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Sent: Wednesday, July 15, 2026 3:59 PM
To: John Eisler
Cc: Plan; Ropp, Matt; Hasenstein, Ethan; Mark S. Bartholomew
Subject: 217-26-000166-PLNG Knife River
Attachments: LT CCCDD 7.15.26.pdf

Mr. Eisler:

I am counsel to Knife River. Please submit the attached letter to the record for the referenced file and hearing.

Thank you.

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Via email to plan@crookcountyor.gov

RE: 217-26-000166-PLNG

To Whom It May Concern:

We represent Knife River Corporation – Northwest (“Knife River”). Please include this letter in the record for the above-referenced planning matter. We are writing specifically to address the consideration of initiation of revocation or modification of Knife River’s CUP. As explained below, there is no basis to initiate revocation proceedings against Knife River.

I. Operating History

Knife River has been operating the subject CUP since 2015. Since that time, Knife River has committed two violations: (1) Operating outside approved CUP hours of operation, and (2) absence of a vehicle barrier or gate at an access point. Knife River promptly paid the citation fee for each, remedied the violation, and has not committed the same or any other violations since. With regard to the violation for operating outside of prescribed hours, the “operating” consisted of the operation of a water pump *off site* of the CUP. The hours of operation restrictions are located in CCC 18.144.060(8) and pertain to “mining extraction, processing and equipment operation.” The water pump was used to fill ponds that are part of the CUP, but there is legitimate doubt as to whether a water pump is within the purview of CCC 18.144.060(8). The original proposed fine for that offense was \$1,500.00. Community Development Director John Eisler reduced the fine to \$600.00 based on the following: Knife River’s first offense with regard to operating hours and Knife River’s proactive response to correct the issue. Mr. Eisler went on to cite that mitigating factors in CCC 18.144.070(1)(d) weigh in favor of Knife River in reducing the fine. Ironically, after a mere two instances of violations, one of which was reduced due to Knife River’s record of compliance, Crook County

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now sees fit to put Knife River on trial to consider revocation of its entitlement. Revocation of the CUP is unwarranted under the CCC and is unconstitutional under both the United States Constitution and the Oregon Constitution.

II. Applicable Standard

The notice of the hearing cites three relevant provisions in the Crook County Code: CCC 18.172.070, 18.144.070, and 18.172.100. CCC 18.172.070 governs procedural notice and is not relevant to the substantive matters addressed herein. CCC 18.172.100 governs revocation of permits generally. CCC 18.144.070 governs enforcement of aggregate resource sites, including the revocation of permits for aggregate resource sites. Because CCC 18.144.070 is specific to the subject use, CCC 18.144.070 is the applicable standard for analysis. *Sparks v. City of Bandon*, 30 Or LUBA 69 (1995) (more specific provisions prevail over more general provisions). Aggregate sites are a Goal 5 protected resource. Accordingly, specific provisions pertain to them.

III. CCC 18.144.070

CCC 18.144.070 provides, in relevant part, that the planning commission may revoke a permit for mining aggregate resource sites if:

- (a) The permittee provided false or misleading material information, or omitted disclosure of a material fact, in the permit application or materials submitted in support of the application; or
- (b) The permittee is intentionally conducting mining operations in violation of federal, state or county laws or regulations applicable to mining operations which results in a substantial injury to persons or interests protected by the law or regulation. An intentional violation shall not exist if the permittee disputes the violation and continues the alleged unlawful conduct while litigating the existence of the purported violation.

We are not aware of any allegation, much less any substantiated allegation, that Knife River provided false or misleading information in support of the application for the CUP. Even if an applicant had provided false or misleading information to gain approval and the approval was wrongly granted, the ability to revoke a permit on such grounds is highly constrained, if not simply unavailable, due to the finality of land use decisions in Oregon. *See Johnson v. Landwatch Lane County*, 327 Or App 485 (2023) (Oregon Court of Appeals found that Lane County erroneously revoked permits even in light of evidence of fraud in deeds submitted at the time of application).

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As for the second avenue for revocation, CCC 18.144.070(b), the County has the burden of proof to demonstrate that Knife River is *intentionally* conducting mining operations in violation of federal, state or county laws or regulations and that such violations result in a substantial injury to persons or interests protected by the laws or regulations. There are no allegations of injury, let alone substantial injury, stemming from Knife River's operation of a water pump or lack of a gate on one section of the CUP site. The foregoing violations were unintentional and did not result in injury. Therefore, there are no grounds for revocation. Even if all criteria were met, revocation would not be appropriate, because revocation is discretionary. The Code provides that a permit *may* be revoked, not that it shall be revoked. Revocation for two violations is disproportionate to the violations, highly punitive, and unconstitutional, which we will discuss further below.

IV. CCC 18.172.100

As stated, we believe that the applicable criteria to revoke a CUP for aggregate are contained in CCC 18.144.070. To the extent CCC 18.172.100 applies, revocation is not an appropriate action. Similar to CCC 18.144.070, CCC 18.172.100 provides that a permit may be revoked for fraud or misrepresentation. Our response to that element is the same as above—there is no fraud or misrepresentation, and the County likely could not revoke a permit at all under that subsection due to the holding in *Johnson*. In the event a Knife River opponent argues that the permit is being exercised or has been recently exercised contrary to the conditions of approval (CCC 18.172.100(d)), we disagree. First, Knife River is not currently operating outside the scope of its conditions of approval. Any such determination would require a finding of guilty of a violation and a finding that the violation has not been remedied. Citizen allegations of violations do not constitute violations of the Code of the CUP's conditions of approval. Secondly, we submit that Knife River has not “recently” exercised its permit contrary to the conditions of approval. The pump operation violation was in November of 2025, twenty months ago, and has not occurred again. The violation for a missing piece of gate was in May of 2026. The fine was paid and the violation was promptly remedied. CCC 18.172.100 provides the discretionary “may” remedy when considering the revocation of a permit. Even if all criteria for revocation were met, revocation would be an extraordinarily punitive action, disproportionate to the harm of the underlying violations.

V. United States and Oregon Constitutions

The Eighth Amendment of the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The Oregon Constitution states, “Excessive bail shall not be required, nor excessive fines imposed.” Oregon Constitution, Article I, Section 16. Revoking the CUP due to two underlying violations (the sum total of which was \$1,100.00 in fines) would be grossly and outlandishly disproportionate to the violations. The Eighth Amendment applies to state actions, in addition to federal, pursuant to *Timbs v. Indiana*, 586 US 146 (2019). In *Timbs*, Tyson Timbs pleaded guilty to distribution of drugs. He was sentenced to one year of home

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detention and five years of probation, along with fines and fees of \$1,203.00. *Timbs* at 149. Additionally, the State of Indiana seized his \$42,000.00 vehicle via civil forfeiture, as it was used in his crimes. Timbs appealed, arguing that the seizure constituted an infringement of his Eighth Amendment protections against excessive fines. The United States Supreme Court agreed, reversing the Indiana Supreme Court. The Court held that the seizure of the vehicle was tantamount to a fine and that any such fine must be proportionate to the crime. Given the fact that the crime yielded a punishment of probation and home detention, seizure of the vehicle was disproportionate. *See also United States v. Bajakajian*, 524 US 321 (1998) (A forfeiture is a “fine” for purposes of the Eighth Amendment; Seizure of \$357,144.00 for failing to disclose that amount of cash to customs was disproportionate and violated Eighth Amendment).

As applied to Knife River, the County is considering whether to revoke the CUP. Such revocation would be a forfeiture, tantamount to a fine for Eighth Amendment analysis. We cannot conjecture at this point as to the monetary loss to Knife River in the event of revocation due to lost revenue and money invested in the CUP. However, suffice to say, it would be an understatement to claim that revocation would be grossly disproportionate to the violations.

VI. Conclusion

We are aware of a concerted effort by neighbors who are opposed to Knife River and are attacking it on various fronts. Allegations of violations and serial complaints may not be used to determine proportionality or whether the permit should be revoked. Reliance on allegations would deprive Knife River of due process, which would be yet another violation of its constitutional rights. This hearing goes far beyond the typical land use matter, as it implicates Knife River’s constitutional rights and economic rights and creates a risk of enormous financial loss to Knife River. We respectfully request that you deny the request to proceed to a revocation hearing, as the criteria for such a hearing are not met per the County Code, and the United States and Oregon Constitutions preclude revocation as a remedy.

Very truly yours,

HORNECKER COWLING LLP



MARK S. BARTHOLOMEW

MSB:snc

cc: Client