

COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES
Planning Division
COURTHOUSE
230 STRAND
ST. HELENS, OREGON 97051
PHONE: (503) 397-1501 FAX: (503) 366-3902

APPEAL / REFERRAL

NOTE: If this is an appeal, please read the back of this form to determine if you have "Standing"
CIRCLE ONE OF THE FOLLOWING

APPEAL or **REFERRAL**

YOUR NAME: Kim O'Dea Law Office of Bill Kloos, PC Phone: 541954-0095

Address: Law Office of Bill Kloos PC City: _____ Zip: _____
375 W. 4th Ave., Suite 204

Email: Eugene, OR 97401 Kimodea@landuseoregon.com

ORIGINAL APPLICATION: Name: Curtis Shuck / Lost Creek Rock Products LLC *Mel McBoegel*

File #: LUC 21-15 Request: Removal of Conditions from LLC's
approval Outright Permitted Use determination.

APPEAL Fee required
File in the County Clerk's Office

Please check one of the following:

I wish to **appeal** the decision made by the Land Development Services Department. This appeal is to the Columbia County Planning Commission. (CCZO Section 1702); or

_____ I wish to **appeal** the decision made by the Columbia County Planning Commission. This appeal is to the Columbia County Board of Commissioners. (CCZO Section 1703)


Original request was: Approved or _____ Denied; Decision Date: Jan 21, 2021
of Conditions Appeal Deadline: Jan 28, 2021

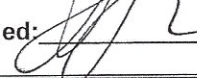
Reason for appeal (attach additional pages if necessary): Improper Conditions. See Attached

REFERRAL Fee required
File in the Land Development Services Office

_____ The application is reviewed Administratively without a public hearing, and I wish to **refer** this application to the Columbia County Planning Commission for a public hearing.

Reason for referral (attach additional pages if necessary): _____

The foregoing statements are in all respects true and correct to the best of my knowledge and belief: 

Date: January 25, 2021 Signed:  on behalf of Curtis Shuck and Lost Creek Rock Products, LLC

FOR CLERK'S OFFICE USE ONLY

Received: ___/___/___ Received by: _____ Receipt # _____ Check# _____

Please route copies of this form to: Board of Commissioners (2 copies), Land Development Services (1 copy) and County Counsel (1 copy). Thank you.

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
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January 22, 2021
NOTICE OF APPEAL

Columbia County Planning Commission
c/o Matt Laird
Land Development Services
230 Strand
St. Helens, OR 97051

Re: Lost Creek Rock Products/Beaver Falls Quarry; Map 07-04W-11, TL 1000.

Dear Mr. Laird,

Please accept this letter as narrative in support of the applicant's Notice of Appeal of LUC 21-15. The applicant is proposing an outright permitted use in the Surface Mining (SM) zone. As such, no land use permit is required. This LUCs was filed to establish that siting standards were met.

The County approved the LUCs, but attached three conditions. At least two of the conditions are improper.

The applicant is entitled to appeal pursuant to CCZO 1700 because the applicant is entitled to notice of the decision, appeared in writing before the planning department and supplied information and argument in favor of the application.

The appeal is filed by Kim O'Dea of the Law Office of Bill Kloos, on behalf of Curtis Shuck, 25275 Loten Way, Veneta, OR 97487 (360-567-7521) and Lost Creek Rock Products, LLC, PO Box 518, Creswell, OR 97426 (541-935-3629). The address and phone number for the Law Office of Bill Kloos is found above. The decision being appealed is LUC 21-15 noticed January 21, 2021 (Staff Report dated January 20, 2021).

I. Condition 1.b

Condition 1.b of the LUCs approval requires a Design Review (DR) application. DR is not triggered by the proposal because the use is not an "industrial use," as defined by the CCZO.

A. CCZO 1040, et.al. – Surface Mining Zone

The proposed use is an outright permitted use under CCZO 1042. Per the purpose statement of the Surface Mining Zone, CCZO 1041, the purpose of the zone itself is to “*provide for the protection and utilization of [deposits of aggregate and resource materials] in a manner which does not conflict with other land uses.*” To address this purpose, the county included CCZO 1044 within the zone, which ensures that the use does not conflict with other land uses. Per the plain language of the Code, the purpose of the zoning district was to adopt provisions to minimize conflict, and the County did so at CCZO 1044. Staff and the applicant agree that the requirements of CCZO 1044 have been met. In this case, compatibility requirements are contained within the zone¹.

B. CCZO 1550 – Design Review

CCZO 1550 – Design Review is not triggered by the proposal. The Director attempts to apply CCZO 1550 to the subject proposal based on an unsupported interpretation of “industrial use.” The Director states that “*surface mining is an industrial use ****,” but provides no basis for the statement. Based on the below, all evidence is contrary to the Director’s position.

Surface mining is a “resource use,” protected by Statewide Planning Goal 5. Statewide Planning Goal 5 specifically lists aggregate as a resource that must be inventoried and protected. Further, it requires that sites for the “removal and processing” of mineral and aggregate resource sites be identified and protected. SWPG 5 is implemented by ORS and OAR. The term “aggregate resource use” occurs.

Surface mining is addressed in the Columbia County RCP as a resource use. See Part XVI, Article VI. Further, Policy 4 and Policy 11 address impacts/compatibility. The requirements of Policy 11 are adopted into CCZO 1040.

In the CCZO, “mineral and aggregate” is listed as a use of its own or a resource use. See Article III, Sections 300 (table of uses), Section 500 (table of uses), and Section 1040.

Industrial uses are listed throughout the CCZO. See Article III, Section 300 (table of uses and page 46), Section 500 (table of uses), Section 910, Section 920, Section 930, and Section 940. “Mineral and aggregate” processing/extraction is not listed as an industrial use in any section of the CCZO.

In short, State and local law have defined aggregate extraction and processing as a resource use (or use of its own). Further, the County has defined and listed industrial uses. Aggregate extraction and processing is not included as an industrial use.

The Director’s interpretation of “industrial use” to include aggregate extraction and processing is not supported by to Statewide Planning Goal 5, implementing Rules and Statute, the County Comprehensive Plan, or the CCZO. Because the proposed use is a resource use (or a use of its own), and not an industrial use, CCZO 1550 is not triggered. Condition 1.b must be stricken.

¹ It should be noted that agricultural use and forest use are both permitted uses in the SM zone. The County does not require DR for those uses. As such, the County is applying its code inconsistently.

Lost Creek Rock Products/Beaver Creek Quarry

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Finally, where a use is subject to CCZO 1550, compliance is specifically required the under the individual zoning district. See CCZO 948, 935, 925, 915 and 686. Design Review is not required in the SM zone. This is because compatibility is addressed within the provision itself, as explained above.

II. Condition 1.a – Pre-application Conference.

Because DR is not required, a pre-application conference is not required. Condition 1.a must be removed.

III. Condition 1.c - TIA

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Thank you,
/s/ Kim O'Dea
Kim O'Dea

Attachments:
Notice of Appeal Form
Copy of Decision

COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES
COURTHOUSE
230 STRAND
ST. HELENS, OREGON 97051
(503)397-1501

**APPEAL INFORMATION for
FINAL ORDER LUC 21-15**

Applicant: Curtis Shuck

Notice Date: January 21, 2021

Appeal Body:

- Planning Commission**, for appeal of an administrative decision; file this appeal in the Land Development Services office, ground floor, Courthouse Annex, St. Helens, OR 97051. The appeal must be filed within 12 calendar days of the above Notice Date, the date this notice was mailed to the applicant and to other persons entitled to notice. The appeal must be accompanied by the appropriate appeal fee.
- Board of County Commissioners**, for appeal of this Planning Commission decision; file this appeal in the Office of the County Clerk, second floor, Courthouse Annex, St. Helens, OR 97051. The appeal must be filed within 7 calendar days of the above Notice Date, the date this notice was mailed to the applicant and to other persons entitled to notice. The appeal must be accompanied by the appropriate appeal fee.
- Land Use Board of Appeals (LUBA)**, for appeal of this Planning Commission or Board of Commissioner decision. File a Notice of Appeal with the Land Use Board of Appeals; PUC Building, 550 Capitol Street NE, Salem, OR 97310. The appeal must be filed with the Land Use Board of Appeals within 21 calendar days of the above Notice Date, the date this notice was mailed to the applicant and to other persons entitled to notice.

Attached is the FINAL ORDER on the application listed above. This decision, or any part of it, or any condition attached to it, may be appealed to the **Appeal Body** noted above.

If a local appeal is filed, and after notice is given to those persons entitled to notice, a public hearing will be held by the Appeal Body at its earliest available regular meeting. At the hearing, all interested parties will have an opportunity to appear and be heard.

The applicant and other interested persons should contact the Planning Department after the applicable appeal period has run to determine whether an Appeal has been filed. Applicants are cautioned against beginning development if an Appeal has been filed.

PLEASE NOTE: An appeal may be filed only by persons who appeared in person or in writing before the Planning Department, the Planning Commission or the Board of County Commissioners. You have "appeared" if you supplied information or argument in favor of or opposed to the application listed above.

If any of the above is not clear, or you have questions or require additional information, please contact Hayden Richardson at (503) 397-7216.