



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

February 25, 2022

Kelly Bacon
Kittitas County
411 North Ruby Street
Ellensburg, WA 98926

Subject: LP-22-00001 Suncadia Phase 2 Division 7

Dear Ms. Bacon,

Thank you for contacting the Yakama Nation Cultural Resource Program (CRP) regarding the above proposal. Under applicable federal and state law, this proposed development cannot move forward without proper consultation regarding cultural resource impacts. The County's reliance on previous development agreements to justify its decision to forego a full environmental impact analysis under the State Environmental Policy Act ("SEPA") ignores the project proponents' failure to abide by previously-agreed consultation obligations. Kittitas County and the project proponents must conduct full consultation with CRP regarding the project's potential cultural resource impacts before the project moves forward.

The project is located within the Ceded Lands of the Yakama Nation, the legal rights to which were established by the Treaty of 1855 (12 Stat. 951), between the Yakama Nation and the United States Government. The Treaty set forth that the Yakama Nation shall retain the rights to resources upon these lands and, therefore, it is with the assistance and backing of the United States Federal Government that Yakama Nation claims authority to protect traditional resources.

The project area is within the traditional territory of the *Pshwánapam* (Kittitas or Upper Yakama band). Precontact archaeological sites are protected under State Law RCW 27.53.060 which is indicated in the EIS Cultural Resources Section 3.10.4 and "are subject to regulatory protections and processes."

Precontact sites within the Parcels 11827, 16199, 951842, defined in the SEPA include 45KT1354 (lithic scatter and burial), 45KT1357, 45KT966, and 45KT2189. This requires permitting with the Department of Archaeology and Historic Preservation (DAHP) and consultation with CRP for site treatment measures. Any alteration or disturbances of these sites by the applicant constitutes "knowing and willing" and can be prosecuted under RCW 27.53.090.

This need for consultation is further supported in the DEIS (1999) and FEIS (2000), which clearly indicate a need to work with the Yakama Nation and DAHP to determine appropriate site-specific

mitigation. Secondary and cumulative impacts are also discussed and acknowledged to be potentially greater than anticipated in the comprehensive plan EIS (DEIS Appendix H. 1999). Further, these impacts potentially affect cultural resources and are subject to regulatory protections and processes under RCW 27.53.060. A development agreement attached to the SEPA link outlines specific mitigation procedures listed in the SEPA Checklist Question 13. These include C21, C22, and C23 (attached) these procedures further reinforce the need for consultation with Yakama Nation and the Department of Archaeology to determine if additional mitigation is required. However, the implementation of Division 7 has occurred thus far without this vital component of consultation with Yakama Nation and DAHP to discuss what is appropriate.

In this specific case, the proposed Division 7 has moved forward absent from this level of engagement and resolution of concerns with Yakama Nation and DAHP. Consultation is identified in the provided and referenced documents associated with this SEPA. Therefore, we specifically ask that the applicant, Kittitas County, Yakama Nation, and DAHP be included in a conference call, which specifically addresses these concerns as well as all potential impacts from the proposed project.

The cultural resource documents utilized for this development are over 20 years old and the owners of the resort have changed hands since this time. The documents referenced through the SEPA process contain procedural steps however; they do not provide how these procedural steps have been satisfied. The existing agreements do not appear to have been followed and the foundation of these agreements are comprised of dated material. For instance, when asked in the SEPA Checklist for Question 13d regarding proposed measures to avoid, minimize, or compensate for loss, the applicant provides "not applicable" in response.

Please contact me at casey_barney@yakama.com or staff archaeologist Noah Oliver at ext. 4726 or noah_oliver@yakama.com if you have any questions regarding the above.

Sincerely,



Casey Barney
Interim Cultural Resources Program Manager

CC: Sydney Hanson, Department of Archaeology and Historic Preservation
Lance Wollwage, Department of Archeology and Historic Preservation
Guy Tassa, Department of Archaeology and Historic Preservation
Shona Volckers, Yakama Nation Office of Legal Council
Jerry Meninick, Yakama Nation Director of Cultural Programs
Yakama Nation Cultural Committee

MPR Conditions of Approval

(Development Agreement attached in SEPA documents, Page 26)

Cultural Resources. The EIS discusses adverse impacts to cultural resources and identifies mitigation measures that should be implemented. Pursuant to Kittitas County SEPA Ordinance Section 15.04.200(d), Comprehensive Plan Policy GPO 2.196, Section 2.2(C) and Policy 2.38, and Shoreline Master Program goals, policies, use regulations and environment designations, the following mitigation measures will be required.

C-21 Mitigation measures available to ensure protection of all significant cultural resources on the MPR site, as identified in the EIS, and the traditional cultural property, include: (1) avoidance; (2) limited testing to determine the significance and extent of properties deemed potentially significant to the National Register of Historic Places; and (3) using approved cultural resources plan, the placement of a protective overburden may be placed on top of known significant properties creating an undisturbed barrier between the resource and development activity; and (4) excavation to recover significant cultural information prior to negatively impacting any National Register eligible properties. Avoidance of impacts to all previously identified significant cultural resources can be obtained by establishing a 150-foot buffer around known resource areas. If it is determined that avoidance of a resource area is not possible, proposed construction or landscape alteration that intrudes into the prescribed buffer area shall be conditioned on the applicant conducting archaeological subsurface testing. This testing will be completed prior to any disturbance to adequately document the extent and potential of the cultural resources for nomination to the National Register of Historic Places. The applicant shall consult with the Washington Office of Archaeology and Historic Preservation (OAHP) and the Yakama Nation to determine whether additional mitigation measures are necessary. The applicant shall notify Kittitas County of the results of such investigation and consultation.

C-22 Prior to any disturbance to known significant resources areas, as identified in the Draft and Final EIS Cultural Resources information, an archaeological permit must be requested from OAHP, State permission granted, and archaeological testing conducted to determine the significance and extent of the cultural resource. Necessary mitigation measures are determined after testing in consultation with the State OAHP and the Yakama Nation.

C-23 Prior to any land disturbing activities within identified cultural constraint areas steps will be taken to ensure the protection of all potentially significant buried cultural resources. These steps include: (1) a series of subsurface test probes shall be completed to ensure the identification and protection of all significant buried cultural resources; or (2) using an approved cultural resources plan, a protective overburden shall be placed on top of the cultural constraint area creating an undisturbed barrier between any potential buried cultural resources and proposed land disturbing activities. All cultural resources identified through such testing shall be protected as outlined in Conditions C-21 and C-22 above.

SEPA Checklist Question 13

13. Historic and cultural preservation [\[help\]](#)

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe. [\[help\]](#)

Please see Section 3.10 and Appendix H of the DEIS and Section 3.10 of the FEIS for documentation.

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. 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. [\[help\]](#)

Please see Section B.13.b of attachment.

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc. [\[help\]](#)

Measures outlined in the MPR Conditions of Approval, sections C-21 through C-23, would be implemented.

- 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. [\[help\]](#)

Not applicable.