

YAKIMA COUNTY PLANNING COMMISSION
November 9, 2022
HEARING EXHIBIT LIST

File Nos.: LRN2022-00002/SEP2022-00004 – Granite

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Noelle Madera

From: Noelle Madera
Sent: Monday, November 7, 2022 3:14 PM
To: Bill Douglas; Long Range Planning
Subject: RE:

Bill,

Thank you for your comment. I will forward it to the Planning Commission.

Noelle Madera

From: Bill Douglas <bdouglas@westernmaterials.com>
Sent: Thursday, November 3, 2022 4:11 PM
To: Long Range Planning <longrangeplanning@co.yakima.wa.us>
Subject:

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

To Planning Dept.

I'm just writing to support Granite Construction Company and Rowley Trust Comprehensive Plan Map Amendment to amend the comprehensive plan's Mineral Resource site.

Granite has been taking the rock of the hillside for several years, and this makes so much more sense than digging ponds along the Yakima River. It is a very good way to provide needed gravel to the Yakima Valley. Hopefully, this project can be given approval, so that Granite can continue to operate on this site. We lease to Granite across the highway and they have been very good tenants and are environmentally conscious.

Best Regards,
Bill Douglas

EXHIBIT NO. 1
DATE: 11/03/2022
FILE NO. LEN22-002

Selah-Moxee Irrigation District
113 East Moxee Avenue
P.O. Box 166
Moxee, WA 98936
(509) 469-0449 FAX (509) 469-0489

November 7, 2022

Ms. Noelle Madera, Planning Section Manager
Yakima County Planning Division
128 North Second Street
Fourth Floor Courthouse
Yakima, WA 98901

Re: *Comprehensive Plan Map Amendment – Mineral Resource Overlay*
Case Nos. LRN2022-00002/SEP2022-00004
Granite Northwest, Inc.; Granite Construction Company; Rowley Family Trust

Dear Ms. Madera:

On behalf of Selah-Moxee Irrigation District (“SMID”), this letter is to provide comments regarding the above-referenced Comp Plan Amendment to reconfigure the Mineral Resource Overlay (“MRO”) associated with proponents’ East Selah Quarry mining operations (the “Quarry”). Collectively, the Amendment proponents are referred to herein as “Granite.”

SMID delivers irrigation water to 7,000+ acres within East Selah, Terrace Heights, and Moxee, primarily via its main canal, which begins in East Selah and extends through a 9,600’ tunnel under the Yakima Ridge to SMID’s East Valley service areas. The subject Quarry is located near the East Selah tunnel entrance, meaning that Quarry operations – and, specifically, blasting – can affect irrigation water delivery infrastructure and operations.

In 2017, SMID challenged a County-issued SEPA threshold determination and conditional use permit, allowing expansion of Quarry operations near the SMID tunnel, which, in SMID’s view, threatened the continuing integrity and function of the irrigation canal. Eventually, SMID and Granite entered into a settlement agreement, by which SMID terminated its administrative and judicial appeals of the SEPA

EXHIBIT NO. 2
DATE: 11/07/2022
FILE NO. LRN 22-002

and CUP approvals in exchange for specified Granite undertakings, including advance notice concerning blasting events, installation of blast monitoring equipment, sharing of seismic data with SMID, and consultation concerning the cause of and allocation of responsibility for tunnel damage occurring during or following blasting operations (the “2017 Settlement Agreement”).

Regarding the currently proposed Comp Plan Amendment:

SMID has no *per se* objection to the proposed reconfiguration of the Quarry MRO. In our experience during the past several years, commonsense safeguards for canal and tunnel operations such as those included in the 2017 Settlement Agreement have effectively reduced blasting risks and provided a framework for fairly apportioning responsibility for potential Quarry-related damage to the East Selah tunnel and irrigation water deliveries. For that reason, SMID expects future conditional use permits for Quarry operations within a reconfigured MRO will continue to be governed by the 2017 Settlement Agreement. Provided Granite is amenable to extending the parties’ rights and duties under the 2017 Settlement Agreement to govern future, new or amended conditional use permits, SMID is satisfied that MRO reconfiguration as proposed under the subject Amendment is compatible with the needs of SMID and its irrigation water customers.

We ask that these comments be included in the Planning Commission’s consideration of the proposed Amendment during its November 9, 2022, Public Hearing. In the meantime, please contact me if there are any questions regarding SMID’s comments under this letter at 509-469-0449 or by email at smidistrict@qwestoffice.net.

Sincerely,



Nathan Draper, Secretary/Manager
Selah-Moxee Irrigation District

Sent VIA EMAIL <longrangeplanning@co.yakima.wa.us> AND REGULAR U.S. MAIL

Site Maps and Review of Application

Case SEP22-004

Area 2 is of concern because of distance 700 ft. from 191305-23402 where occupied.

Area 2 is only about 2000 ft. mile from the aqueduct and if superimposed blast impulse risks unknown. Area 1 is about half mile from our property 111306-44404, since we are looking at apartment buildings and businesses (through our property on Buds Place) and would like to understand the potential noise or vibration effects due to blasting at distance appears to be 0.5 mi. to 1 mi .depending on which Area of the blast.

Worst case analysis of the (repetitive) explosive impulse forces envisioned or planned, is requested at least 3 locations shown on following slides, and should be possible by third party (test and measure blast received impulses to ascertain what explosive shock waveforms to expect both air pressure, and through the earth for a given explosive charge energy and concentration). This is to avoid potential injury or harm after examining objective test data and comparison with known standards for safe exposure for Stakeholders (humans, animals, structures).

Worst case potential cracking of the aquaduct or leaching into the farmlands on other side of the mesa.

Simulation rather than measurement worst case from Area 2 to occupied parcel 191305-23402 may be used to determine the maximum vibration impulse expected due to the controlled explosion.

Not to exceed limits for number of explosions and energy to be defined within each proposed area.
Maximum quantity and type of explosive used and stored within each area safety data to be disclosed.
Safety plan for explosive storage and transfer within each area to be reviewed.
The below Redlined Review of the Application to be addressed prior to its next Review.

EXHIBIT NO. 3
DATE: 11/07/2022
FILE NO. URN 22-002

Adam, Monica and Andrew Griffin
Plat Owners191306-44404

Blasting Areas to Evaluate



120 North Second Street • Fourth Floor, Courthouse • Yakima, Washington 98901
(509) 574-2300 • 1-800-577-7334 • FAX (509) 574-2301 • www.co.yakima.wa.us

LISA H FREUND - Director

Public Services

DATE: October 26, 2022

TO: Granite Northwest, Inc., Granite Construction Company, Rowley Family Trust, James Essig, Adjacent Property Owners (APOs), and Interested Agencies

FROM: Noelle Madena, Planning Section Manager, Yakima County Planning Division

SUBJ: Notice of Planning Commission Public Hearing
Comprehensive Plan Map Amendment – adding/removing/reconfiguring Mineral Resource Overlay (MRO)
Case Numbers: LRN2022-00002/SEP2022-00004
Applicant(s): James Essig on behalf of Granite Northwest, Inc. and Granite Construction Company and Susan Rowley on behalf of the Rowley Family Trust

NOTICE IS HEREBY GIVEN that the Yakima County Public Services Planning Division has received an application for the 2022 Biennial Comprehensive Plan Map Amendment Cycle to amend the Mineral Resource Sites map in the Yakima County Comprehensive Plan (*Horizon 2040*) and concurrent rezones. The Yakima County Planning Commission will conduct an open record public hearing on this proposal as described below. Interested persons are invited to testify and/or provide written comments.

ENVIRONMENTAL REVIEW

This proposal is subject to environmental review. The Yakima County Planning Division is lead agency for this proposal under the State Environmental Policy Act (SEPA). The environmental checklist and other information on file with the Planning Division are available to the public as described below. Comments on the proposal will be used to prepare an environmental threshold determination, which will then be issued for additional comments. Copies of the staff report, environmental checklist, and application materials can be obtained online at <https://www.yakimacounty.us/2603/Biennial- Amendments> under the case number or upon request.

NOTICE OF PUBLIC HEARING

An Open Record Public Hearing is scheduled before the Yakima County Planning Commission on Wednesday, November 9, 2022, at 6:00 pm to consider the hearing item described below. The agenda and other meeting information are available at <https://www.yakimacounty.us/923/Planning-Commission>. The hearing will be conducted in-person only at the **First Street Conference Room, 223 N. First Street, Yakima, WA 98901**.

PUBLIC COMMENTS AND ADDITIONAL INFORMATION

The public is invited to testify at the hearing on this proposal. Written comments may be submitted to the Planning Division prior to the hearing date or provided at the hearing. Email your comments to longangeli@yakima.wa.us or mail them to Yakima County Planning Division, 128 N. 2nd Street, 4th Floor Courthouse, Yakima, WA 98901. Be sure to include your mailing address and reference the above case numbers in your correspondence. Anyone who testifies or submits written comments will become a case number in your correspondence.

Yakima County enforces full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For further information on a meeting and your need special accommodations, please call us at (509) 574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll-free relay service 1-800-833-4358 and ask the operator to dial 509-574-2300.

party of record and will be notified of any future hearings and decisions on this application.

DESCRIPTION OF THE PROPOSAL

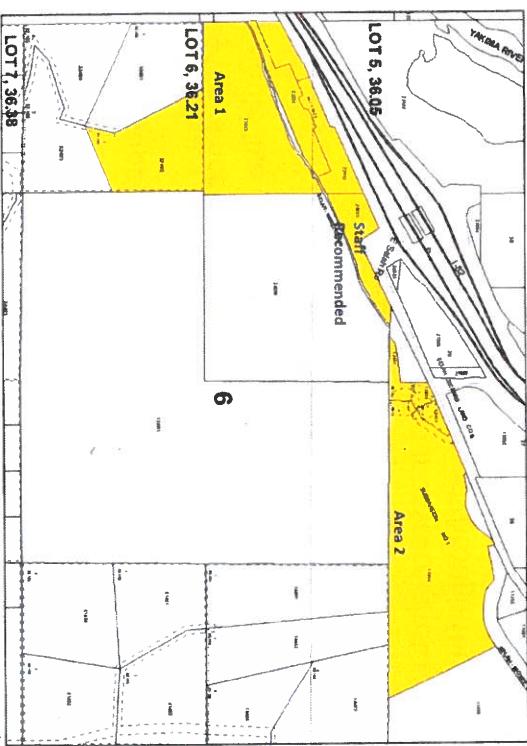
Case Numbers: LRN2022-00002/SEP2022-00004 – Granite Construction Company, and Rowley Family Trust Comprehensive Plan Map Amendment – This proposal would amend the comprehensive plan's Mineral Resource Sites map by changing the Mineral Resource Overlay (MRO), with associated rezones, as outlined below:

Area 1: 191306-22402, 191306-23002, 191306-23003, and 191306-23004
Reconfigure the MRO to keep the eastern portion of the properties only. Add the MRO to the eastern portion of parcel 191306-32402. Rezone all areas within the MRO from Remote/Extremely Limited Development Potential (RELDP) to Mining (MIN).

Staff Recommended: 191306-24003
Include this parcel in the MRO designation and rezone from Rural-10/5 (R-10/5) to MIN.

Area 2: 191306-12404, 191306-12403, 191306-12402, and 191306-12401
Remove these parcels from the MRO and rezone from MIN to R-10/5.

Copies of the application, staff report, and additional information are available at <https://www.yakimacounty.us/2603/Biennial- Amendments> under the case number or may be obtained upon request. If you have any questions, please contact Noelle Madena, Planning Section Manager, at noelle.madena@co.yakima.wa.us or 509-574-2300.



Yakima County enforces full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For further information on a meeting and your need special accommodations, please call us at (509) 574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll-free relay service 1-800-833-4358 and ask the operator to dial 509-574-2300.

Adam, Monica and Andrew Griffin

Plat Owners 191306-44404

Potential Blasting ~700ft From occupied Area 2

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Search By: **Parcel Number** **Parcel #:**

Enter a complete or partial PARCEL NUMBER. Parcel Numbers must be at least 8 characters. Click the Search button to continue.

Search

Map Scale: 1 inch = 1000 ft.

MapSize: **Small (800x600)**

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Esting(N) | Nothing(N) | Longitude(E), Latitude(N)

Click Map to: Get Information

One Inch = 1000 Feet

Feet 500 1000 1500

Map Report

Maps brought to you by:

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www.vtgco.com
(509) 248-4442



Aquaduct at ~2000ft From Area2

This may be addressed by consulting the Appendix

← → ⌂ ▲ Not secure | yakimap.com/servlet/com.esri.esrimap.Esrimap?name=YakGISH&Cmd=PNE&Left=164070

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NORTH

FAQ | Help | Legend | Search | Tools | Overview

Search By: Parcel #:

Enter a complete or partial PARCEL NUMBER. Parcel Numbers must be at least 8 characters. Click the Search button to continue.

Search

MapScale: 1 inch = 600 ft.

Overlays: 2017 Photos FEMA Critical Areas Contours Utilities

MapSize:

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Easting(ft) | Northing(ft) | | | | |

Longitude(E) | Latitude(N) | | | | | |

Map | | Report

Red annotations on the map include a large red arrow pointing from the word 'Aquaduct' to a specific location on the map, and a red 'L' shaped line drawn across the map area, spanning approximately 2000 feet.

191306-44404 at ~0.5-1mi. From_Areas 1,2&3

The concern here is to identify early-on, any effects on planned apartment and businesses to be built along the road that goes through our property 191306-44404 (Buds Pl. and Adam's Ave.)



Review Application Case SEP22-004

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

The purpose of this amendment and rezone is to facilitate a future boundary line adjustment that will reconfigure parcel boundaries to match geographic features, while applying a zoning designation that will conform with existing land use activities.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

N/A, the purpose of this project is to clean up some zoning and parcel lines for the existing Rowley Quarry operation.

GraniteConstructionApplication_Yakima_19130... 3 / 15 - 172% + ⌂ ⌂

size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The purpose and long-term strategy of the East Selah Mineral Lands Amendment and Rezone project is to protect cultural resources, provide permanent slope stability, and enhance economic viability of the existing Rowley Quarry in Yakima County. The project will facilitate a future boundary line adjustment that will reconfigure parcel boundaries to match geographic features and optimize use of the active quarry while supporting natural resource industries and meeting long-term preservation objectives. The first step in this process is to establish the appropriate and preferred zoning and comprehensive plan designations for the purposes stated above. Upon approval, the applicant will move forward with the execution of boundary line adjustment to reconfigure parcel shapes and sizes to align with geographic features and long-term sustainable land use practices.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any

Review Application Case SEP22-004

3. Water

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Yes here is a man-made drainage ditch with a seasonal flow that lies immediately north of the quarry site and south of Interstate 82 with a culvert that goes under the Freeway and ultimately flows into the Yakima River.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

No work is proposed at this time, as this is a non-project application.

21. a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.

Rock quarry operations typically use highly controlled blasting to cut basalt away from the hillside to facilitate mining and processing of aggregates. This is only applicable to Parcel B and Group C Parcels of the proposal.

1) Describe any known or possible contamination at the site from present or past uses.

None known.

IS C OR B = A RISK?

Review Application Case SEP22-004

5) Proposed measures to reduce or control environmental health hazards, if any:

Blasting is performed by a professional contractor on a small scale. A formal blasting notification with date and time is sent out prior to any blasts, per the current operating procedure.

Page 7 of 14

. 74

Mr. T. E. S.

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Noise will not affect the proposed area. Existing traffic noise from the interstate currently exists.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)?

Indicate what hours noise would come from the site.

No change from the existing operations is proposed. Noise from the existing mine operations but ~~jet truck traffic, road construction, blasting, earth moving, and materials handling~~ The added acreage will not increase the intensity of current noise levels in the short run. ~~As mining progresses, future operations will be set back further from local residents and the factory, which will reduce official noise levels in the long run.~~ Typical operating hours are 8:00 a.m.-3:30 p.m. Monday through Friday. ~~Occupational high noise exposure will continue when required by specific construction projects.~~

and levels of noise would be created by or associated with the project on a long-term basis (for example: traffic, construction, operation, other)?

Our noise would come from the site.

from what to?

whom?

?

?

— Drawing

Review Application Case SEP22-004

g. Land and shoreline use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

Mining at the Rowley Quarry was initiated in the late 1950's and was a source of aggregate materials during the construction of Interstate 82. The site has provided construction materials to projects in Yakima County for over 50 years. The mine site is currently permitted with Yakima County and Washington Department of Natural Resources. The adjacent properties include residential structures and a commercial fruit stand which has been owned and operated by the Rowley Family for over 70 years.

dist. where influence

k. Proposed measures to avoid or reduce displacement impacts, if any:

N/A.

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

The purpose and long-term strategy of the project is to protect cultural resources, provide permanent slope stability, and enhance economic viability of the existing Rowley Quarry.

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

No measures proposed.

Where?
on map?

Review Application Case SEP22-004

c. Proposed measures to reduce or control aesthetic impacts, if any:

The sequencing of mining operations and ongoing reclamation activities.

11. Light and glare

? w.I.

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

STAFF



d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

One of the long-term goals of this project is to implement measures to avoid, mitigate, and compensate for potential loss, changes to, and disturbance to resources.

14. Transportation

Plan? Risk
Mit?
KNEA?

Review Application Case SEP22-004

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

This proposal would not cause any increases in pollution to water, air or land nor would it increase noise. Two purposes and long-term strategy of the East Sooth Mineral Lands Amendment and Parcels project is to ~~protect~~ ~~control~~ ~~relocate~~ provide permanent hope stability, and enhance economic stability of the existing Poverty County while continuing to provide long-term mineral resources to transportation infrastructure and the development projects throughout Yakima County. This proposal will clean up zoning nonconformities to better map the subject parcels according to the GMA.

—?
1? **BLAST** ?
IMPULSIVE FMEN—**STAKEHOLDERS**



Aggregate may be extracted from parcels B and Group C parcels at bonus point in the future due to the 2018 change to mining and revision of the surface mining and reclamation plan to be reviewed by the Washington Department of Natural Resources.

Proposed measures to protect or conserve energy and natural resources are:

This proposal will remove a Mineral Resource Overlay and Mining zone designation on Group A Parcels and apply Rural 10/5 zoning which will preclude them from future mining activities.

—
IS THAT IN AREA 1, 2 or 3?

A How would the mineral be likely to use or affect environmentally sensitive areas or areas

Review Application Case SEP22-004

This proposal will remove a Mineral Resource Overlay and Mining zone designation on Group A Parcels and apply Rural 10/5 zoning which will preclude them from future mining activities.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

~~This proposal will not effect sensitive areas~~

113

proposed measures to protect such resources or to avoid or reduce impacts are:

Proposed measures to protect such resources or to avoid or reduce impacts are:

Successful implementation of this proposal will eliminate a split zoned parcel, remove the Mineral Resource Overlay, and protect cultural resources.

1. *Phytolacca* L. (1753)

Mineral Resources Overlay, and protect cultural resources.
K
which
and how
specifically ?

Proposed measures to protect such resources or to avoid or reduce impacts are:

Successful implementation of this proposal will eliminate a split zoned parcel, remove the Mineral Resources Overlay and protect Cultural resources.

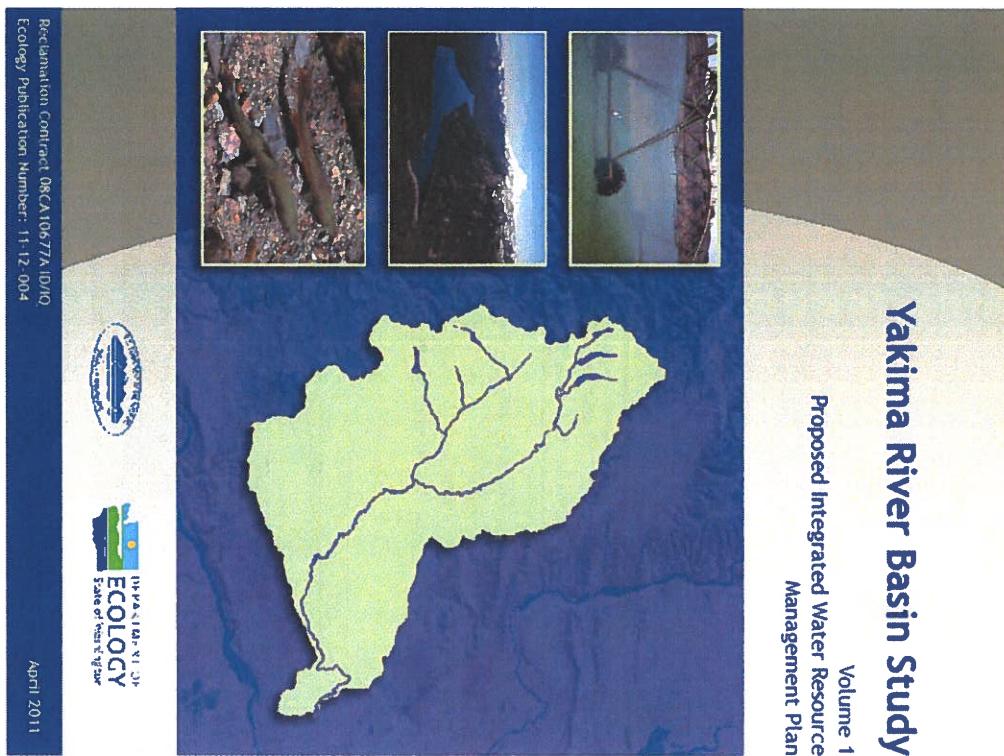
Review Application Case SEP22-004

By signing this form you are certifying that the above information is attached and accurate.

Landowner/Representative Signature: Susan Rowley Date: 1-27-2022

APPENDIX

Studies (click below each to open full documents)



Engineering Geology in Washington, Volume 1
Washington Division of Geology and Earth Resources Bulletin 73

Yakima River Basin Study

Proposed Integrated Water Resource Management Plan Volume 1

DANN N. MACLEBY
U.S. Bureau of Reclamation

KUZA DIVISION BAHU

PROJECT DESCRIPTION

alignments reflect a strong *ret₁* reworking pattern across the Yakima old system. Relatively steep, dredgeable gorges enter the master stream from the east and west. Alluvium of various compositions and thicknesses is present in the side gorges and occurs as terraces over older stream beds. The Yakima River shows a few, a few to many tens of feet thick, is present in many places along the main channel and in local, quaternary alluvium along the side drainage ways. Landslides, mostly in the overburden materials, are also present in places in the Yakima River canyon (Campbell, 1975; Swanson et al., 1979).

In the area of the dam, the Nakura Fossi Belt is exposed as the Seaf. Burn limestone, northwards dipping, double-plunging, symmetrical anticline about 10 km long (Figure 1). Exposed in the anticline and forming the "roundabout" of the dam is an unnamed basin floor (now no. 5) of the Grande Ronde Basal (Campbell, 1975). The basin crops out on the left bank, as well as near vertical cliff face, the basalts as in the right-hand face, is covered by a silt deposit.

In 1935-36, the USBR replaced the fish passage facilities on the right tributary with a multiple tent net facility, where the screen was the fish forebay area of the dam (Figure 2), where there was room to accommodate it. The fish screen structure, the largest fish passage structure on the Columbia River, contains 27 drum screens, each 7 ft in diameter and 12 ft long. Five 30-in. diameter pipes with capacities of 300/s are provided to return the fish that encounter the screens to the river. As such, the fish screens are the fish bypass structure, the fish return pipe, the fish counting facility, and the main fish passage screens (USBR, 1956). An additional juvenile fish ladder was built on the left tributary in 1987.

General

KOZA University Dam is within the Yakima Fold Belt

Washington. The belt is part of the thick pre-Miocene flows of the Yakima Basin Subgroup of the Moclum-Columbia River Basalt Group. The Yakima Basalt is further divided into the Lower Moclum Grande Ronde and Basalt and Middle Nisqually Wanapum Basalt (Figure 3).

hæd (USBR, 1985b).

GEOLIC ASPECTS ON SITING AND DESIGN

The dam site is located in a relatively narrow part of the Yakima River canyon where a prominent outcrop of basalt is present on the left riverbank. This site was also topographically favorable for the elevation of the classical headworks to serve, by gravity, the intended

Reclamation Contract 08CA10677A ID/IQ
Ecology Publication Number: 11-12-004

April 2011



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

**Established by the
Treaty of June 9, 1855**

November 8, 2022

Sent via Electronic Mail

Yakima County Planning Commission
c/o Thomas Carroll
128 N. 2nd Street
Yakima, WA 98901

Re: COMPREHENSIVE PLAN MAP AMENDMENT CASE NO. LRN2022-00002/SEP2022-00004

Dear Yakima County Planning Commission,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) to comment on Comprehensive Plan Map Amendment Case No. LRN2022-00002/SEP2022-00004 (“Amendment”). The Amendment seeks to rezone portions of Archaeological Site 45YA109 to (1) remove the mining zoning designation and mineral resources overlay from certain culturally sensitive areas, and (2) add the mining zoning designation and mineral resource overlay to other portions of the Archaeological Site. The Yakama Nation supports removing the mining zoning designation and mineral resources overlay from the entirety of Archaeological Site 45YA109, and therefore supports in part and objects in part to the proposed Amendment.

The proposed Amendment is part of a larger effort to expand mining operations within Archaeological Site 45YA109, which sits on the north side of the Yakima Ridge just east of the Selah Gap. Granite Northwest, Inc., Granite Construction Company, and the Rowley Family Trust (“Proponents”) previously applied to Yakima County for a conditional use permit to expand their mining operations in this area, which is the subject of active litigation. *See Confederated Tribes and Bands of the Yakama Nation v. Yakima County, et al.*, No. 17-2-01434-39 (Yakima Cty. Sup. Ct.); *Confederated Tribes and Bands of the Yakama Nation v. Yakima County, et al.*, No. 18-2-01517-39 (Yakima Cty. Sup. Ct.). Both cases are currently stayed to allow the Yakama Nation and Proponents to engage in settlement discussions, which are ongoing. Until such time as a settlement is reached or litigation on the Proponents’ conditional use permit concludes, the Yakama Nation opposes the current effort to allow increased mining within Archaeological Site 45YA109.

FACTUAL BACKGROUND

The Yakama Nation is a sovereign, federally recognized Native Nation pursuant to its inherent sovereignty and the rights reserved in the Treaty with the Yakamas of June 9, 1855. Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855, 12 Stat. 951 (“Treaty of 1855”). The Yakama Nation’s cultural resources are situated throughout our Treaty Territory, including territories beyond the exterior boundaries of the Yakama Reservation. These resources, including our ancestors’ burial sites and remains at

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

EXHIBIT NO. 4

DATE: 11/08/2022

FILE NO. WEN22-002

Archaeological Site 45YA109, are the foundation for the Yakama Nation's culture, heritage, and religion, and the Yakama People's spiritual relationship to our land and ancestors. The Yakama Nation has never ceded rights to our ancestors' burial grounds or to any of our cultural resources, which we retain as inherent sovereign rights to this day.

The confluence of the Yakima and Naches Rivers at the Selah Gap has been an important fishery and village site, known as *Wanapine*, since time immemorial. The talus slopes in and around *Wanapine* are well-documented burial sites for the Yakama People, both within the Yakama Nation's oral tradition and through the non-Indian archaeological record dating back more than 150 years. The entirety of the mining operation at issue sits within Archaeological Site 45YA109, as recorded by the Washington State Department of Archaeology and Historic Preservation.¹ The Site is associated with two other significant burial grounds in the immediate area: YA110 and YA610.²

PROCEDURAL HISTORY

Proponents' Amendment sits within the context of a years' long dispute between Proponents, Yakima County, and the Yakama Nation, which is the subject of two active lawsuits between those parties. Proponents have mined within Archaeological Site 45YA109 since at least 2008. In 2015, Proponents applied to Yakima County for a conditional use permit to expand their mining operation. The Washington State Department of Archaeology and Historic Preservation and the Yakama Nation both objected. In broad strokes, those objections focused on the lack of sufficient archaeological information, the lack of mandatory state archaeological permits, and the failures of the permit application under State land use, cultural resource, and environmental laws.

In 2017, Yakima County issued a conditional use permit with required mitigation measures for cultural resources within Archaeological Site 45YA109. The Yakama Nation appealed Yakima County's permitting decision to the Yakima County Hearing Examiner, who amended the mitigation measures to ensure the Proponents obtain archaeological excavation permits before mining within their expanded mining boundaries. The Yakama Nation appealed again to the Yakima County Board of County Commissioners, and ultimately to Yakima County Superior Court under two separate case numbers. Since 2017, the parties have actively litigated the legal sufficiency of Yakima County's permitting decision in proceedings that have reached the Washington State Supreme Court.

Confederated Tribes and Bands of the Yakama Nation v. Yakima County, et al., 195 Wn.2d

¹ Letter from Gretchen Kaehler, Assistant State Archaeologist, to Lynn Deitrick, Yakima County Planning Manager (Aug. 11, 2015) (on file with Yakima County Planning Division) (stating "The proposed mind [sic] expansion is completely encompassed by archaeological site 45YA109 . . ."); Email from Gretchen Kaehler, Assistant State Archaeologist, to Tommy Carroll, Yakima County Planning (Aug. 18, 2015) (on file with Yakima County Planning Division) (stating "The project area is within archaeological site 45YA109. The site boundaries have not changed. We have not agreed to any protective measures or buffers and are not sure how the [sic] anything would be buffered since the project area is encompassed by the archaeological site.").

² YAKAMA NATION CULTURAL RESOURCES PROGRAM, ARCHAEOLOGICAL SITE INVENTORY FORM: 45YA109 (2016) (on file with Washington State Department of Archaeology and Historic Preservation).

831 (2020). Both cases are currently stayed by the Yakima County Superior Court pending the outcome of active settlement discussions between the parties.

On January 27, 2022, Mr. James Essig of Granite Construction Co., submitted a General Application Form and SEPA Environmental Checklist to the Yakima County Planning Department to amend the Comprehensive Plan and rezone parcels within Archaeological Site 45YA109. The impacted parcels are identified by group as A, B, and C. Under the Amendment, Group A would be amended to remove the mining zoning designation and mineral resources overlay to protect cultural resources. Groups B and C would be amended to allow expanded mining within the Archaeological Site. The Yakima County Planning Commission is holding a hearing on the Proponents' Amendment on November 9, 2022, and is accepting comments up to the hearing. The Yakama Nation offers these comments in response to Proponents' Amendment.

AMENDMENT COMMENTS

The Yakama Nation opposes Proponents' Amendment to change both the mineral resources overlay and zoning designation for the Group B and C parcels to the extent that they support expanded mining operations within Archaeological Site 45YA109. The Amendment is inconsistent with applicable law, the Proponents' environmental checklist is deficient, and the Proponents have not acknowledged the nature of their mine as being sited entirely within Archaeological Site 45YA109.

1. Proponents' Amendment Is Inconsistent With State Law.

Mining within a recorded archaeological site and historic cemetery is inconsistent with the Growth Management Act, State Environmental Policy Act, and Yakima County Comprehensive Plan. These bodies of law acknowledge that governmental actions, like the proposed rezone here, must consider any significant impacts on the environment including cultural resources. RCW §§ 36.70A.020(10), 43.21C.030; Yakima County Horizon 2040 § 2.3.7. Mining and archaeological resource protection are inherently at odds. The Washington State Legislature has enacted entire chapters of the Revised Code of Washington aimed at preventing activities like mining in such culturally sensitive areas. RCW Chapter 27.44 prohibits disturbance of Indian graves. RCW Chapter 68.60 prohibits disturbance of historic cemeteries. RCW Chapter 27.53 regulates the excavation of archaeological sites by requiring trained professionals to obtain permits before ground disturbance occurs.

The Amendment takes this State policy into account by removing mining designations from certain critically sensitive cultural areas, which should be applauded. However, those areas that are being moved into mining are within the immediate vicinity of a significant complex of talus pit burials. Yakima County should deny the Amendment as inconsistent with State law until a resolution on cultural resource protection is reached between the Proponent, the Yakama Nation, and the Washington State Department of Archaeology and Historic Preservation.

2. Proponents' Amendment Is Not Supported By A Sufficient Environmental Checklist.

Yakima County should also require the Proponents to submit an environmental checklist with sufficient information for the County to consider the environmental impacts of the proposal. Under SEPA, Yakima County is obligated as lead agency to solicit and consider sufficient information about the impacts of proposed projects on the environment, including effects on cultural and archaeological resources.³ Specifically, when making a SEPA threshold determination, a SEPA responsible agency must show that its decision was based on information sufficient to evaluate a proposal's environmental impact, and that it considered the relevant environmental factors.⁴ SEPA expressly protects cultural and archaeological resources, and a SEPA responsible agency must consider and address a project's potential impact on them⁵ – a task which first requires that sufficient information be obtained by the agency, typically via the SEPA Environmental Checklist. Critically, Section 13 of the Environmental Checklist, entitled “Historic and cultural preservation,” requires project proponents to identify any evidence of Indian cultural resources located within a proposed project area.⁶ The Proponents' current environmental checklist does not meet that bar.

Proponents' environmental checklist identifies that archaeological resources are present, identifies some—but not all—of the archaeological studies that have been completed for the site, and notes that Proponents are in active consultation with the Yakama Nation and the Department of Archaeology and Historic Preservation. Proponents do not disclose or acknowledge that the proposed action will take place entirely within the boundaries of a recorded archaeological site. Proponents do not disclose that significant work has been completed by the Yakama Nation and recorded by the Washington Department of Archaeology and Historic Preservation regarding the site, including cemetery layers identifying burial grounds in the area. While Proponents are in active settlement discussions with the Yakama Nation, it is not properly characterized as consultation. The parties are in a litigation posture and communicating through settlement talks or the courts. Proponents' environmental checklist is incomplete, and therefore misleading about the environmental conditions at the subject properties.

³ Yakima County Code § 16.04.010 (acknowledging and adopting SEPA rules, WAC 197-11, by reference).

⁴ WAC 197-11-335; *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 423, 225 P.3d 448 (2010), (citing RCW 43.21C.030(2)(c)); *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

⁵ RCW 41.21C.020(2) (the responsible agency has the responsibility to use “all practicable means . . . to . . . preserve important historic, cultural, and natural aspects of . . . national heritage . . . ”).

⁶ SEPA Environmental Checklist § 13(b), codified at WAC 197-11-960 (“Are there any landmarks, features, or other evidence of Indian or historic use or occupation? . . . Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.”)

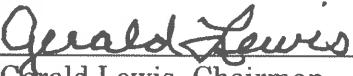
3. Proponents' Refusal To Acknowledge That Their Mine Sits Entirely Within Archaeological Site 45YA109 Is Concerning.

Proponents have mined an archaeological site for years without the required state archaeological excavation and removal permits, which has resulted in at least one enforcement action by the Washington State Department of Archaeology and Historic Preservation. Yakima County conditioned the Proponents' proposed expanded mining operations on first receiving an archaeological excavation and removal permit, which Proponents still have not obtained. Proponents acknowledge the existence of archaeological resources in and around their permitted mine, but refuse to acknowledge the Washington State Department of Archaeology and Historic Preservation's recording of Archaeological Site 45YA109 encompassing and including their entire mine footprint. Without further assurances, or resolution of the outstanding litigation between the parties, the Yakama Nation is concerned that the Proponents are not willing to acknowledge the Archaeological Site that they are legally required to protect. For that reason, the Yakama Nation opposes the current effort to expand mining within Archaeological Site 45YA109.

CONCLUSION

The Yakama Nation looks forward to continuing productive conversations with the Proponents to address cultural resource protections within Archaeological Site 45YA109, and resolve the active litigation between the parties. Until such time as the litigation is resolved through settlement negotiations or otherwise, the Yakama Nation opposes any changes in zoning or the mineral resources overlay that would allow for expanded mining within Archaeological Site 45YA109.

Sincerely,



Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

Noelle Madera

From: Kim Thompson <kim@signworksyakima.com>
Sent: Wednesday, November 9, 2022 10:43 AM
To: Long Range Planning
Subject: case # LRN2022-00002/SEP2022-00004

CAUTION : This email originated from outside of this organization. Please exercise caution with links and attachments.

Concerning the Plan Map Amendment Rezone:

I live on East Selah Road. I am concerned about the use of the rezone land. It comes closer to residential area, closer to the tunnel that carries the irrigation water, air quality, water quality of wells in the area, natural environment, traffic .(more heavy trucks and littered rocks on the road, blasting.

Pollution of air and water. The eyesore of our hills being torn down is horrible. For what it is worth I am against this extension of the Granite Northwest expansion.

Thank you

Kim Thompson
941 East Selah Road
Yakima, Wa 98901
509 248-8235

Kim Thompson
Sign Works
915 W Yakima Ave
Yakima, Wa 98902

509 248-8235

EXHIBIT NO. 5
DATE: 11/09/2022
FILE NO. LRN22-002