010: Ord. 14-2007 § 1 (Exh. A) (part), 2007).

2. The Critical Areas Ordinance, and its section 11.50.110 and associated subsections, shall be updated to include and consistently utilize Yakima County's most recently updated Critical Aquifer Recharge Areas ("CARA") maps.

Definitions to be Added:

1. The following definitions shall be added to the Comprehensive Plan's Glossary of Terms:

"Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products.

"Archaeological site" means a geographic locality that contains archaeological objects.

"Archaeological survey" means a professional survey and report prepared by a professional archaeologist consistent with the Washington State Department of Archaeology and Historic Preservation's survey and reporting standards. Such survey reports are protected from public disclosure under RCW 27.53.070.

"Archaeology" means systematic, scientific study of humankind's past through material remains.

"Cultural resources" means archaeological and historic sites and artifacts, as well as traditional food, medicine, fibers, and objects that sustain the religious, ceremonial and social activities of affected Indian tribes.

"Field investigation" means an on-site inspection by a professional archaeologist or by an individual under the direct supervision of a professional archaeologist employing archaeological inspection techniques for both the surface and subsurface identification of archaeological resources and artifacts resulting in a professional archaeological report detailing the results of such inspection. Field investigation information is protected from public disclosure under RCW 27.53.070.

"Historic" means peoples and cultures who are known through written documents in their own or other languages.

"Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

"Professional archaeologist" means a person with qualifications meeting those set forth in RCW 27.53.030(11), who has at least a masters degree in Anthropology or a related field and two years professional experience in archaeological field work.

2. The following definitions shall be added to the Critical Areas Ordinance's Definitions section 11.50.030:

"Fish and Wildlife Habitat Conservation Areas" means WAC 365-190-030 (6)(a) "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

"Development" means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, clearing, paving, excavation or drilling operations, storage of equipment or materials, or any other activity which results in the removal of vegetation or in the alteration of natural site characteristics.

3. The following definitions in the Critical Areas Ordinance's Definitions section 11.50.030 shall be revised to read in their entirety as follows:

"Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment, such as salmon, steelhead, sockeye and coho.

"Critical areas" or "environmentally sensitive areas" means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include aquifer recharge areas, fish and wildlife habitat conservation areas, wetlands and streams, flood hazard and geologic hazard areas. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public or private property.

"Critical area report" means a report prepared by a qualified professional to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also see Stream reconnaissance report, "Wetland impact assessment report" and "Wildlife report."

Collaborative Development of Proposed 2018 Comprehensive Plan Amendments. The City shall consult and work collaboratively in good faith with the Yakama Nation to develop proposed Comprehensive Plan updates for the 2018 amendment cycle regarding the following issues and associated probable environmental impacts:

1. *Climate Change.*

- The Yakama Nation's Climate Adaptation Plan for the Territories of the Yakama Nation, published in April 2016, identifies, amongst other things, (1) important resources and cultural components likely to be impacted by climate change, (2) specific recommendations for deeper analyses of vulnerabilities and risks to critical interests, and (3) adaptation actions that should be

implemented now. The City shall review the Climate Adaptation Plan and its recommendations, and work with the Yakama Nation to identify any appropriate associated updates to the City's Comprehensive Plan and development regulations.

2. *Streamside Management Projects – Guidelines for Exempt and Non-Exempt Projects.*

- Streamside management projects have the potential for significant adverse effects to Yakama Nation reserved Treaty rights, including, but not limited to fish and wildlife and their habitats and the Yakama Nation's time immemorial water rights.

3. *Adequate Water for Development in Urban Growth Areas.*

- The City, in consultation with the Yakama Nation and other appropriate governments and agencies, shall review its Comprehensive Plan and associated development regulations for compliance with the Washington Supreme Court case, *Whatcom County v. Hirst*, 186 Wn.2d 648 (2016) and consistency with Yakima County's Comprehensive Plan, and to ensure that any development of groundwater resources in Urban Growth Areas shall not impair the rights of senior water users.

CONTACT PERSON: Contact Jeff Peters, City of Selah Community Development Supervisor Planner (509) 698-7365 for more information.

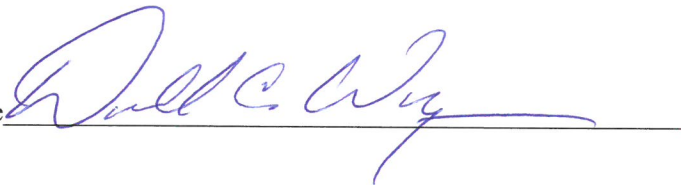
There is no comment period for this DNS

This MDNS is issued after using the optional DNS process in WAC § 197-11-355. There is no further comment period on the MDNS.

Responsible official: Donald C. Wayman
Position/Title: City Administrator/SEPA Responsible Official
Address: 222 S. Rushmore Rd. Selah, Washington 98942

Date May 30, 2017

Signature



Appeals: You may appeal this determination to the Selah City Council by filing a written appeal along with the required \$300.00 filing fee with the City Clerk at 115 W. Naches Avenue, Selah, WA 98942 no later than June 5, 2017.

You should be prepared to make specific factual objections.

Contact the City of Selah Community Development and Planning Division to read or ask about the procedures for SEPA appeals.