



March 9, 2022

To: Crook County Planning Commission

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

Re: Applicant's Final Argument for Case No. 217-21-000537-PLNG (CUP)



Dear Members of the Planning Commission:

Applicant submits this document and exhibits entered into the record by Applicant March 9th, 2022 as final argument and rebuttal to exhibits 67-71.

Applicant would first like to thank the Planning Commission, Planning Staff, County Counsel and interested parties for their time, patience and courage in actively participating in this important public process. Applicant acknowledges that the challenge of balancing competing and sometimes conflicting uses to ensure the county's supply of high-quality construction aggregates while also protecting the interests of neighboring property owners places extraordinary pressures on those citizens charged with the responsibility of making these land use decisions.

Procedural Background: On September 8th, 2021, after several public hearings, the Planning Commission closed the record for this case, 217-21-000537-PLNG (CUP) (the "CUP"). The next step would be deliberation and decision. However, prior to deliberation on the CUP, the Planning Commission would have to wait for the County Court to issue the final decision on Plan Amendment case 217-21-000436-PLNG (the "PAPA"), an application to add the subject property to the county's Goal 5 inventory of significant aggregate sites (the "Inventory"). The Planning Commission had considered both the PAPA and the CUP applications together up to that point. It is the Planning Commission's role to issue a decision on the CUP. However, in the case of the PAPA, the Planning Commission's role was to offer a recommendation to the County Court; the County Court would make the decision. Until the County Court issued a final decision on the PAPA, the Planning Commission would postpone deliberations for the CUP. On February 2nd, 2022, the County Court signed Ordinance No. 328, adding the subject property to the Inventory and clearing the way for the CUP.

On February 23, 2022, the Planning Commission voted to reopen the public record for the CUP to allow materials submitted to the PAPA record subsequent to September 8th, 2021. This includes exhibits 35-66, Ordinance No. 328, staff reports, minutes and audio of public hearings and public notices. Exhibits 35-66 are exhibits submitted to the PAPA

record that illustrate efforts from Applicant and participants to inform the county on the merits of the case to allow mining on the subject property. Ordinance No. 328 represents the County Court's decision to recognize the subject property as a significant aggregate resource and add it to the Inventory.

Because the Planning Commission reopened the record to receive exhibits 35-66 (etc.), the Planning Commission allowed an opportunity for rebuttal of this "new evidence" by participants. This first record period ended March 2nd, 2022 at 4pm. Applicant was then allowed an additional 7 days to submit its rebuttal and final argument. This second record period ended March 9th, 2022 at 4pm.

New Evidence: The county received Exhibits 67-71 during the first record period. In response to this new evidence, applicant has submitted the following:

- Chris Lidstone Credentials: demonstrates Chris Lidstone is a qualified expert; rebuts claims in Exhibit 67.
- Stantec-Lidstone Memo: rebuts claims made in Exhibits 67-71.
- Letter from Vanier, Landowner: rebuts claims in Exhibits 67-71.
- Hudspeth Land & Water (HLW) Memo and Data: rebuts claims in Exhibits 67-71.

The above referenced evidence speaks only to the evidence and argument submitted during the first record period and speaks for itself. As a point of clarification, the water monitoring data and memo provided by HLW represents data collected from Mikulski's shallow aquifer potable water well. As evidenced by the HLW Memo, Knife River has employed qualified experts to monitor the Mikulski well since the beginning of operations at the Woodward site. As noted in the HLW Memo, expert third party data and analysis support Knife River's statements that it is committed to monitoring and protecting its neighbor's groundwater supply. To date, there is no evidence that its operations have impacted nearby wells.

Included in Ordinance No. 328 is the county's "Program to Achieve the Goal" (the "Program"). Ordinance No. 328 is a county ordinance that now applies directly to ensure that mining will occur on the property in a manner consistent with the county's adopted plan for minimizing or mitigating impacts to neighboring properties in the impact area. The Program represents the county's determination that the economic, energy, social and environmental consequences of allowing mining can be minimized or mitigated by adherence to said Program conditions. The County Court considered the entire record (CUP and PAPA) in making this determination and adopting the Program. The Program in Ordinance No. 328 constitutes the county's determination that it is in fact feasible for Applicant's proposal to meet the requirements of the County Code and Comprehensive Plan.

The number of public hearings and the testimony and information now in the record for this case illustrates that for participants representing their respective interests, it

can be difficult to advocate for a position without sometimes resorting to attempts to discredit representatives of inconvenient facts or embellish or exaggerate claims that support a desired outcome. This “shotgun blast” approach confuses and frustrates an already challenging process. At times we may all feel compelled to “play to win.” However, the fact remains that the best interest of the public is served by a decision consistent with our legislatively enacted standards, supported by substantial evidence.

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 Ordinance No. 328 and requests that the Planning Commission approve, consistent with the conditions of the Program, the Conditional Use Permit for aggregate mining of the subject property.

Prepared and Submitted by Knife River
Corporation – Northwest
By: Matt Ropp, Technical Services Mgr.

A handwritten signature in blue ink that reads "Matt Ropp". The signature is written in a cursive style and is positioned above a horizontal line.

Date: March 9, 2022