



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

September 25, 2009



RE: Teanaway Subarea Plan
Attn: Anna Nelson
411 N. ruby St., Suite 2
Ellensburg WA 98926

I appreciate the opportunity to provide comments on the development of the Teanaway Subarea Plan to the Kittitas County Community Development Services

Please find attached correspondence to me from my fisheries staff. I concur with the findings of the report for fisheries protection. As you may know, substantial effort and funding is being invested in the Yakima Basin, and specifically the Teanaway River, to allow it to once again support a viable salmonid and resident fish population. It appears that Kittitas County has a number of current and near future land use issues of significance. Of these issues, the review and evaluation of the Critical Area Ordinance, update of the Shoreline Master Program and update of obsolete floodplain mapping will be necessary for the proper development of a subarea plan for the Teanaway Basin. Development of a land use plan without this information may lead to significant adverse environmental impacts.

Please contact my staff regarding your response to the mitigation measures noted in the attached memo. John Marvin can be reached at 509/966-7406.

Sincerely,

Phil Rigdon
Deputy Director
Division of Natural Resources
Yakama Nation

MEMORANDUM

TO: Phil Rigdon, Deputy Director, DNR
THROUGH: Scott Nicolai, Yakima Subbasin Habitat Coordinator, YKFP
FROM: John Marvin, Habitat Biologist, YKFP
DATE: Friday, September 11, 2009
RE: Teanaway Subarea Plan

Kittitas County is accepting public comments on the development of a subarea plan, under authority of the Growth management Act (GMA), for the Teanaway River Basin. The stated goal of the Teanaway Subarea Plan is to promote a long-term plan that identifies and protects the important characteristics and identifies future uses for a majority of the study area. The plan is currently in the scoping phase and I recommend submitting the following comments:

General Comments

Yakama Nation operates a spring chinook acclimation facility on the North Fork Teanaway. This facility, in operation since 1999, acclimates about 1/3 of the 780,000 spring chinook fry from the Cle Elum Hatchery. Redd counts in the Teanaway increased from less than ten to as high as 100+ through these efforts. Development of the subarea plan must take into account the efforts and expenditure of the Yakama Nation and others in the Teanaway Basin to restore sustainable fisheries.

In 2006, American Forest Resources LLC submitted two comprehensive plan amendment applications (06-18, 06-19) to re-designate approximately 7,000 acres of Commercial Forest to Forest and Range 20. The Kittitas County Planning Commission found that the Teanaway Basin is an environmentally sensitive area and such environmental sensitivity needed to be addressed due to the large amount of acreage being proposed for conversion. On September 19, 2006 the Planning Commission recommended denial to the Board of County Commissioners with a 5-0 vote on one application, and a 4-1 vote on the other, based on the information submitted. The applications were subsequently withdrawn before being presented to the Board of County Commissioners. While a subarea plan is the appropriate avenue to analyze the landscape and appropriate land use, including the presence or absence of forest lands of long-term commercial significance and critical areas, it appears that the issues discussed below need to be addressed before undertaking the Teanaway Subarea Plan.

It appears that Kittitas County has a number of current and near future land use issues of significance, including:

- a) Groundwater issues in Upper Kittitas County;
- b) Ongoing GMA compliance;
- c) Critical Areas Ordinance Update;
- d) Floodplain Map Inaccuracies and;
- e) Shoreline Master Program Update;

Groundwater

Kittitas County and the State of Washington, Department of Ecology spent two years working cooperatively, as late as July 8, 2009, to establish a permanent rule to manage exempt groundwater wells until more is known about the aquifers and water supplies in upper Kittitas County, of which the Teanaway River Basin is included. The new rule would have established interim and long term management measures and calls for development of a comprehensive groundwater study. However, on July 16th, 2009, Ecology announced that they were unable to gain a commitment from the Kittitas County Board of Commissioners to move forward with a revised memorandum of agreement and alternative rule approach. Ecology filed an emergency rule that closes upper Kittitas County to all new groundwater withdrawals effective July 16, 2009 through November 13, 2009 and/or 120 days. To date, the State and Kittitas County have yet to resolve this issue. Even if this issue is resolved and a memorandum of agreement is signed, the results of a comprehensive groundwater study are unknown and possibly years away. It seems unwise to plan for future land uses in the Teanaway Basin when the availability of water is in question. Low stream flows are a limiting factor to the survivability and sustainability of fisheries resources in the Teanaway Basin, and therefore must be addressed in the subarea plan.

GMA Compliance Issues

Kittitas County was found to be out of compliance with regard to certain provisions of the GMA by the Eastern Washington Growth Management Hearings Board (EWGMHB) (Case No. 07-1-0004c). The EWGMHB has directed the County to address the following issues:

- f) Designation of the areas previously designated as Urban Growth Nodes (UGN), Vantage, Thorp, Ronald, Easton, and Snoqualmie Pass;
- g) Documentation identifying the boundaries of the City of Kittitas UGA;
- h) Designation and de-designation of forest and agricultural lands, and;
- i) Conducting a SEPA review.

In addition, Kittitas County, and a number of interveners, appealed to Superior Court legal issues regarding rural densities (Rural 3), cluster platting and planned unit developments. It is unknown what the status of the Superior Court appeal is at this time.

While the County is currently working to resolve these issues, there is no guarantee that ongoing efforts will be found GMA compliant or resolved through litigation within the near future. Reliance of the Teanaway Subarea Plan on current GMA compliance efforts and litigation may be futile if those efforts are not GMA-compliant.

All of the Teanaway Basin is designated as Rural and Commercial Forest, so the Teanaway Subarea Plan may need to incorporate any resource de-designation criteria adopted as part of the current GMA compliance work and address appropriate rural densities. Until these legal issues are resolved, it appears unwise to proceed with the subarea at this time.

Critical Areas Ordinance

The GMA (RCW 36.70A.130) requires a scheduled review and evaluation of comprehensive plans, including, but not limited to, consideration of critical area ordinances (CAO). RCW 36.70A.130(4) established the deadline for Kittitas County's review and evaluation schedule as December 1, 2006, which the County attempted to comply with by Ordinance No 2006-63. RCW 36.70A.130 (8)(a) grants counties required to satisfy the schedule of review a one year extension for development regulations that protect critical areas; therefore Kittitas County's CAO update was due on or before December 1, 2007. RCW 36.70A.130 (5)(b) grants a 36 month extension to counties with a population of less than 50,000, and those that have also not exceeded a 17% population increase in the ten years preceding the date established in the applicable schedule. While Kittitas County has a population less than 50,000, the Washington State Office of Financial Management has data that indicates Kittitas County had a 25% population increase between 1990 and 2000. While these are not the dates to be used to determine eligibility for the extension (1996 – 2006), it is likely the County has exceeded the 17% threshold.

In 2007, the Washington State Legislature adopted Substitute Senate Bill 5248 (RCW 36.70A.560), which mandates a three year moratorium on adopting critical areas ordinances as they specifically apply to agricultural activities. Nothing in RCW 36.70A.560 limits or otherwise modifies the obligations of a county or city to comply with the other requirements of the GMA pertaining to critical areas not associated with agricultural activities. The Kittitas County CAO does not regulate agricultural activities; reliance on Substitute Senate Bill 5248 as a time extension for CAO review and evaluation would be incorrect.

A review of Kittitas County Resolution 2005-148, which established the scope of work for the 2006 comprehensive plan update, indicates that Kittitas County had no plans at that time to include a review and evaluation of the CAO, yet Ordinance No 2006-63 included minor edits to critical areas goals and policies. An online review of the Kittitas County Comprehensive Plan documents since 2006, and development code updates in 2007, does not reveal any indications of a planned CAO review. As required by the GMA, a review and evaluation of the Kittitas County CAO shall include best available science (BAS) and special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries (RCW 36.70A.172). The Kittitas County CAO was adopted in 1994 by Ordinance 94-22, and the BAS and special consideration requirements (RCW 36.70A.172) were adopted into the GMA in 1995, therefore the existing CAO has not met the standards of RCW 36.70A.172.

While the above analysis of GMA requirements concerning the Kittitas County CAO is complex, it appears that Kittitas County is GMA non-compliant with regards to its CAO review by almost 2 years. If in fact the county meets the extension requirements of RCW 36.70A.130 (5)(b) , the CAO update will be due in December 2010, a little over a year. An e-mail inquiry with the State Department of Community Trade and Economic Development (CTED) indicated that Kittitas County has no official requests for a time

extension for CAO review and update. If CAO non-compliance can be determined, any future GMA actions can be petitioned to the EWGMHB for a formal finding of non-compliance (RCW 36.70A.280). RCW 36.70A.130(7) states that only those counties complying with the schedules, demonstrating substantial progress towards compliance for development regulations that protect critical areas, or complying with the extension provisions may receive state funds from the Public Works Assistance Account (RCW 43.155.050) and the Water Quality Account (RCW 70.146.030). The GMA (RCW 36.70A.130(7)) states that counties which are fewer than twelve months out of compliance with the schedules for development regulations that protect critical areas and are making substantial progress towards compliance are eligible for state grants for CAO review and evaluation. If the 2-year Kittitas County CAO non-compliance can be confirmed, Kittitas County risks losing substantial amounts of state funding and may not even be eligible for state grants to review and evaluate the CAO. Therefore, it appears that a CAO review and evaluation should be the number one priority for Kittitas County. The information derived from the BAS review will be necessary in determining appropriate land uses in the Teanaway Basin, and countywide.

Floodplain Map Inaccuracy

The Flood Insurance Rate Maps (FIRM) for Kittitas County were adopted in 1980, based on data from the 1970's and have never been updated. All FIRM floodplains within the Teanaway River Basin are Zone A, which have no base flood elevations associated. Rivers and their floodplains are naturally dynamic and become even more unpredictable when artificially altered. Almost every year there are numerous applications in Kittitas County for landowners to construct or repair revetments abutting the Teanaway River. An analysis of aerial photos, topographic data, historic data, soils data and anecdotal information indicate that flooding occurs well outside of the FIRM designated floodplains. The Washington Department of Transportation is currently drafting a report on chronic flooding issues associated with the Highway 970 Bridge over the Teanaway River. It is rumored that County is contemplating forming a Flood Control Zone District to address chronic flooding issues countywide, but until such a district is formed and new flood maps and plans are adopted, development in historic floodplains is unwise. The information derived from the CAO BAS review (frequently flooded areas constitute a critical area) and review and revision of the comprehensive flood hazard management plan and development of updated FIRM maps will be necessary in determining appropriate land uses in the Teanaway Basin, and countywide.

Pending Shoreline Master Program Update

The Shoreline Management Act (SMA) (RCW 90.58.080 (1)(v)) requires Kittitas County to update its Shoreline Master Program (SMP) for regulation of uses of the shorelines of the state consistent with the required elements of the SMA guidelines on or before December 1, 2013. While 2013 may seem like a long time, the 2003 shoreline guidelines (WAC 173-26) are extremely detailed in the inventory and analysis required when updating an SMP. Kittitas County has approximately 630 miles of shoreline streams and 1730 acres of shoreline lakes. The process of conducting just the inventory appears to be substantial. As an example, Whatcom County began its SMP update in April 2005, and just received approved by the state in August of this year; Yakima County began its SMP

update in 2003, and has yet to receive approval from the state. The SMA guidelines also require protection measures for critical areas; therefore, updated CAO standards will be required for the SMP update.

Fisheries

The Teanaway River has documented populations of Spring Chinook, Coho, Summer Steelhead and Bull Trout. Both Steelhead and Bull Trout are listed as Threatened under the Endangered Species Act (ESA).

Bull Trout in the Teanaway Basin have been classified as depressed and declining with a risk of extirpation by the U.S. Fish and Wildlife Service. Recent spawning support that inference that the Teanaway River has one of, if not the most, imperiled stocks of Bull Trout in the entire Yakima River Watershed. In addition, recent data indicates that the Teanaway Bull Trout stocks are likely the most genetically distinct of all stocks in the Yakima River Watershed; therefore, impacts to these stocks are more detrimental than others within the basin. Bull Trout in the Yakima River Basin are fragmented and isolated by a variety of factors, and the Teanaway River is essential for recovery.

Yakima River steelhead, a component of the Middle Columbia River steelhead Distinct Population Segment (DPS), were first listed as threatened on March 25, 1999 (Federal Register 64:14517-14528) and more recently reaffirmed as threatened (Federal Register 71:834-862). Causes of decline include migration blocks at numerous dams and reservoirs and loss of suitable spawning and rearing habitat due to water diversion, stream channelization, grazing, logging, mining, and pollution (Federal Register 64:14517-14528; Haring 2001). Steelhead within the Yakima River Basin display an array of life history strategies, traits, and genetic variation. Steelhead trout were widely distributed in the Yakima basin prior to 1850 and were known to utilize virtually all of the major streams and tributaries for some aspect of their life history; including the Teanaway River. The current steelhead range in the Yakima Subbasin is slightly smaller than under historic conditions. However, the range of anadromous steelhead is significantly reduced from 1850. Fewer tributaries are utilized for spawning and rearing than were historically. Sections of many streams thought to formerly support spawning and rearing are now utilized only as migration corridors due to habitat degradation. At least four steelhead populations exist in the Yakima watershed including the upper Yakima River, the Naches River, and Satus and Toppenish Creeks. Of these, the upper Yakima population, which includes the Teanaway River, is the smallest (4-5% of Yakima run) and appears significantly reduced from historic levels. According to recent data, current Steelhead stock abundance in the Yakima River basin is believed to be less than 5 percent of its historical level in most years and as low as 1 percent in some years.

Recovery for fisheries, including threatened Bull Trout and Steelhead, requires reducing threats to the long-term persistence of populations and their habitats, ensuring the security of multiple interacting populations, and providing habitat conditions and access to them that allow for the expression of various life-history forms.

Any plans developed must take sensitive fisheries and their habitat into consideration and develop strategies to improve aquatic, riparian and floodplain habitat. The information derived from the BAS review for the CAO update will establish appropriate protection measures in the Teanaway Basin, and countywide.

Priority Habitats and Species

The Washington Department of Fish and Wildlife publishes a Priority Habitats and Species (PHS) list. The PHS list is a catalog of habitats and species considered to be priorities for conservation and management. Priority species require protective measures for their survival due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority species include State Endangered, Threatened, Sensitive, and Candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.

Priority habitats are habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs).

Numerous individuals and groups use the PHS List as well as associated PHS products (e.g., PHS Data) to inform conservation-related activities. Typical users include cities and counties that use PHS to fulfill planning requirements under the Growth Management Act and Shoreline Management Act, non-profit organizations such as land trusts that use PHS information to prioritize habitat protection, community groups working on local biodiversity planning initiatives, as well as other state and federal government agencies.

A cursory review of the PHS list indicates a number of species, including threatened, endangered and sensitive species, and habitats may be located in the Teanaway Basin. The information derived from the BAS review for the CAO update will confirm or deny species and habitat location in the Teanaway Basin, and countywide.

Water Quality

The Teanaway River is listed as impaired for temperature under Washington State's Water Quality Assessment (303d) list. Any plans developed need to take impaired water quality into consideration and develop strategies to improve water quality.

c: file