

# EVALUATION OF THE APPLICATION TO DESIGNATE THE RECORD RIDGE MINE AS REVIEWABLE UNDER THE *ENVIRONMENTAL ASSESSMENT ACT (2018)*

REQUESTED BY:  
WILDSIGHT

AUGUST 13, 2024

Pursuant to the Section 11 of the *Environmental Assessment Act*, S.B.C. 2018, c.51.



**EAO**

Environmental  
Assessment Office

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## 1.0 PURPOSE OF THIS REPORT

This report provides the Environmental Assessment Office (EAO)'s analysis of the application to designate the proposed Record Ridge Mine (Record Ridge) near Rossland, British Columbia (B.C.) as a reviewable project under Section 11 of the [Environmental Assessment Act \(2018\)](#) (the Act).

This report provides a summary of the application, comments and input received by the EAO, the details of the Designation Application from Wildsight under Section 11 of the Act, and the EAO's conclusions with respect to the Designation Application. If designated, the Project may not proceed without first undergoing an environmental assessment under the Act.

## 2.0 REVIEW PROCESS AND ENGAGEMENT

Record Ridge is a proposed magnesium mine located near Rossland, B.C. by West High Yield Resources Ltd. (WHY Resources). The project area around Record Ridge is part of a large claim block that has been explored for gold, nickel, magnetite, and chromite. In 2003, WHY Resources acquired the mineral tenures covering a major portion of the Record Ridge claim block in addition to three other mineral claims. Initially, WHY Resources' exploration activities on the property were focused on gold, however early exploration discovered magnesium-rich minerals known as ultramafic serpentines, as detailed in WHY Resources' *Mines Act* permit application.

In 2016, in preparation for entering regulatory processes, WHY Resources began baseline studies including: rock geochemistry, soil type and geochemistry, surface water hydrology, groundwater hydrology, water quality, sediment quality, fisheries and aquatic resources, vegetation, wildlife, archaeology, land use, and cultural use.

In 2019, WHY Resources submitted a joint application for *Mines Act* and *Environmental Management Act* (EMA) permits. Record Ridge includes extraction and crushing of ore on-site followed by transportation of the crushed ore to a third party of off-site processing. The project components include an open pit, waste rock storage facility, soil stockpile(s), a level pad for primary and secondary crushing, maintenance pad, office building, and access roads. The permit application review process was paused by WHY Resources in 2019, and then reinitiated in early 2022. In March 2022, the Ministry of Energy, Mines and Low Carbon Innovation (EMLI) – the lead provincial agency overseeing permitting of industrial mineral projects – formed a Mine Development Review Committee (MDRC) for Record Ridge.

### 2.1. EA Project Notification and Mine Category

As proposed in WHY Resources' *Mines Act*/EMA permit application in 2022, Record Ridge was within 15 percent of the production threshold for automatically triggering a provincial environmental assessment and therefore met the notification thresholds set out in Section 5 of the [Reviewable Projects Regulation \(RPR\)](#). As required by section 10 of the Act, WHY Resources submitted a Project Notification to the EAO on May 11, 2023. On June 1, 2023, the EAO sent a letter to WHY Resources requesting additional information, including information related to WHY Resources' views on whether Record Ridge is in the category of Construction Stone and Industrial Mineral Quarries set out in Part 3, Table 6 of the RPR.

Over the summer and fall 2023, WHY Resources adjusted the project to decrease Record Ridge's annual production capacity from 249,000 tonnes/year of mined product to 200,000 tonnes/year. In October 2023, WHY Resources submitted a revised joint *Mines Act*/EMA permit application to EMLI.

WHY Resources notified the EAO of its reduction in annual production on November 28, 2023, stating that because of the decrease in production capacity, Record Ridge no longer fell under the Project Notification requirements in Section 10 of the Act, and therefore they would not be providing further information. The EAO did not consider its previous questions to have been addressed and so, on December 8, 2023, the EAO requested additional details to understand WHY Resources' interpretation that Record Ridge involved removal of industrial minerals, as defined by Appendix 3 of the RPR.

The EAO notes that the BC MA/EMA permit application describes Record Ridge as a “proposed conventional open-pit magnesium-bearing serpentinite mine.”

In letters on December 11, 2023, and February 23, 2024, WHY Resources described “serpentinite ore, which, when processed, yields high purity magnesium oxide (MgO) and silica (SiO<sub>2</sub>)” therefore is “an industrial mineral in which silica is the predominant mineral, thereby falling under the RPR Appendix 3, s. 1(e).”

While the Project Notification process described above was still underway, the EAO received an application, submitted under Section 11 of the Act, requesting that the Minister designate Record Ridge as requiring an environmental assessment.

## 2.2. Designation Application

Section 11 of the Act gives the responsible Minister (Minister), or their delegate, the power to designate an eligible project as reviewable. The Minister’s powers and duties under Section 11 are delegated to the Chief Executive Assessment Officer.

To be ‘eligible’ for designation, a project must not be [substantially started](#) and cannot already be reviewable (i.e., already automatically subject to an environmental assessment) under the RPR.

Section 11 specifies that the Minister must consider:

- (a) whether the applicant is an Indigenous nation;
- (b) whether the eligible project could have effects on an Indigenous nation and its rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- (c) whether potential effects of the eligible project would be equivalent to or greater than potential effects of a project in the prescribed category of the RPR; and
- (d) whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act.

When a complete designation application has been received, the EAO sets out a process for reviewing the application and developing the analysis and recommendation for the decision maker. This process involves seeking input on the application from the proponent of the project, potentially affected First Nations, local governments, provincial and/or federal agencies and, in some cases, the public.

Finally, the Minister or delegate must determine whether an assessment of an eligible project is consistent with the purposes set out in [Section 2 of the Act](#). If the Minister or delegate declines to designate the project as reviewable, reasons for that decision must be provided to the Applicant.

### 2.2.1. Wildsight’s Application for Designation

On April 18, 2024, Wildsight (or the Applicant), an environmental organization based out of Kimberley, British Columbia, submitted a [letter to the Minister of Environment and Climate Change Strategy](#) requesting that Record Ridge be required to undergo an environmental assessment. On May 2, 2024, the Environmental Assessment Office (EAO) accepted the letter as an application to designate Record Ridge as a reviewable project, under Section 11 of the *Environmental Assessment Act* (the Act).

The Applicant raised the following concerns in their application:

- Impacts to endangered species and ecological communities;
  - Known populations of mountain holly fern, designated as threatened under Schedule 1 of the *Species at Risk Act*, have been identified within 20 metres from the proposed open pit location;
  - An identified graminoid grassland community, red-listed in BC, was identified within the surface footprint.

- Improper permit designation;
  - Incorrect categorization as an industrial mineral mine;
  - Changes to the proposed annual production capacity to avoid an environmental assessment;
  - The two-year mine life contradicts information available on WHY Resources’ website proposing potential mine life anywhere from 20 to over 170 years;
- Mine operation concerns;
  - Dust, asbestos and noise issues associated with mining operations;
  - Use of explosives as a means of ore extraction, given the proximity to private residences, farms, and the town of Rossland;
  - Transportation of ore impacts on traffic, road wear, and noise; and,
  - Viability of magnesium ore derived from serpentinite.

The Applicant submitted a follow-up letter to the EAO on June 12, 2024, stating its support for a submission sent to the EAO from the City of Rossland on May 28, 2024, including the view that Record Ridge, as proposed, is reviewable under the Act.

### 2.3. Summary of the EAO’s Engagement on the Designation Application

After receiving the Designation Application (the Application), the EAO wrote to WHY Resources, informing them that the EAO was concluding the Project Notification process that had been ongoing, and informing WHY Resources of next steps associated with the Application received from Wildsight.

The EAO established the process for gathering input necessary to conduct an analysis of the Application. As part of this process, the EAO sent notifications to First Nations whose asserted territory overlapped with the project area for Record Ridge, as well as local governments. Due to the high levels of local public interest, the EAO conducted a 30-day public comment period. The EAO also engaged with EMLI to understand their regulatory processes and issues raised.

#### 2.3.1. First Nations Engagement

The EAO identified five First Nations that could potentially be affected by Record Ridge. In notification letters to all five nations, the EAO inquired about governance roles in relation to the area and a preliminary description of the nation’s interests and how Record Ridge might interact with or impact those interests. Four out of the five nations provided EAO with their perspectives.

In correspondence with the EAO prior to receiving the request from Wildsight, the Osoyoos Indian Band, acting on behalf of the Okanagan Nation Alliance member nations, asserted that they do not believe that an environmental assessment is warranted for Record Ridge and that the assessment undertaken by EMLI and the joint *Mines Act*/EMA permitting process (including conditions and any ongoing associated management plans) would sufficiently address any areas of Osoyoos Indian Band’s concerns.

The Sinixt Nation expressed to the EAO in a letter dated May 29, 2024, that Record Ridge could potentially impact their constitutionally protected Section 35 Rights, however, without provincial capacity funding, the Sinixt are unable to complete a detailed review of what potential impacts to the environment and their rights might be. The EAO also met with Sinixt on June 6, 2024, where they reiterated their concerns about the potential impacts of Record Ridge but were unable to financially undertake a detailed review. In Sinixt’s June 17, 2024, letter they affirmed that the project could have impacts on heritage resources, cultural plants, wildlife, and water quality; including transboundary effects that could potentially impact the ongoing restoration work for salmon and other freshwater fish species; however, without capacity funding they could not undertake those studies.

Shuswap Band indicated in their May 3, 2024, letter to the EAO that they were not in support of Record Ridge and have expressed their concerns through the EMLI permit process as members of the MDRC. Shuswap Band commented on

potential environmental, cultural and ecological impacts of interest including concerns about asbestos exposure, acid rock drainage and metal leaching, and impacts to Sheep Creek and salmon rehabilitation efforts downstream of the Columbia River.

Additionally, Shuswap Band included details of their concern brought forward through the MDRC review which includes air quality concerns, impacts to fish and fish habitats due to sediment ponds, species at risk and native vegetation impacts (including traditional foods and medicines), and impacts to wildlife and wildlife habitat.

Splats'in First Nation provided a letter to the EAO on June 25, 2024, stating that they have interests in the Record Ridge project area and wish to be consulted. The letter from Splats'in also indicates their support for an environmental assessment prior to any development or approval of the project.

The EAO did not receive input from Ktunaxa Nation Council.

### 2.3.2. Engagement with Local Governments and Other Jurisdictions

The EAO also sought the views of local governments in the area and sent notification to the City of Rossland and the Regional District of Kootenay Boundary.

The City of Rossland Office of the Mayor submitted a letter to the EAO outlining the key goals in the Official Community Plan and concerns with the potential effects of Record Ridge to the environment, community well-being, and tourism. Within these areas, the key concerns raised by the City of Rossland are:

- Water use – reliance on groundwater for operations and dust mitigation and uncertainty about water availability;
- Economic impacts – the potential effects of the mine on tourism have not been considered; and,
- Traffic management – no current approval of WHY Resources proposed mitigation to avoid transporting material through Rossland.

The letter City of Rossland also submitted a letter to the Minister of Environment and Climate Change Strategy considering Section 11 of the Act. The City of Rossland stated their perspective that the project is already automatically reviewable as a metal mine under the RPR and, if the Minister determined that it was not reviewable, an environmental assessment would be in the public interest and should be required so that the effects of the mine and uncertainties can be more fully explored and assessed, including impacts to First Nation interests.

The Regional District of Kootenay Boundary (RDKB) submitted a staff report to the EAO summarizing community concerns and a recommendation that the Board of Directors support a resolution that requests that Record Ridge be designated as a reviewable project. On May 29, 2024, the Board of Directors [approved the resolution](#) and a staff member of the RDKB provided an excerpt of the draft minutes to the EAO along with the staff report. The staff report identified similar concerns as the City of Rossland, related to dust, use and contamination of residential water sources, traffic, recreation, and tourism-based economies.

Environment and Climate Change Canada (ECCC) had previously contacted the EAO about Record Ridge in 2023 and, when the Application was received, ECCC submitted their view that up-to-date and accurate mapping of the threatened mountain holly fern is important to help inform the decision on whether to undertake an environmental assessment for the project.

The EAO also received letters from the U.S. Environmental Protection Agency (U.S.EPA) and the Washington State Department of Ecology. Both letters expressed the view that an environmental assessment would be helpful to identify impacts to residents across the border.

### 2.3.3. Public Engagement

Following WHY Resources submission of a Project Notification on May 11, 2023, the EAO received many letters from members of the public about Record Ridge. Because of the level of interest in Record Ridge, the EAO decided to hold a 30-day public engagement and comment period on the Application to understand and consider the concerns.

Between May 15 to June 14, 2024, the EAO received over 184 responses to an [online survey](#) and eight personal submissions (letter or email) from the public. Most survey responses expressed support for an environmental assessment of Record Ridge. Comments emphasized that an environmental assessment is needed to properly address the concerns raised and its potential impacts to the environment and community well-being. There were also 15 submissions that felt that an environmental assessment would not be necessary or valuable given the existing information and the ongoing *Mines Act*/EMA permitting process.

The key environmental concerns raised in the public comments were:

- Disturbance of the sensitive and unique ecosystems, including impacts to the unique grasslands surrounding Record Ridge and the habitat of the endangered mountain holly fern;
- Air quality and dust control, specifically concern over airborne contaminants such as asbestos; and
- Potential effects to water quality and quantity from mining.

Another key concern raised was the potential negative effects of a mine on tourism and recreation in Rossland, as the mine site is near popular attractions such as hiking and mountain biking trails. While many comments did see the potential economic benefits of Record Ridge, a majority felt these would not outweigh the negative economic consequences to tourism. Traffic and road safety was also a prominent concern, especially along Cascadia Highway, which is planned as the main access road for Record Ridge but is also a residential street running through Rossland.

Many comments received expressed dissatisfaction with WHY Resources' community consultation to date. Commenters felt that the information and answers provided at open houses hosted by WHY have not adequately addressed community and environmental concerns. Responses also highlighted the inconsistencies between information provided in the Record Ridge application and the WHY Resources website, for example the proposed life of the mine.

For more detail on public comments on Record Ridge, see Appendix A.

## 2.4. Proponent Response to the Designation Application

For administrative fairness, when an application for designation is received by the Minister, the EAO shares the submission with the project proponent and invites their comment. On May 2, 2024, the EAO wrote to WHY Resources to conclude the process that had occurred following the submission of the Record Ridge Project Notification and to inform WHY Resources of the request received from the Wildsight and the EAO's acceptance of the request under Section 11 of the Act. The EAO subsequently followed up with WHY Resources to provide an opportunity for them to submit a response to the letter from Wildsight, for which the EAO later provided additional time so that WHY Resources could review comments submitted during the public comment period.

On June 24, 2024, WHY Resources submitted [a response to the EAO](#), highlighting their concerns with the public engagement and comment period on the Designation Application and providing their views on the request to designate Record Ridge as a reviewable project. WHY Resources questioned the EAO's decision to hold a public comment period, the survey questions themselves, and the accessibility of comments to the proponent and the public.

The EAO notes that the Chief Executive Assessment has authority under the Act to conduct public comment periods and carry out other public engagement. The EAO public engagement website provides a transparent way to share those comments with WHY Resources and other parties, and respect individuals' privacy. The EAO acknowledges some technical

challenges with the public engagement system, which is new in the past year, and will work to continually improve the functionality and accessibility.

WHY Resources provided reasons for why they believed Record Ridge should not be designated as a reviewable project. Their letter notes that the Applicant is not a First Nation and summarizes the differing views that were provided by First Nations. WHY Resources highlights their perspective that the potential effects of Record Ridge have been adequately identified and addressed through the *Mines Act* and EMA permitting process and an environmental assessment would create unnecessary regulatory burden, costs and delays.

The letter from WHY Resources also addressed questions raised by members of the public about the size of the project and the life of the mine. Specifically, the public has raised questions about the *Mines Act* and EMA application statements that the project is planned for two years, which contradicts other public statements by WHY Resources about the length of the project. Members of the public raised concerns about a planned incremental expansion of Record Ridge to avoid an environmental assessment. WHY Resources acknowledges that Record Ridge is a pilot project that has been designed and adjusted to fall below the Act thresholds. The supporting letter from WHY Resources also indicates that if market conditions support it, Record Ridge may expand in the future.

### 3.0 REGULATORY HISTORY, CONSIDERATIONS, AND STATUS

The EAO consulted with EMLI, to understand how the *Mines Act*, EMA, and/or the permitting processes may consider any of the concerns about potential effects and risks of Record Ridge raised by the Applicant, technical advisors, First Nations, and the public, as these may be relevant to the designation application.

#### 3.1. Mining Regulation in British Columbia

The RPR sets out the triggers that require a proposed mining project to undergo an environmental assessment under the Act. Regardless of whether an environmental assessment is required, all mining activities in B.C. are regulated by the EMLI under the *Mines Act*. The *Mines Act* and the *Health, Safety and Reclamation Code for Mines in British Columbia* (the Code) provide the requirements for the full lifecycle of mining, including early exploration, development, production, reclamation, closure, and post-closure.

A *Mines Act* permit (and often other applicable permits under various legislation) must be in place before any significant work in, on, or about a mine can occur. Depending on the type of mine and the level of processing involved, mine permitting is managed through one of EMLI's regional mine offices or the Major Mines Office. Permitting decisions under the *Mines Act* are made by the Chief Permitting Officer or their delegate. The intent of the process is to ensure that the proponent has the necessary information and technical capability to build a mine that meets provincial requirements and minimizes any negative environmental effects in the area.

A review committee is formed to conduct the technical evaluation of the project, the potential impacts, and the mitigation measures. Like the EAO's technical advisory committees, *Mines Act* review committee members include Provincial staff, First Nations and other potentially impacted groups such as local governments and community associations. In some circumstances when a project is near another province or territory or the US-Canada border, neighbouring jurisdictions may also participate in an application review. The review committee typically includes geotechnical, geoscience, reclamation, health and safety, water management, hydrology, hydrogeology, and biology subject matter experts.

The *Mines Act* permitting process is generally defined by a pre-application stage that involves early engagement with affected groups, including First Nations, discussion and confirmation of identification requirements and responsibilities, formation of the review committee, and completion of baseline studies by the proponent. When a proponent submits the application(s), the review committee checks that information has been provided and then carries out a detailed review, posing questions and comments to the proponent for response. EMLI consults First Nations throughout the review stage



and conducts public engagement. Following the detailed review, EMLI leads the drafting of permits and associated conditions and produces a summary report describing the process, the issues raised and how they were addressed, and any other relevant matters. The Chief Permitting Officer considers the report, comments and recommendations of technical experts, First Nations, and stakeholders when making their decision.

The consultation and engagement approaches for mine permitting are carried out in alignment with Section 8.1 of the *Interpretation Act* which states that provincial acts and regulations are to be interpreted in a manner that upholds or protects rights recognized and affirmed by Section 35 of the *Constitution Act, 1982* and with the *Declaration on the Rights of Indigenous Peoples Act*. The EAO is aware that the *Mines Act* and EMA permitting processes include opportunities for deep engagement with First Nations to determine the potential impacts on their rights and interests, and to find means to avoid, reduce, or accommodate as necessary.

More information on the permitting process can be found on the [B.C. Mine Information website](#).

### 3.2. Current Status of Permits for Record Ridge

WHY Resources has been engaged in the permitting process for several years. WHY Resources first submitted its permit applications in 2019. WHY initiated a pause in the permitting process, during which it made revisions to the project, and EMLI reconvened the MDRC in March 2022. The MDRC includes representatives from the Ministry of Water, Land, and Resource Stewardship, Ministry of Transportation and Infrastructure, Environment and Climate Change Canada, ECCC, EMLI, Ministry of Forests, City of Rossland, Regional District of Kootenay Boundary, and representatives from the Sinixt Nation, Ktunaxa Nation Council, the Okanagan Nation Alliance (specifically Osoyoos Indian Band), and Shuswap Band.

Due to the high public interest in the project and permitting process, WHY Resources held two open house sessions on May 17 and 18, 2023 in Rossland, BC. Common concerns raised included water and water quality, dust management, vegetation and reclamation, human health and safety, asbestos and other airborne chemicals, noise pollution, transportation, recreation, agricultural protection, and First Nations rights and title. To address public concerns, WHY Resources has proposed additional mitigation measures for dust management, reduction in the volume of ore extracted, mechanical removal instead of blasting, rerouting the transportation to avoid trucking through the City of Rossland, and funding to the Kootenay Columbia Trail Society to reroute a 1.3 kilometre portion of the popular Seven Summits Trail.

Between February 2022 and October 2023, WHY Resources and its technical consultants engaged with the MDRC to revise its application. The revised application is currently undergoing technical review by the MDRC. EMLI held a public comment period from April 18, 2024, to May 28, 2024, on the joint application, and has directed WHY Resources to respond to public and MDRC comments. To the EAO's understanding, the development of those responses is ongoing.

## 4.0 EVALUATION OF PROJECT AGAINST SECTION 11 OF THE ACT

Having concluded the information gathering phase, the EAO must proceed to its analysis of the Application in consideration of Section 11 of the Act. As noted in Section 2 of this report, when the Minister receives an application to designate a project as review, the Act sets out the factors that they must consider in their decision. First amongst those is whether the project is an eligible project for designation. In accordance with Section 11 of the Act, the Minister may only designate a project or a modification of an existing project as a reviewable project if the project has not substantially started **and** is not a reviewable project under the RPR.

### 4.1. Whether the Project is an Eligible Project

This report has summarised that, over the course of several months in 2023, the EAO engaged with WHY Resources on their Project Notification and specifically on the matter of WHY Resources' views regarding which part of the RPR applied. WHY Resources' position is that Record Ridge is an industrial mineral mine with a production capacity that does not trigger an environmental assessment. The EAO's May 2, 2024, letter to WHY Resources stated:

“the question of what category of mine Record Ridge falls under, which the EAO does not yet consider adequately resolved, will be determined through the consideration of [Wildsight’s] application. This is because only ‘eligible projects’ may be designated under that Section. If Record Ridge is a reviewable project, it is not an “eligible project”, and of course need not be designated under Section 11. If it is not, then the Minister, or the Chief Executive Assessment Officer as the delegated decision maker, will make a decision on whether to designated it as a reviewable project after considering Wildsight’s application.”

The RPR sets out the criteria for determining which projects are reviewable and required to undergo an environmental assessment. In the RPR, [Mine Projects](#) are divided into six different mine type categories:

1. Coal Mines;
2. Mineral Mines;
3. Sand and Gravel Pits;
4. Placer Mineral Mines;
5. Construction Stone and Industrial Mineral Quarries; and
6. Offshore Mines.

Each of these six categories have definitions that apply and different thresholds above which a new or modified project is reviewable, i.e., the level of activity and disturbance that would trigger an environmental assessment. “Industrial mineral” is defined in Appendix 3 of the RPR and includes eleven subsections.

The criteria for determining whether new “Construction Stone and Industrial Mineral Quarries” are reviewable are:

- (1) A new quarry facility or other operation that
  - (a) involves the removal of **construction stone or industrial minerals or both**,
  - (b) is regulated as a mine under the *Mines Act*, and
  - (c) during operations, will have a production capacity of  $\geq 250\,000$  tonnes/year of quarried product.
 [Emphasis added.]

WHY Resources does not assert that Record Ridge would produce “construction stone.” This leaves the issue of whether it would produce “industrial minerals.” If so, Record Ridge would not be a reviewable Construction Stone and Industrial Mineral Quarry since it falls below the 250,000 tonnes/year threshold referred to above.

The RPR defines “industrial minerals” as “the substances listed in Appendix 3.” Appendix 3 provides:

1 For the purposes of the definitions of "industrial mineral" in section 9, **the following substances are industrial minerals:**

- (a) all rock or stone used to produce dimension stone or building facing stone, or for any other ornamental or decorative purpose;
- (b) barite, calcite, dolomite, gypsum, limestone, magnesite, phosphate rock, wollastonite;
- (c) bentonite, clay, diatomaceous earth, pozzolanic materials, zeolite, kaolin clay, and all related substances;
- (d) pumice, lava, volcanic ash and all related substances;
- (e) all substances in which silica is the predominant mineral and that are used for an industrial purpose, including massive silica, quartz, quartzite, garnet and corundum;
- (f) jade, rhodonite and all decorative stone and rock;
- (g) talc;

- (h) marl;
- (i) feldspar;
- (j) shale and slate;
- (k) graphite. [Emphasis added.]

The highlighted words mean that the definition of “industrial minerals” is exhaustive. That is, if the relevant substance is not listed in Appendix 3, it is not an “industrial mineral” for the purposes of the RPR.

In their October 2023 joint *Mines Act*/EMA permit application, WHY Resources describes Record Ridge as a magnesium exploration project, designed to supply 200,000 tonnes per year of magnesium-bearing serpentinite rock. WHY Resources has asserted that that serpentinite is an industrial mineral as defined in the RPR. However, the list of industrial minerals in the RPR does not include serpentinite. The 200,000 tonnes per year planned production of Record Ridge is below the threshold for a new industrial mineral quarry (250,000 tonnes per annum) but above the threshold for a mineral mine (75,000 tonnes per annum).

The RPR defines “mineral mine” as “a mine where a mineral, as defined in the *Mineral Tenure Act*, is or could be mined, but does not include a mine where industrial minerals are or could be mined.” The *Mineral Tenure Act* defines “mineral” as follows:

**“mineral”** means an ore of metal, or **a natural substance that can be mined**, that is in the place or position in which it was originally formed or deposited or is in talus rock, and includes

- (a) rock and other materials from mine tailings, dumps and previously mined deposits of minerals,
  - (b) dimension stone, and
  - (c) rock or a natural substance prescribed under section 2 (1),
- but does not include
- (d) coal, petroleum, natural gas, marl, earth, soil, peat, sand or gravel,
  - (e) rock or a natural substance that is used for a construction purpose on land that is not within a mineral title or group of mineral titles from which the rock or natural substance is mined,
  - (f) rock or a natural substance on private land that is used for a construction purpose, or
  - (g) rock or a natural substance prescribed under section 2 (2); [Emphasis added.]

In multiple letters between May 2023 and May 2024, the EAO sought to understand the basis of WHY Resources’ assertion that Record Ridge would produce an industrial mineral. WHY Resources did not provide the EAO with consistent information in this regard, and stated that the material is “near-surface magnesium bearing material known as serpentinite” ([letter to EAO, May 11, 2023](#)), “serpentinite ore, which, when processed, yields high purity magnesium oxide (MgO) and silica (SiO<sub>2</sub>)” ([letter to EAO, December 11, 2023](#)) and finally as an industrial mineral in which silica is the predominant mineral, thereby falling under the RPR Appendix 3, s. 1(e)<sup>1</sup> ([letter to EAO, February 23, 2024](#)). As evidence of its February 2024 assertion, WHY Resources provided an assessment of the chemical composition of a sample of raw material indicating that the raw material (serpentinite) was 44.9 percent silicon dioxide and 39.8 percent magnesium oxide. The EAO notes that this chemical analysis was carried out for a 2022 pre-feasibility study evaluating a potential

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<sup>1</sup> RPR Appendix 3: For the purposes of the definitions of “industrial mineral” in section 9, the following substances are industrial minerals: 1 (e) all substances in which silica is the predominant mineral and that are used for an industrial purpose, including massive silica, quartz, quartzite, garnet and corundum.

chemical processing Magnesia Plant on site, which is not currently proposed as a project component. WHY Resources is of the view that Record Ridge would be classified as an industrial mineral quarry under the RPR mainly due to the higher percentage of silica.

The EAO had considerable difficulty in reaching an understanding of the facts concerning Record Ridge, and the nature of the materials it would be producing. However, based on the information provided by all parties, including WHY Resources, during the Project Notification and the Designation Application review processes, the clearest information is that it will produce serpentinite. As serpentinite is not listed as an industrial mineral in the exhaustive definition of that term in Appendix 3 to the RPR, Record Ridge would not be a “Construction Stone and Industrial Mineral Quarry.”

Wildsight’s application for designation also included the view that Record Ridge did not meet any of the items listed in Appendix 3 of the RPR, and therefore should be considered a mineral mine. Additionally, a number of public comments and submissions from organizations such as the Save Record Ridge Action Committee Society raised concerns regarding the classification of the Project, indicating that it should be considered a mineral mine and reviewed under the Act.

As part of collecting relevant information, the EAO consulted EMLI to understand their views regarding the categorization of Record Ridge. Unlike the RPR, the *Mines Act* and *Mineral Tenure Act* do not distinguish between minerals and industrial minerals, there is only a single definition for “mine” and for “mineral”. EMLI’s practice is to apply a risk-based model to determine their approach to reviewing and authorizing mines. Based on the proposed project components and a preliminary environmental risk analysis, EMLI determined that Record Ridge was a lower risk mine for the purposes of permitting. EMLI acknowledged that the RPR does not list serpentinite specifically as an industrial mineral.

The next issue is whether Record Ridge would, as currently proposed, be classified as a mineral mine. If so, it would be a reviewable project and therefore required to obtain an environmental assessment certificate prior to proceeding since it would exceed the 75,000 tonnes/year threshold set out above. The EAO’s conclusion in this regard is that Record Ridge would be a mineral mine. That is, it is a “mineral mine” as “a mine where a mineral, as defined in the *Mineral Tenure Act*, is or could be mined.” As noted above, “mineral” is broadly defined in the *Mineral Tenure Act* to include “a natural substance that can be mined, that is in the place or position in which it was originally formed.” This would encompass the substances to be mined at Record Ridge. None of the exclusions in the definition of “mineral” in the *Mineral Tenure Act* would apply to those substances.

As a result, Record Ridge is not an eligible project for designation.

## 4.2. Other Designation Considerations

With the determination that Record Ridge is not an “eligible project” under the Act, the EAO did not evaluate the remaining factors under Section 11.

The EAO wishes to acknowledge the significant public interest in Record Ridge. The public engagement and comment period showed a high level of concern and outstanding questions from the surrounding communities about aspects of the project. B.C. has a robust regulatory regime for mining projects that ensures a thorough assessment of a project’s components and activities and the potential effects related to the environment, health, safety, First Nation rights, and other values and factors. Regardless of the project design that WHY Resources chooses to advance and the required regulatory path for Record Ridge, the EAO recommends that increased consideration be given to identifying and mitigating the impacts of Record Ridge on affected communities.

## 5.0 CONCLUSION

The EAO has concluded that Record Ridge is a reviewable project under the RPR and is required to obtain an environmental assessment under the Act prior to proceeding.

## APPENDIX A: SUMMARY OF RECORD RIDGE PUBLIC COMMENT PERIOD

The EAO held a public engagement and comment period between May 15, 2024, and June 14, 2024. Members of the public were asked complete a survey with 10 questions, most of which are common questions for all EAO public comment periods:

1. What is your age?
2. What is your gender?
3. Where do you live?
4. Based on your understanding of your community and how you or other people (neighbours, tourists, businesses, etc.) or wildlife may use this land and the surrounding areas – do you have any feedback on the proposed project location?
5. Based on your understanding of your community and how you use the surrounding area or local amenities, do you have any feedback on the project design as proposed?
6. Do you have specific knowledge that leads you to believe the project has the potential to cause significant negative impacts, and should be considered for an environmental assessment?
7. Do you have any specific knowledge of potential positive impacts from the project?
8. Did you provide feedback to the Ministry of Energy and Mines on the joint *Mines Act* and *Environmental Management Act* permit application?
9. To your knowledge, does the joint application and associated appendices adequately include the potential impacts that the project may have on your community?
10. Given the review underway by the Ministry of Energy and Mines and Low Carbon Innovation (which considers the key components, environmental effects and design of proposed mines in B.C.), do you believe that an environmental assessment of Record Ridge would be valuable?

There were 184 surveys completed, with most respondents (approximately 76 percent) reporting as living within 10 kilometres of the project (e.g., Rossland or closer). Survey respondents were provided an opportunity to provide additional comments on questions 4 to 10. The EAO has summarized the comments from the public in Table 1 below.

Table 1. Summary of key comments received during the Public Comment Period of May 15 to June 14, 2024

Key Theme	Common Points or Concerns Raised
Categorization and Environmental Assessment	<ul style="list-style-type: none"> <li>Concerns related to incorrect categorization of the project to avoid an environmental assessment based on discrepancies between WHY Resources' stated classification as an industrial mineral quarry versus a mineral mine.</li> <li>Doubts regarding the justification for revisions in project details, such as the reduction in annual tonnage.</li> <li>Feelings that there is lack of a comprehensive environmental assessment in the permitting process, highlighting gaps in addressing impacts on biodiversity, recreational trails, and transportation routes.</li> </ul>
Community Impact and Consultation Deficiencies	<ul style="list-style-type: none"> <li>Criticism of inadequate consultation with local landowners and residents of adjacent communities (including Rossland, Patterson, Sheep's creek).</li> <li>Concerns about the negative impact of the project on the quality of life and health for citizens and potential restrictions on access to adjacent lands.</li> <li>Frustration related to WHY Resources' Open House, multiple responses stating they feel communities concerns where not adequately addressed.</li> </ul>
Traffic and Road Safety	<ul style="list-style-type: none"> <li>Concern over increased traffic on Cascade Highway (a single lane, at times dirt road) and worries about the safety implications of increased heavy truck traffic on already dangerous, heavily used, residential roads.</li> <li>Calls for better road maintenance and infrastructure improvements to accommodate mining operations without compromising public safety.</li> </ul>
Environmental Impacts - Habitat disruption	<ul style="list-style-type: none"> <li>Concerns about the disturbance of sensitive ecosystems and wildlife habitats due to mining activities.</li> <li>Specific concern over impact on unique grassland ecosystems and infringement to habitat of endangered plant species, mountain holly fern.</li> <li>Doubts regarding the feasibility of ecosystem restoration post-mining.</li> </ul>
Environmental Impacts - Water Contamination and Scarcity	<ul style="list-style-type: none"> <li>Concerns over potential mine run-off, posing long term risks for aquatic ecosystems and downstream users.</li> <li>Concern that water needed to operate the mine will impact availability for residences nearby, especially during drought seasons, further exacerbating scarcity issues.</li> </ul>
Environmental Impacts: Dust and Air Quality	<ul style="list-style-type: none"> <li>Anticipation of air and soil pollution from dust and mining operations</li> <li>Worries about airborne contaminants, including asbestos and silica, generated from mining activities and their potential health risks for residents.</li> <li>Demand for rigorous dust management and monitoring/ mitigation strategies to protect public health and safety.</li> </ul>

<p>Tourism and Recreation</p>	<ul style="list-style-type: none"> <li>• Concern regarding the proximity of the mine site to popular trail systems (particularly Seven Summits Trail).</li> <li>• Worry over potential closure, relocation or degradation of trails, campsites, and outdoor recreational areas, impacting local businesses and quality of life for locals.</li> <li>• Concerns about the potential negative effects of the project on Rossland's tourism industry as the mine site may lessen the appeal of popular attractions.</li> </ul>
<p>First Nation Consultation and Rights</p>	<ul style="list-style-type: none"> <li>• Concerns about inadequate consultation with First Nation communities, contravening <i>United Nations Declaration on the Rights of Indigenous Peoples</i> principles and Truth and Reconciliation Commission recommendations.</li> </ul>