

May 31, 2024

To: Utah Division of Water Resources  
Chuck Williamson  
P.G. Stream Alteration Specialist Utah DNR

Thank you for the opportunity to comment on the applications for Stream Alteration Permits 24-57-0015 and 24-57-0017.

Save Our Canyons submits comment discussing permitting criteria to demonstrate that the issuance of said permits would unnecessarily impact several criteria cited by the Division of Water Resources (DWR), would improperly exempt the Division from required joint review of permits with the United States Army Corps of Engineers (USACE), and may have allowed for improper segmentation of a permit application which was closed by DWR in March, 2023. In addition, included are comments from state and local agencies regarding the application for Stream Alteration Permit: 22-57-0005, which was closed in March, 2023, due to Tree Farm's failure to provide additional information.

*Evaluation of permitting criteria*

The following evaluation criteria cited by DWR would be affected by the issuance of stream alteration permits, specifically of Smith Creek in the project area:

- According to comments submitted by Salt Lake City Department of Public Utilities (SLCDPU) for an application for Stream Alteration Permit: 22-57-0005, dated March 2, 2022, Save Our Canyons reiterates the following comment:
  - This project is located in Parley's Canyon, through which water associated with SLC's Parley's water rights passes into Salt Lake Valley in order to satisfy exchange obligations of the City. To the extent that Tree Farms affects flows from Smith's Creek and other side channels, it may impact the flow of water in Parley's Creek. Tree Farms should be required to confirm that the stream alteration work would not affect the overall flow of water in Parley's Creek below the area of disturbance identified in the stream permits.

*Improper exemption from required joint review with USACE:*

DWR is required to jointly review stream alteration permits with USACE when proposed changes are over a certain threshold. According to Programmatic General Permit 10 (PGP 10) issued by USACE, "The discharge of dredged and/or fill material into streams is limited to no more than 300 linear feet below the ordinary high-water mark of a stream, including stream restoration projects."

Proposed stream alterations in permits 24-57-0015 and 24-57-0017 separately do not meet the threshold (300 LF) cited in PGP 10, with proposed alterations of 206 linear feet and 100 linear feet, respectively. Combined, the total affected stream for both permits is 306 linear feet, which would meet the threshold identified in PGP 10 for joint review with USACE.

As proposed stream alterations and culverts would be contiguous, and both occur on the same creek (Smith Creek), Save Our Canyons recommends that the two permits in question be reviewed together, and that USACE should be involved in the review. Permit approval should be conditioned upon approval from USACE.

#### *Improper Segmentation of a Permit Application*

In February 2022, a stream alteration permit for a similar project was submitted by Tree Farm LLC, applying for 278 feet of enclosure (Stream Alteration Permit: 22-57-0005). Save Our Canyons submitted comments on March 7, 2022, raising concerns that the application in question would cause unreasonable and unnecessary environmental impacts on the natural stream environment in accordance with Utah Code Ann. §73-3-29(a)(ii). That application was closed in March, 2023, for the following reason stated on the application: APPLICANT HAS FAILED TO RESPOND TO REQUESTS FOR ADDITIONAL INFORMATION. APPLICATION CONSIDERED WITHDRAWN. 3/15/23.

Although Stream Alteration Permit 22-57-0005 was for a different frontage road route and a different parking solution, it required all but 28 feet of the same section of Smith's Creek be put into a culvert as proposed in Stream Alteration Permits 24-57-0015 and 24-57-0017. Due to the similarities in all three applications, and previous concerns raised by Save Our Canyons for stream alteration permit applications within the same project area, improper segmentation of a permit application may have occurred.

#### *Recitation of Save Our Canyons comments to Stream Alteration Permit 22-57-0005*

Due to similarities in Stream Alteration Permits 24-57-0015 and 24-57-0017 and a previously denied application (Stream Alteration Permit 22-57-0005), concerns from previous Save Our Canyons comments have been included below, and Save Our Canyons submits the following comments to be included on new Stream Alteration Permit applications in the same project area:

Pursuant to Utah Code Ann. §73-3-29 (4)(a), Save Our Canyons submits the following comments on the Tree Farm Stream Alteration Permit Application 22-57-0005. Save Our Canyons is concerned with this application's timing and the unreasonable and unnecessary environmental impacts on the natural stream environment in accordance with Utah Code Ann. §73-3-29(a)(ii).

The stated purpose of the stream alteration permit is an improved access road and parking for a controversial large mining operation that will impact tributaries to Parley's Creek. The

designated beneficial use classifications for this section Parleys Creek are 1C, 2B and 3A. This means the raw water is used for domestic purposes, these waters must be protected for primary and secondary recreational contact activities for cold water aquatic organisms - both for sport and to support ecosystem services, like providing food for wildlife.

The immediate impact of this stream alteration would be significant. Smith Creek is already listed as an impaired waterway, in part due to the intensity of use in and around it. Further alteration will increasingly jeopardize the functionality of the waterway and contribute to its further impairment for all beneficial uses. Save Our Canyons does not believe the State should allow an already impaired waterway to be altered, particularly those which are impaired because of human uses and activities, unless it can be shown to benefit the uses in which the waterway is designated. Especially when this creek is known to be a highly utilized area for wildlife species, and the water source is critical to their survival. Additionally, Upper Parley's Creek and its tributaries (of which Smith Creek is one) are designated as "high quality waters" in accordance with UAC R371-2 and carry an Antidegradation policy, Section R371-2-3. Category 1 waters are waters of high quality with exceptional recreational or ecological significance, or that require protection. These waters must be maintained at existing high quality.

The proposed large mining operation will also cause cumulative impacts to the watershed. Given the intensification of use, the existence of a prolonged drought, the stressors of climate change, the purpose of the stream alteration permit will significantly, unreasonably or unnecessarily affect recreational use and the natural stream environment by the very nature of the application and the very intense use of gravel mining and quarrying. The proposed excavation of some 650 acres of limestone, could dry many streams and impact groundwater and existing water rights in the vicinity that are hydrologically connected to Parley's Creek.

Save Our Canyons also finds this application to be incomplete and piecemeal. The primary focus is on the culvert for Smith Creek, but not for the complete and utter destruction of the 2-3 category 1 streams that will be impacted by primary use of mining, gravel and quarrying in this critical watershed.

In addition, the applicant does not currently own enough water rights nor has the operator secured a municipal water supplier to provide water service to the mine in order to legally operate. Given that the area is closed to new appropriation, until the Applicant has shown it has enough water to operate, the stream environment should not be unnecessarily disrupted under Utah Code Ann. §73-3-29(a)(ii).

Finally, this proposed mining use is subject to numerous other state, federal, and county land use approvals. Save Our Canyons and others intend to participate in each of these approvals, some of which may be tied up in litigation for years. Allowing alteration of the stream before all of the required approvals for the operation are in place would violate Utah Code Ann. §73-3-29(a)(ii) by causing unnecessary and premature damage to the natural stream environment if the applicant is not successful in receiving all of the required mining and county land use approvals. DWR and USACE should also be concerned about approving a stream

alteration to facilitate the construction of a frontage road to a piece of property that may never have a permitted use beyond the owner's personal use. Previous plans for developing these parcels have failed to materialize. The stream alteration should not be approved until all permits required for the proposed quarry have been secured.

The requested stream alteration should therefore be denied and the impacts evaluated for the total damage to Parleys Creek and its tributaries in the region. It is unreasonable to evaluate the culvert of Smith Creek without evaluating the impacts a massive mining operation will have on the waters and springs in an increasingly arid canyon. There is no question that these uses from the application (road construction and mining) will unreasonably and unnecessarily affect recreational use and the natural stream environment, endanger aquatic life, diminish the natural channel's ability to convey high flows, and impair vested water rights of others in the region. If the Application is not denied outright, we request that you place stringent restrictions on the approval pursuant to Utah Code Ann. §73-3-29(c) requiring Tree Farm to acquire all water rights necessary to operate the mine, as well as the required county, state, and federal permits prior to commencing any work to pipe the stream.

*Concerns stated by Utah Division of Emergency Management, the USACE, and SLC Public Utilities regarding Stream Alteration Permit 22-57-0005*

Due to similarities in Stream Alteration Permits 24-57-0015 and 24-57-0017 and a previously denied application (Stream Alteration Permit 22-57-0005), Save Our Canyons submits the following comments to be included on new Stream Alteration Permit applications in the same project area:

According to comments in reference to Stream Alteration Permit 22-57-0005 by the SLCDPU and USACE concerning the proper application for the permit application in question's review and approval, as well as Utah Department of Public Safety's comments concerning floodplain development review, both concerns should be resolved before the approval of the stream alteration permit and should be conditioned on approval from both agencies.

According to email comments from the Utah Department of Public Safety, the following permits would be required before issuance of Stream Alteration Permit 22-57-0005, including;

- A floodplain development permit from the local Floodplain Administrator (FPA) in the community they are doing the work in
- Ensure compliance with the National Flood Insurance Program (NFIP) and with the local floodplain regulations by contacting the community FPA
- State and federal agencies need to obtain the local floodplain development permits as per the federal regulations 44 CFR 60.3.
  - This may include obtaining a Letter of Map Change (LOMC) from FEMA
- Any other federal or local permits required to develop in Special Flood Hazard Areas (SFHA)

*Concurrent permit applications between Mountair Private Road Company and Granite Construction*

Due to the coordinated effort between Mountair Private Road Company and Granite Construction to apply for stream alteration permits which would allow for the construction of projects to service the same proposed mining operation, Save Our Canyons urges DWR to evaluate stream alteration permit applications as one complete application to alter Smith's Creek by both entities.

According to Project Information cited in Stream Alteration Permit: 24-57-0017, the application by Granite Construction is not a single and complete project, but rather "Granite and the Mountair Private Road Company (MPRC) have mutually agreed to this solution." As both applicants for Stream Alteration Permit: 24-57-0017 and Stream Alteration Permit: 24-57-0015 would not have submitted this application without another entity's concurrent stream alteration, Save Our Canyons urges both Stream Alteration Permits to be reviewed and evaluated as one concurrent permit application.

Thank you for the opportunity to submit comments on Stream Alteration Permits 24-57-0015 and 24-57-0017.

Sincerely,

**SAVE OUR CANYONS**

**Save Our Canyons**

**HEAL UTAH**

HEALTHY ENVIRONMENT ALLIANCE OF UTAH

**Healthy Environment Alliance of Utah (HEAL Utah)**



**Utah Physicians for a Healthy Environment**

CLEAN AIR, CLEAN ENERGY, CLEAN FUTURE

**Utah Physicians for a Healthy Environment**