



To: The Crook County Court
Judge Seth Crawford
Commissioner Brian Barney
Commissioner Jerry Brummer

Friday, December 10, 2021

From: Matt Ropp, Knife River NW Region Technical Services Manager

Re: Applicant's Final Argument on Case No. 217-21-000436-PLNG (PAPA)

CROOK COUNTY
DEC 10 2021
PLANNING DEPT

Dear Members of the Court:

The record in this matter now includes more than 64 exhibits comprised of hundreds of pages. That is a lot to review and digest. You have heard hours of testimony from experts, neighbors, concerned citizens and Staff. The law requires that land use applications meet applicable standards and criteria and that decisions be based on substantial evidence in the record. I believe it is a fact that this case meets the applicable approval criteria and that substantial evidence in the record supports that fact. My intent for this final argument is to focus on the point of this process and the appropriate outcome.

Approval of this application and allowing immediate (Yr. 2022) utilization of the aggregate resource at the subject property is in the best interest of the vast majority of the citizens of Crook County, and simply makes sense. For the past six years, Applicant has been operating at the adjacent Woodward site and supporting one of the largest construction projects (Facebook) ever to happen in Crook County by providing 90% of the ready-mix concrete used to build the project. In 2016, the County designated the EFU zoned portion of the Woodward property a 3C (not 3B) significant aggregate resource and authorized mining. Applicant's processing and export operations are well established, located in a heavy industrial zone, and its business has been functioning well and supporting the local economy. The aggregate reserve within the Woodward site is nearly depleted. Applicant seeks to continue its operations by mining the subject property, which abuts its existing operation. The subject property contains a significant aggregate resource: over 1.5 million tons of recoverable ODOT spec concrete aggregates. The Facebook project is ongoing. The Apple data center project is ongoing. Substantial tax revenue from both projects will soon compliment the County's general fund to support more public improvement and redevelopment projects, attracting more residents and business operators and resulting in sustained or increased demand for ready-mix concrete in Crook County. Applicant is assisting the county and supporting the local economy, preparing to meet

these demands, by carrying the burden of identifying and permitting new concrete quality aggregate sites, including the subject the property.

Several neighbors object to mining the subject property. This should be expected. Who would prefer to live next to a mining operation versus a landscape where one can enjoy the clean, quiet open space of another's private property? Neighbor objections fall into two categories: complaints regarding activities at the existing permitted Woodward site; and, fears and objections to impacts that could result from mining the subject property.

With respect to existing operations at the Woodward Site, it's important to emphasize that the Woodward site is not the subject of this Application. Many of the complaints made by the closest and most vocal adversarial neighbor -Mikulski- are primarily related to processing activities that occur in the heavy industrial zoned portion of the Woodward property. While Applicant strives to be a considerate neighbor and goes to great lengths to respond to Mikulski's regular objections, it's important to remember that Mikulski's objections primarily speak to impacts to their enjoyment of a residential use. The Mikulski residence is sited on resource (not residential) zoned land and is adjacent to heavy industrial zoned land. This was the case when they acquired their property and will continue to be the case after the subject property is mined. Stated differently, if Applicant were not operating the Woodward site, generating industrial noise from trucks and equipment, back-up beepers, etc., another heavy industrial operator would likely be producing the same impacts. This is the county's intended plan for this area.

Much has been made out of a concern that mining the Site will impact area wells. Applicant has consulted with qualified experts (Chris Lidstone and Mark Stacy of Stantec) to ensure its mining plan addresses this concern. Substantial evidence in the record demonstrates that impacts are very unlikely, and that the use of recharge trenches, baseline testing and continued monitoring will mitigate any potential impacts to area wells. Further, Applicant voluntarily guarantees it will remedy any impacts it causes to neighboring wells. The State's Hydrogeologist, Mr. Bob Brinkman, weighed in on the matter, stating (Rec. Ex. 38):

"The mine plan includes extraction through mine cells with water conveyed to a recharge trench to maintain the water balance within the local water table. This method of pit dewatering is practiced at a number of sand and gravel operations across the state and permit conditions are in place to prevent unacceptable water level declines from occurring in offsite water supply wells...To date, MLRR has not had an instance where a properly installed and maintained recharge trench with real time water level monitoring has failed to prevent unacceptable declines in head due to offsite water supply wells."

Dick Zimmerlee, a current tenant of the subject property (leases from the owner), has led the opposition on the groundwater issue. Mr. Zimmerlee has made claims that Applicant's mining activities will cause an increase in groundwater levels of up to 15 feet, backing water into adjacent properties and rendering farmland unusable. This is a fiction. Mr. Zimmerlee hired a consulting geologist - Mr. Jim Newton - to review evidence in the record and speak to Mr. Zimmerlee's claims. Mr. Newton's memo (Rec. Ex. 62) attempts to discredit Mr. Lidstone and Mr. Stacy, asserting numerous "deficiencies and contradictions," describing Stantec's work as "derelict and inaccurate." However, Mr. Newton's memo does not provide evidence or substantive conclusions to support Mr. Zimmerlee's claims. Mr. Newton's memo does not inform with respect to science and evidence, it simply attempts to discredit Applicant's experts. Mr. Newton's oral testimony at the December 3rd public hearing was emotional and combative and was not the testimony of an objective, reliable expert. Mr. Lidstone's testimony was professional and believable and should be considered more reliable than Mr. Newton's. Evidence in the whole record demonstrates, and the Court can find, that Applicant has adequately addressed the groundwater issue.

There has been much discussion related to Applicant's ability to reclaim land for farm use after mining. Despite Mr. Zimmerlee's claims to the contrary, Applicant is capable of reclaiming mined land for farm use. This has been demonstrated by evidence in the record. Examples of productive reclaimed farm land were witnessed by the Court during its site visit. Applicant's history of reclaiming productive farm land has also been confirmed by the state's mine land reclamationist, Mr. Ben Mundie. Applicant encourages the Court to review Mr. Mundie's letter at Record Ex. 41.

Three out of six (two were absent and one agreed with Applicant) planning commissioners recommended that the Court approve adding the subject property to the county's Goal 5 Inventory of significant aggregate resource sites, but that it be designated a 3B site, a site less important relative to conflicting uses. County staff has advised the Court that the 3B designation does not *necessarily* mean Applicant cannot proceed with its conditional use permit. However, the Planning Commission's recommendation was based on advice from the Planning Director stating that the 3B designation is applied when "conflicting uses are so important that we should never allow a mine"(Rec. Ex. 49, Pg. 4, Par.2):

"Ann Beier continued to explain that the County's comprehensive plan policy isn't helpful in determining what those consequences mean. She noted there are three choices: One, there are no conflicting uses. Two, conflicting uses are so important that we should never allow a mine [3B]. Third, we need to balance the uses [3C]."

Crook County Ordinance 43, Section Five B, .3, states that under a 3B designation, mining *may be disallowed completely*. Statements made by several planning commissioners during deliberation on this matter, together with their decision to wait to deliberate on the pending conditional use permit, illustrate that these planning commissioners intended to prohibit mining of the site. This would be a mistake. Prohibiting mining in this case is inconsistent with Goal 5. The *Goal*, as expressed by Crook County Ordinance 55, is to provide for protection and use of the aggregate resources. The Goal is to allow mining of significant aggregate resources where it is demonstrated that adverse impacts to the surrounding area can be minimized. It is important to emphasize here that “minimize,” does not mean eliminate. Applicant has acknowledged that there will be impacts associated with its mining operations. However, Applicant has demonstrated with substantial evidence in the whole record that - through voluntary operating conditions- it can minimize adverse impacts. Because the County’s current acknowledged land use code includes discretionary review criteria and public notice requirements for most uses on EFU zoned land, Applicant would have the opportunity to participate in land use actions for nearby proposed conflicting uses. These criteria and procedural requirements, so long as they are applied by the County until the aggregate resource at the Site is depleted, serve to protect the Site - the Goal 5 resource - by giving Applicant the opportunity to defend its operations against new incompatible conflicting uses. Two-way protection: mine operating conditions to protect existing conflicting uses; and, applicability of current land use criteria and procedural requirements to new conflicting uses in the impact area until the Site is depleted of its aggregate resource. This is the balance. This is a program to achieve the Goal. As previously stated, the Goal is:

To provide for the protection and use, both current and future, of the mineral and aggregate resources of the County consistent with statewide land use planning goals, and its administrative rules, while minimizing any adverse impacts to the surrounding area.

Per Ordinance 55, Policy 11:

To the extent feasible, mitigation [conditions of approval] of the effects of mining on other uses of land shall occur as part of the development of a program to achieve Goal 5 with respect to the resource site. These decisions shall be based on substantial evidence.

Staff’s advice to the Court regarding the 3B designation- that the 3B designation doesn’t prevent the County from *processing* a conditional use permit- may be technically correct. However, in the context of this case and considering the enthusiasm and influence of opponents and support for opponents expressed by some members of the Planning Commission, Applicant asks that the Court’s decision on this Plan Amendment dispose of any ambiguity regarding the Court’s position on

whether the aggregate resource should be utilized. Are the conflicting uses so important that mining should never be allowed? If so, the Court should designate the subject property a 3B site. This will send a clear message to the Planning Commission that prohibiting mining is an acceptable option. Should the values of the aggregate resource and conflicting uses be balanced by mitigating impacts to both through conditions of approval? If so, the subject property should be designated a 3C site and mitigation/ conditions of approval should be included in the Court's decision and ordinance: the program to achieve the Goal. Conditions of approval have been proposed by Applicant (Rec. Ex. 63, Section VI.)

It is also important to restate the fact that in 2016, when the Woodward aggregate reserve - site of Applicant's current operation - was added to the Inventory, it was designated a 3C site (Rec. Ex. 37). Applicant encourages the Court to carefully review all of Exhibit 37 and consider it a model for what is appropriate in this case. Further, there is not a single significant aggregate site in Crook County that has been added to the Inventory through the post acknowledgement plan amendment process that is designated 3B: all significant aggregate sites that have conflicting uses and have been added to the Inventory have been designated 3C sites.

Applicant respectfully asserts that substantial evidence in the whole record for this case proves consistency and/or feasibility of consistency with applicable provisions of the Crook County Code and Comprehensive Plan and requests that the Court add the subject property to the County's inventory of significant aggregate sites as a 3C site with the intent that the aggregate resource contained within the subject property be protected for use -utilized- consistent with Statewide Planning Goal 5.

Prepared and Submitted by Knife River
Corporation – Northwest
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Date: December 10, 2021