



**KNIFE RIVER – NORTHWEST
GOAL 5 PAPA/ CONDITIONAL USE PERMIT
APPLICANT’S FINAL RUBUTTAL ARGUMENT**

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**Crook County
Community Development**

Owner: Robert J. Vanier and Lani Vanier
P.O. Box 326
Dayville, OR 97825

Applicant: Matt Ropp, Manager of Land Planning
Knife River Corporation – Northwest
32260 Old Highway 34
Tangent, OR 97389

Site Address: 6487 NW Lamonta Road, Prineville, Oregon

Subject Property: T14 R15 Section 14 tax lot 103

Case Number(s): 217-21-000436-PLNG (Comp Plan Amendment)
217-21-000573-PLNG (Conditional Use Permit)

I. Procedural Background

Knife River Corporation – Northwest submitted the above referenced Comprehensive Plan Amendment and Conditional Use Permit applications requesting the county add the subject property to its inventory of significant aggregate resource sites and authorize the extraction of sand and gravel. An initial evidentiary hearing was conducted by the Crook County Planning Commission, beginning at 4pm on July 28th, 2021. After approximately three hours the Planning Commission continued the public hearing to August 25th, 2021. A continued public hearing was conducted by the Planning Commission, beginning at 4pm on August 25, 2021. At the conclusion of the public hearing, the Planning Commission advised participants that if any participant believed new evidence had been submitted at the hearing, any participant had the right to request that the record be left open for submittal of written rebuttal evidence. No participant requested that the record be left open for submittal of written rebuttal evidence. Applicant requested the record be left open for seven days for rebuttal argument from any participant and an additional seven days for Applicant’s final argument. After approximately three hours and forty-five minutes, the Planning Commission closed the public hearing, leaving the record open for two distinct periods with the following instructions: 1) the record is open for any participant to submit rebuttal argument only until 4pm on Wednesday September 1st, 2021; and, 2) the record is open for Applicant only, to submit its final argument, until 4pm on Wednesday September 8th, 2021. This document constitutes Applicant’s final argument for both the Comp Plan Amendment and Conditional Use Permit applications.

Applicant’s case for approval of a PAPA to add the subject property to the county’s Goal 5 Inventory of Significant Aggregate Resources and a Conditional Use Permit to extract sand and gravel from the subject property is demonstrated by evidence and argument in the whole record, including:

- Knife River Comp Plan Amendment Burden of Proof
- Knife River Conditional Use Application
- Exhibit 14 – Stantec Groundwater Presentation Exhibits
- Exhibit 16 – Site Visit Maps
- Exhibit 22 – Site Plans
- Exhibit 23 – Dust Management Plan
- Exhibit 24 – Groundwater Exhibits
- Exhibit 26 – Outline for Response to Groundwater Questions
- Oral Testimony for Applicant, PC Hearing 4pm to 7pm Wednesday July 28th, 2021
- Oral Testimony for Applicant, PC Hearing 4pm to 7:45 pm Wednesday August 25th, 2021
- Exhibit 33 – Stantec Rebuttal Argument for Applicant Dated September 8th, 2021

Over the course of two public hearings, the Planning Commission has posed questions to the Applicant and emphasized a number of key issues the Commission would like the Applicant to explain. The format of this document is intended to provide an outline of key issues with a summary of Applicant's explanations and a list of proposed conditions of approval intended to address key issues.

II. Key Issues

Dust

Nearly all oral testimony and written submittals complaining of fugitive dust at knife river's operations identify activities occurring at or around the Woodward processing site (e.g. crusher, plant area, stockpiles) as the primary source of dust. Active extraction operations were not identified as being a significant contributor to dust issues, except that disturbed ground, left untreated after mining, is believed to contribute to conditions that are more difficult to manage for dust. Applicant has acknowledged that excessive disturbed ground increases the difficulty of managing fugitive dust, especially during windy conditions. Applicant has acknowledged that an area of land on the Woodward property referred to by Commissioner Hermrick as the "30 acres of pig weed" was not properly vegetated during the spring of 2021 and this undoubtedly contributed to fugitive dust. As explained by applicant during oral testimony, this was a result of a miscommunication or misunderstanding between Knife River, the landowner, and the tenant farmer, Mr. Zimmerlee. As stated by Mr. Zimmerlee, the land was not planted this year, primarily due to a lack of irrigation water. Applicant acknowledges that Mr. Zimmerlee also stated he believes there were issues related to the condition of the land and investments required to restore the fertility and tilth of the land. Applicant addresses the matter of reclamation success in following sections of this document and in Exhibit 33, Pg. 2 "Agricultural Management and Site Reclamation."

As a result of communication with neighbors and public testimony during this application process, Applicant recognizes the need to do a better job of managing fugitive dust at the Woodward site and to apply the same efforts and methods to managing the subject property. Applicant submitted its Dust Management Plan (Exhibit 23), which not only demonstrates to the county that Applicant has a formal plan for managing fugitive dust, but also provides transparency with respect to regulatory agency (i.e. DOGAMI, DEQ) permit conditions. Applicant commits to compliance with its Dust Management Plan as a condition of the Conditional Use Permit for the subject property (Applicant's Proposed Condition 9). This will

give the county enforcement authority that, if necessary, could result in code enforcement citation and ultimately revocation of the Conditional Use Permit.

Additional measures to improve the operator's ability to manage fugitive dust include a designated haul road between the subject property and the Woodward processing site. The designated haul road will be located as depicted on Applicant's site plan dated August 23rd, 2021. The designated haul road will be constructed of an all-weather surface with an aggregate road base. The designated haul road will be treated regularly to minimize fugitive dust.

The following conditions of approval related to dust management are proposed by Applicant:

7. The Applicant shall control fugitive dust emissions associated with mining operations on the subject property, consistent with its Dust Management Plan dated August 23, 2018.
8. The internal haul road between the subject property and the Woodward processing site shall be constructed with an aggregate base sufficient to support heavy vehicles and equipment, shall have an all-weather surface, and shall be treated regularly to minimize fugitive dust.
9. A contact person representing the aggregate operator shall be named and all appropriate contact information shall be provided to a neighbor that requests such information. The designated contact person shall be a person authorized to respond to/address concerns/complaints related to fugitive dust.

Significant change or increased costs for farm practices

Several area landowners expressed concerns that fugitive dust caused by gravel extraction on the Vanier property may impact farm crops and livestock. While there were general statements that dust on hay crops makes the hay less suitable for livestock feed, there was no explanation of how the dust would impact farm crops to a degree that it will force a significant change in accepted farm practices on surrounding lands devoted to farm use; or, significantly increase the cost of farm practices on surrounding lands devoted to farm use. Extraction operations on the adjacent Woodward property have been active for six years. No evidence of measurable impacts to farm operations on surrounding lands resulting from extraction activities at the Woodward property has been submitted to the record and no evidence has been provided to the Applicant.

Applicant acknowledges that surrounding landowners are concerned about *potential* impacts that may result from gravel extraction operations on the subject property. Based on communications with surrounding property owners and testimony provided by participants at the two public hearings, Applicant understands the primary concerns are dust and groundwater impacts. As explained above, Applicant's operations on the adjacent Woodward property during the past six years have not resulted in the potential impacts identified by participants in this land use process and Applicant has committed to management of dust and groundwater to ensure that impacts these impacts are minimized. Applicant believes the record in this case supports the fact that its gravel extraction activities on the subject property will not force a significant change in accepted farm practices on surrounding lands devoted to farm use; or, significantly increase the cost of farm practices on surrounding lands devoted to farm use.

Berms

Applicant proposes berms along the easterly portion of the north property line (adjacent to the Davis property) and along Stahancyk Lane, as depicted on Applicant's site plan dated August 23rd, 2021. Applicant suggests that berms along Lamonta Road be optional, to be determined by the Operator as mining operations progress. There are no nearby noise sensitive uses to the east of the subject property and Applicant suggests that leaving this area in farm vegetation (unless disturbance is necessary or berms are required due to a demonstrated need for mitigation) may be less impactful than constructing a berm prior to the start of mining. Applicant also notes that whereas required berm heights on the Woodward property ranged from five (5) to twenty (20) feet, a standard minimum of eight (8) feet in height is sufficient to provide necessary visual screening and sound attenuation.

The following conditions of approval related to screening berms are proposed by Applicant:

12. Screening berms, as depicted on the site plan dated 08/23/2021 entitled "Proposed Mining Area Site Plan" shall meet the following requirements:

- A. Berms depicted on the site plan as "proposed" shall be required.
- B. Required berms shall be constructed and maintained as follows:
 - 1. Minimum 8 feet in height
 - 2. Maximum slope of 3H:1V.
 - 3. Required berms may be located within the mining setback area.
 - 4. Berms shall be hydroseeded with appropriate grass seed mix.
 - 5. Berm vegetation shall be maintained to prevent the spread of noxious weeds.
 - 6. Berms shall be removed upon completion of the mining operation.

Noise

Noise emanating from subject property may be generated by mining equipment working (i.e. haul truck and loader engine and fan noise, excavator engine and track noise) and also by audible reverse signal back-up alarms. Back-up alarms are an important safety feature intended to prevent injury or death by alerting people near vehicles that they are moving backward. Back-up alarms are required by the Mine Safety and Health Administration (MSHA). Testimony at the public hearing suggests that while equipment noise may be tolerable as background noise, back up alarms that beep can be annoying. To address this issue, Applicant proposes to replace existing back-up beepers with directional "white noise" back-up alarms.

The following conditions of approval related to screening berms are proposed by Applicant:

10. Noise attenuating berms, consistent with proposed Condition 9, shall be constructed as depicted on the approved site plan.

11. Existing back-up “beepers” on mining equipment and vehicles shall be replaced with directional “white noise” back-up alarms.

Operating Hours/days

Residents in rural areas, particularly where dwellings are sited near active resource uses (farm, forest) or industrial areas, typically do not expect to enjoy the same “residential” environment as residents of a designated residential areas (i.e. residential zoning, urban or suburban communities). Applicant recognizes that some landowners or occupants are able to work from home or may be retired, but this seems to be the exception to the rule that generally the environment in the resource zoned area includes daytime noise caused by resource activities. Applicant’s intent is to extract the aggregate resource from the subject property and complete reclamation as quickly as possible. Further limiting hours of operation could prolong the active life of the mining operation at the subject property. Applicant proposes standard hours of operation, as listed in at condition 6 in Section III of this document.

Groundwater

Potential groundwater impacts are a primary concern expressed by adjacent property owners and the Planning Commission. A final summary of groundwater protection measures is provided by Stantec, on behalf of the Applicant, in Exhibit 33. See proposed groundwater protection conditions 16, 17, and 18 in Section III of this document.

Water Rights

Knife River receives industrial use water for its operations at the Woodward property from Ochoco Irrigation District (OID). Knife River and OID have in place a water lease and delivery agreement. OID holds industrial water rights pursuant to the District’s primary water rights certificate. Knife River is not using OID agricultural irrigation water rights to support its mining operations. OID has confirmed that its industrial water rights may be applied to the Vanier property and that Knife River may use water supplied by OID for industrial use (dust control) on the Vanier property. Applicant will provide evidence of legal water rights for its industrial water use on the Vanier property as a condition of approval. See proposed Condition 4 in Section III of this document.

Reclamation

Revegetation after mining is addressed as part of the Dust Management Plan, is addressed in the Stantec document at Exhibit 33, and will be addressed as part of the DOGAMI reclamation plan. See Proposed Conditions 13, 14 and 15 in Section III of this document.

Noxious Weeds

See Proposed Condition 21 in Section III of this document.

III. Applicant's Proposed Conditions of Approval

Site Plan

1. Prior to commencing mining operations, Applicant shall submit an updated site plan depicting required setbacks and berms consistent with applicable conditions of final county land use approval.

No Processing

2. Mining activities on the subject property shall be limited to aggregate extraction only. No processing is authorized. Materials from the subject property may be transported via an internal haul road to the Woodward property (tax lot 1415140000702) for processing.

Setbacks

3. Mining shall not extend closer than one hundred (100) feet from property lines on the north, east and south side of the subject property. Mining shall not extend closer than fifty (50) feet from adjacent parcel 141514 TL 701 (Porfily property) on west side of the subject parcel. No setback is required along the boundary common to the Woodward property 141514 TL 703). Berms and groundwater recharge trenches may be placed within the setback area.

Water Rights

4. Prior to use of water (for which a water right is required) on the subject property, evidence that water is being obtained for a legal water source shall be provided to Crook County Community Development Department.

Access

5. Access to the subject property shall be from the existing access at the Woodward site. No new access will be permitted on Stahancyk Lane or Lamonta Road.

Hours of Operation

6. Ordinary operating hours shall be Monday through Friday, June 1 through October 31 from 6:00 a.m. to 9:00 p.m., or sunrise to sunset, whichever time-period is less. Operating hours shall be Monday through Friday, November 1 through May 31 from 7:00 a.m. to 6:00 p.m., or sunrise to sunset, whichever is less.

Operating hours shall be Saturdays from 8:00 a.m. to 5:00 p.m. No operations shall be conducted on Sundays or on the following legal holidays: New Year 's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day.

Exceptions to the operating hours set forth above may be granted provided the aggregate operator provides written notice to residential neighbors within the 500-foot Impact Area and to the Crook County Planning Department that a project requires additional materials and adequate time to produce them. The notice shall be at least 72 hours prior to the planned extended hours and the time-period for the extension shall not be longer than 30 consecutive days. The exceptions shall not apply to the Saturday, Sunday, and holiday restrictions.

Dust Mitigation

7. The Applicant shall control fugitive dust emissions associated with mining operations on the subject property, consistent with its Dust Management Plan dated August 23, 2018.

8. The internal haul road between the subject property and the Woodward processing site shall be constructed with an aggregate base sufficient to support heavy vehicles and equipment, shall have an all-weather surface, and shall be treated regularly to minimize fugitive dust.

9. A contact person representing the aggregate operator shall be named and all appropriate contact information shall be provided to a neighbor that requests such information. The designated contact person shall be a person authorized to respond to/address concerns/complaints related to fugitive dust.

Noise

10. Noise attenuating berms, consistent with proposed Condition 9, shall be constructed as depicted on the approved site plan.

11. Existing back-up “beepers” on mining equipment and vehicles shall be replaced with directional “white noise” back-up alarms.

Screening

12. Screening berms, as depicted on the site plan dated 08/23/2021 entitled “Proposed Mining Area Site Plan” shall meet the following requirements:

- A. Berms depicted on the site plan as “proposed” shall be required.
- B. Required berms shall be constructed and maintained as follows:
 - 1. Minimum 8 feet in height
 - 2. Maximum slope of 3H:1V.
 - 3. Required berms may be located within the mining setback area.
 - 4. Berms shall be hydroseeded with appropriate grass seed mix.
 - 5. Berm vegetation shall be maintained to prevent the spread of noxious weeds.
 - 6. Berms shall be removed upon completion of the mining operation.

Site Disturbance

13. No more than 10 acres of ground shall be disturbed on the subject property by mining at any time. The “disturbed area” refers to the active mining and reclamation cells and does not include haul roads, stockpiles or the berm areas.

14. Until final reclamation is completed, the mine operator shall stabilize disturbed areas to minimize dust using hydro-seeding or other soil stabilization methods consistent with its Dust Management Plan

Reclamation

15. The subject property will be reclaimed concurrently with mining as cells are completed. Upon completion of mining cells, standing water will be removed, overburden will be replaced, the uppermost overburden lift will be ripped and disked as necessary to eliminate compaction, and topsoil will be replaced. At the nearest seeding window (e.g. fall, spring), previously placed

topsoil will be ripped, disked and seeded. All reclamation activities will be subject to a reclamation plan approved by the Department of Geology and Mineral Industries.

Groundwater Protection

16. If groundwater is encountered, it may be pumped out of active mining cells and infiltrated on-site.

17. All equipment and trucks operating near exposed water shall be inspected daily and maintained or repaired to prevent hydrocarbon fluid (diesel, oil) leaks. A spill kit design for containing hydrocarbon releases shall be kept near equipment when operating near exposed water.

18. As a condition of this approval, Operator commits to the following groundwater guarantee:

- A. In the event that corrective action for groundwater necessitates well deepening, well replacement or replacement water, the Operator shall take corrective action as required by DOGAMI or as otherwise agreed between the Operator and the affected well owner without undue delay.
- B. With respect to part "A" above, the Operator shall guarantee the quality and quantity of water available at neighboring wells specified above commensurate with the use— domestic, livestock and/or irrigation. Potable water is required for the replacement of domestic wells. Livestock quality water is required for replacement of any livestock wells. Irrigation quality water is required for the replacement of all irrigation wells. Any interruption in the water service or diminished quality occurring beyond the well head, in delivery or pumping systems is not the Operator's responsibility but remains the sole responsibility of the well owner or users. Maintaining any part of the electrical connections, servicing or replacing pumps within the wells shall also remain the sole responsibility of the well owners or users.
- C. The Operator does not make any representations as to the current or past quality or quantity of the water available to the wells or its suitability or legality for domestic or other use. The well owners or users retain responsibility for compliance with existing or future water standards or requirements except to the extent that the Operator's actions have caused those standards or requirements to be violated.
- D. Prior to mining, the Operator shall examine and collect "base line" data for waters of springs and neighboring wells designated on Exhibit 24, Pg. 2, to the extent that permission from the landowner is granted. To ensure that water levels are not lowered or that spring flow is not decreased, the Operator has proposed an infiltration trench or series of infiltration trenches. The Operator shall collect on-site monitoring well water quantity data continuously and on-site monitoring well water quality data quarterly and shall share all collected data quarterly with designated well/spring owners who have granted access and sampling permission. Prior to mining through a trench or a monitoring well, all previously collected groundwater data will be reviewed by licensed professional geologist or engineer. This data analysis shall consider the relocation and placement of the next infiltration trench and monitor wells as well as any potential adverse impacts to surrounding properties. The Operator shall make adjustments to his Mine Plan to minimize or eliminate any mine related adverse impacts. All data shall be

maintained on file by the Operator for 5 years and shall be made available to the County, DOGAMI or affected residents upon written request.

Agency Approvals

19. The Applicant shall obtain the required permits from the appropriate state agency (Department of Geology and Mineral Industries and/or Department of Environmental Quality). A copy of the Department of Geology and Mineral Industries operation and reclamation shall be provided to the Crook County Community Development Department. If a stormwater management permit is required by the Department of Environmental Quality, a copy of the permit shall be provided to Crook County Community Development Department.

Mosquitoes

20. The Applicant shall obtain approval for a mosquito control plan from Crook County's Vector Control District. A copy of the approved plan shall be provided to the Crook County Community Development Department prior to commencing mining operations.

Weed Control

21. The applicant shall obtain approval from the county Weed Master for a weed control plan. A copy of the approved weed control plan shall be submitted to Crook County Community Development Department prior to commencing mining operations. The operator shall submit annual weed control reports as required by Crook County Code.

Emergency Management

22. The final site plan shall be provided to the Crook County Fire and Rescue District's Fire Marshall. Contact information for the on-site operations manager shall be provided to the Fire Marshall.

Archaeological and Cultural Resources

23. The Applicant shall engage with Oregon's State Historic Preservation Office as part of the development process to ensure that requirements related to cultural and historic resources are met. This may require the Applicant to provide on-site surveys of the property.

24. The Applicant will adopt an "inadvertent discovery plan" to address best management practices for archaeological and cultural discoveries during operations.

I. CONCLUSION

Applicant respectfully asserts that substantial evidence in this record proves consistency and/or feasibility of consistency with applicable provisions of the Crook County Code and requests that these applications be approved.

Prepared and Submitted by Knife River Corporation – Northwest

By: Matt Ropp, Manager of Land Planning