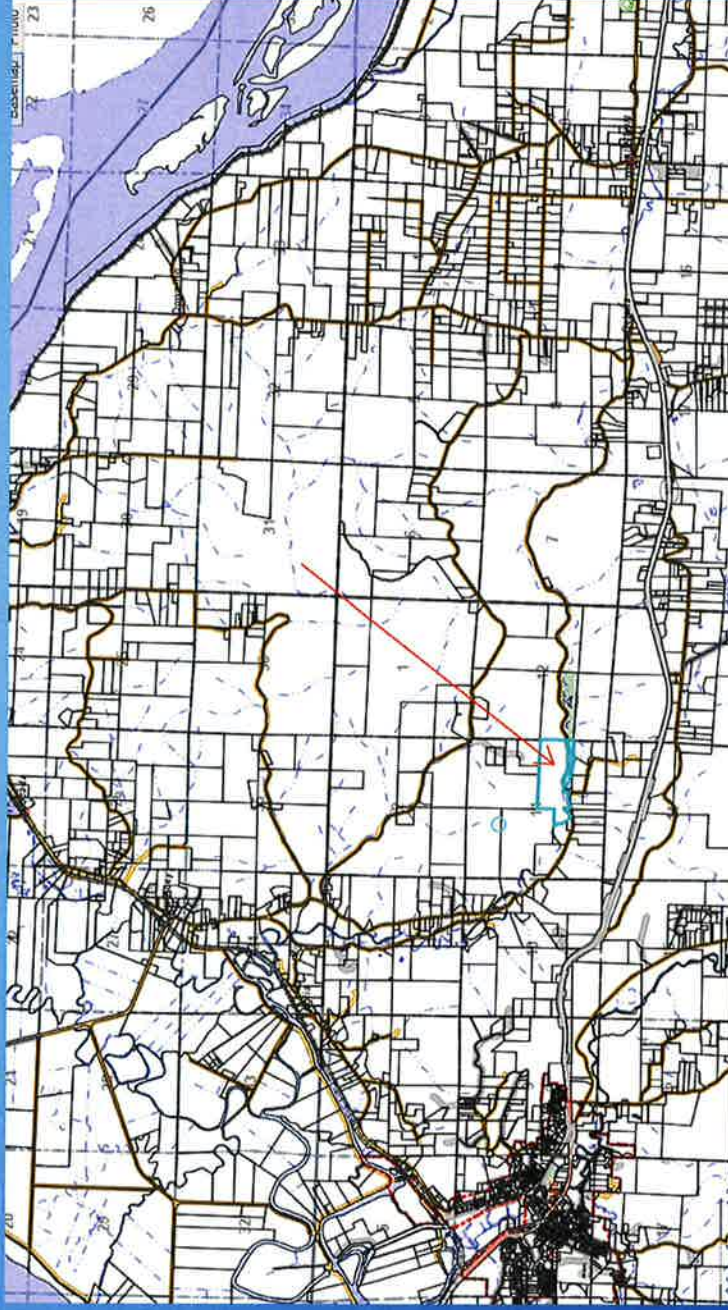


## Staff Report Information & Summary

- ☐ File Number: LUC 21-15 Appeal
- ☐ Applicant: Curtis Shuck
- ☐ Owner: Lost Creek Rock Products LLC
- ☐ Agent: Law Office of Bill Kloos, PC (Kim O'Dea)
- ☐ Site Address: Not Assigned
- ☐ Map/Tax Lot: 7411-00-01000 (Tax Acct. # 27871)
- ☐ Zone: Surface Mining (SM)
- ☐ Size: 74.58 Acres (Proposed Mining Area = 46.23 Acres)
- ☐ Proposal: To operate an aggregate quarry including removal, excavation, processing and stockpiling of aggregate materials and to site a portable non-fixed office and truck scale and exterior storage of heavy equipment associated with the use and the installation of a sedimentation pond.

# Vicinity Map

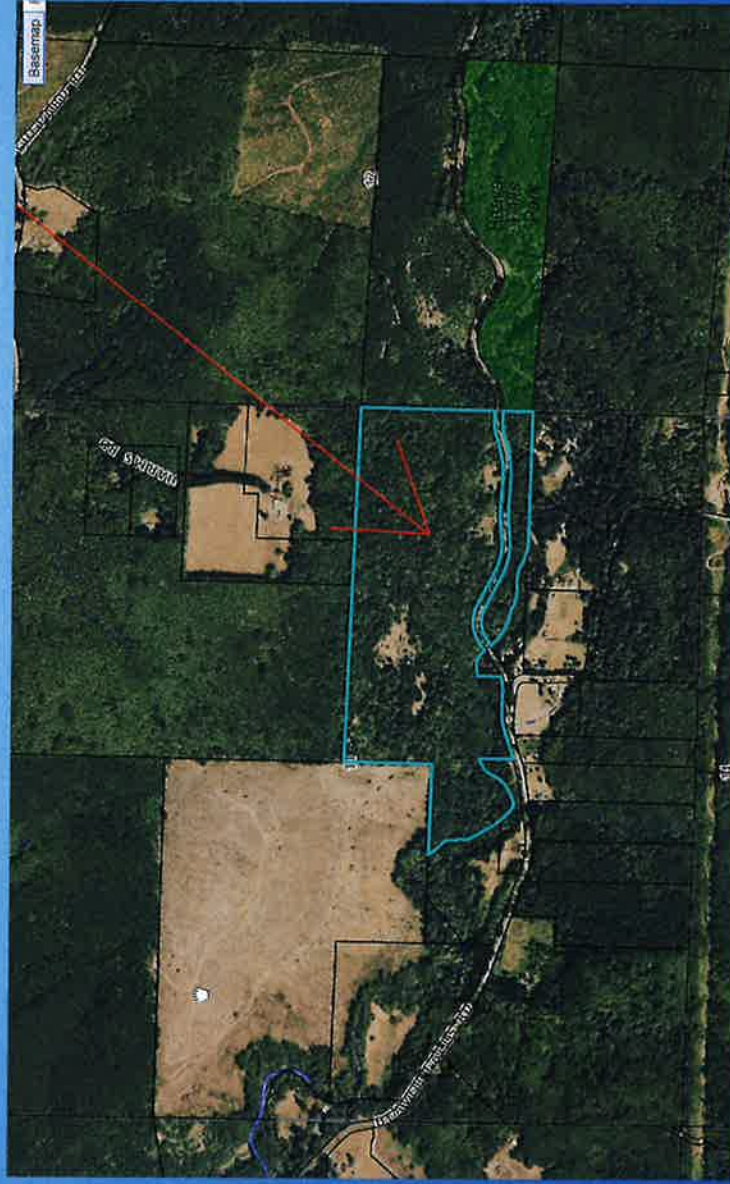






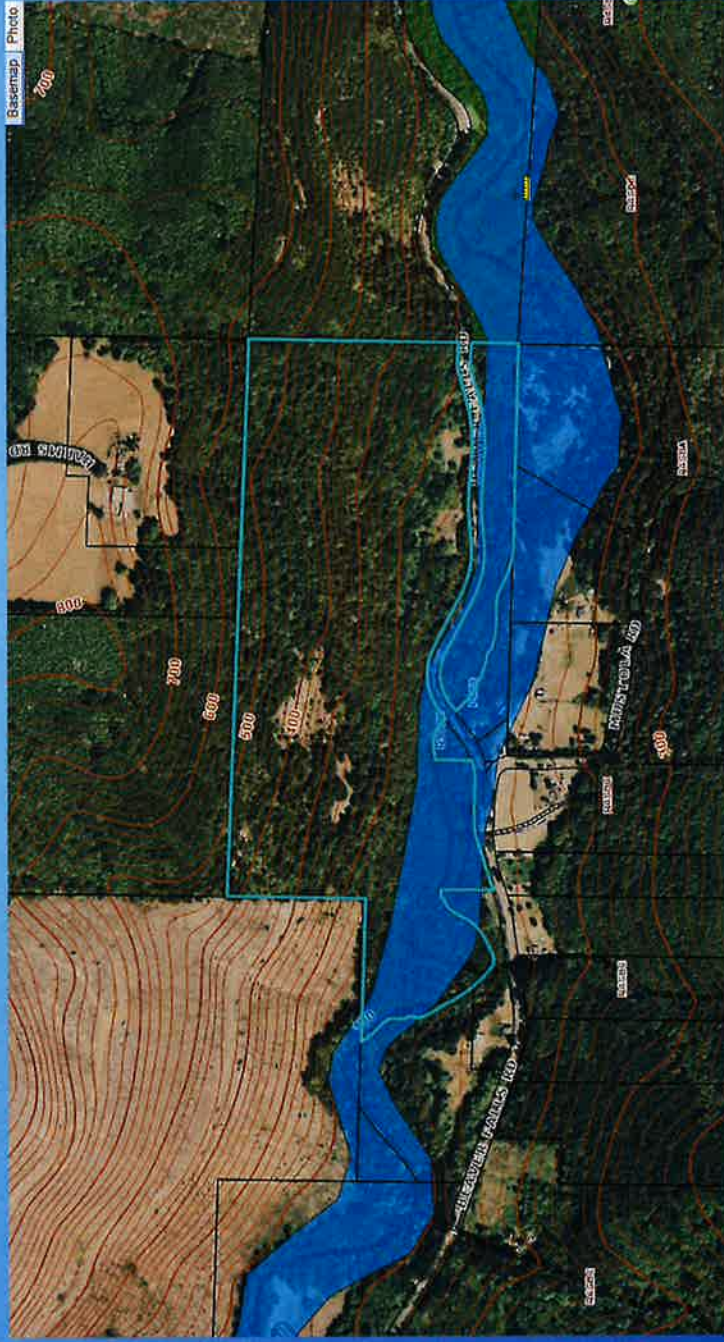
Zone Map

# Air Photo





# Floodplain

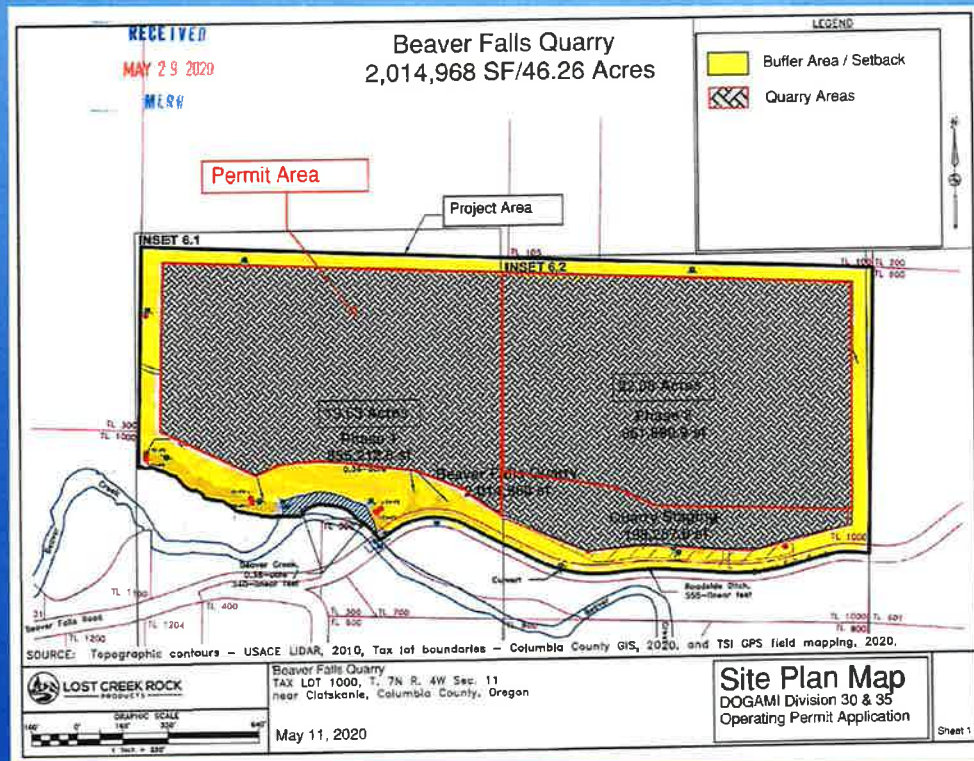


# DOGAMI Permit Boundary



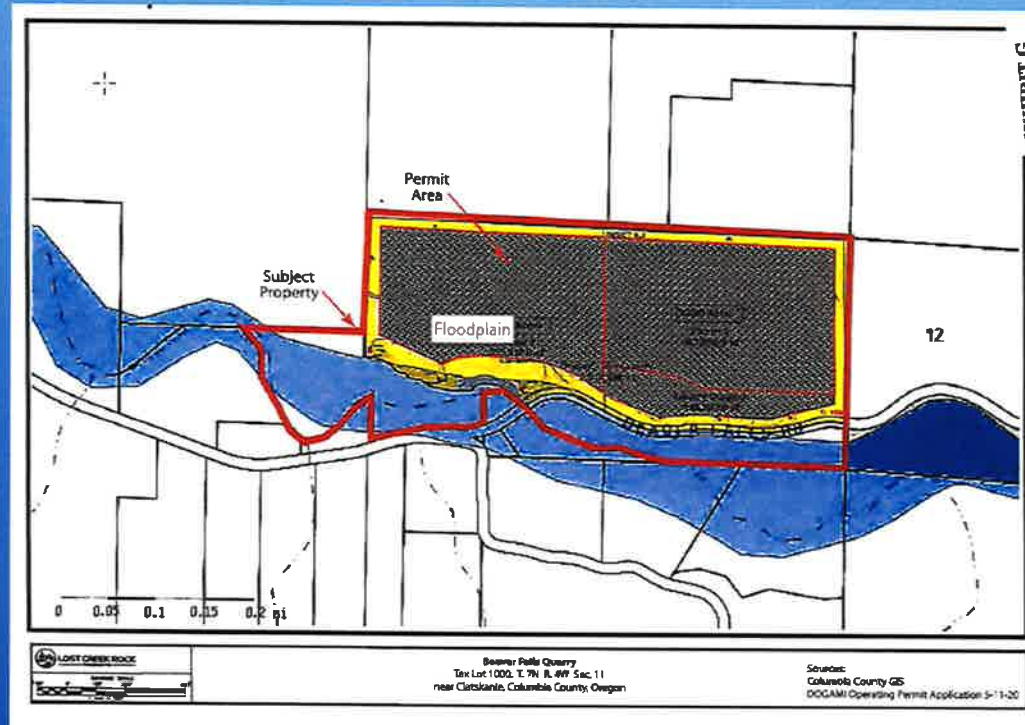


## Site Plan

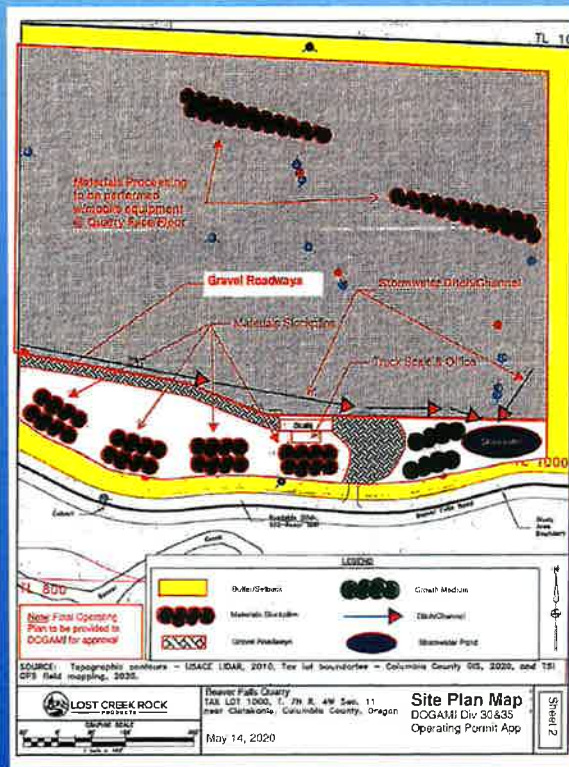




# Permit Boundary with Floodplain



## Site Plan





## Initial Decision & Appeal

- ❑ October 26, 2020 - LDS Planning Receives a LUCS application for mining of the subject property as a permitted use per CCZO Sec. 1042
- ❑ January 21, 2021 – LDS Planning Approves the LUCS application with conditions of approval requiring a Pre-App, Site Design Review and a Transportation Impact Analysis.
- ❑ January 25, 2021 – LDS Planning Receives a timely appeal of the decision stating that a Pre-App and Site Design Review are not required.

# Review Criteria

## ☐ Columbia County Zoning Ordinance (CCZO)

- ☐ Section 1040 Surface Mining (SM)
- ☐ Section 1105 Flood Hazard Overlay – Development Permit
- ☐ Section 1173 Activities Prohibited within the Riparian Corridor Boundary
- ☐ Section 1184 Wetland Area Overlay Development Standards
- ☐ Section 1450 Transportation Impact Analysis
- ☐ Section 1550 Site Design Review
- ☐ Section 1614 Requests for Special Hearings
- ☐ Section 1700 Appeals

## ☐ Oregon Revised Statutes

- ☐ ORS 197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.



## Primary Issue

☐ Does Columbia County require a Site Design Review Land Use Process prior to allowing surface mining in an SM Zone?

☐ Staff finds the answer to this question is yes.

However, it is ultimately up to the Board of Commissioners to determine how to interpret the Columbia County Zoning Ordinance.

# CCZO Section 1040

## Surface Mining

### ☐ 1042 – Permitted Uses

- ☐ Removal, excavation, and processing of aggregate materials.
- ☐ Equipment and structures, except residences, which are necessary or accessory to the operation of an aggregate site.
- ☐ Storage of heavy equipment necessary for operation.
- ☐ Agricultural practices except marijuana growing and producing.
- ☐ Aggregate stockpiling.
- ☐ Sedimentation ponds when used in conjunction with aggregate removal operations.
- ☐ The managing, growing, processing and harvesting of timber and forest products including the operation of accessory equipment used in the manufacturing, growing, and harvesting of forest products, as permitted in ORS 215.283(2)(i).
- ☐ Concrete and asphalt batch plant on a temporary basis not to exceed 60 days.



# CCZO Section 1044 Operating Standards

☐ .7 Access

☐ .10 Archeological Sites

## CCZO Section 1550 Site Design Review

- ❑ The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.
- Type 2: Projects, developments and building expansions which meet any of the following criteria:
  - Have an area of 5,000 sq.ft. or more, or are 10% or more of the square footage of an existing structure.



## Law Insider.Com

### Definitions of Industrial Use

- ❑ **Industrial use** means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

A second definition on the Law Insider web page is as follows:

- ❑ **Industrial use** means the use of any land, building or structure for the purpose of manufacturing, processing, assembling, making, preparing, inspecting, ornamenting, finishing, treating, altering, repairing, warehousing, storing or adopting for sale any goods, substance, article or thing, or any part thereof, and the storage of building and construction equipment and materials, as distinguished from the buying and selling of commodities and the supplying of personal services. A transportation terminal would also be considered an "Industrial Use".

Comprehensive Plan  
Part XVI. Goal 5  
Article VI. Surface Mining

**TABLE XVI-1**

**ACTIVE AGGREGATE SITES**

With ACTIVE MINING AND LAND RECLAMATION PERMITS (1-20-84)

❑ 24. Zimmerly, Paul 7411-000-01000

- Significant Mineral and Aggregate Sites:
  - Sites listed in Table XVI-1 were sites actively being mined in 1984 and have been determined to be significant in the acknowledged 1984 Columbia County Comprehensive Plan.

# OAR 660-023

## Procedures and Requirements for Complying with

### Goal 5

#### 660-023-0010 Definitions

(6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, "protect" means to develop a program consistent with this division.



# OAR 660-023-0180

## Mineral and Aggregate Resources

(1) For purposes of this rule, the following definitions apply:

(b) “Conflicting use” is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site (as specified in subsection (5)(b) and section (7) of this rule).

(g) “Minimize a conflict” means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to “minimize a conflict” means to ensure conformance to the applicable standard.

(k) “Protect” means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of subsection (2)(d) of this rule, “protect” also means to limit or prohibit new conflicting uses within the impact area of the site.

## Mining is not listed as an Industrial Use in the Zoning Ordinance

This is correct.

- ☐ Mining is a type of Industrial use that is specific to its location.
- ☐ The Industrial zones found in the Zoning Ordinance are located within urban growth boundaries.
- ☐ Mining is an allowable use in the PA-80, PF-80 and SM zones.
- ☐ All new mining applications are heard by the Planning Commission

## There is no connection between CCZO Sec. 1040 and Sec. 1550.

- ❑ Each zone within the ordinance does not reference back to Section 1550 Site Design Review.
- ❑ That is not how the CCZO is Structured
- ❑ As was stated earlier, CCZO Section 1550 lists use types that are applicable in any and all zones.
- ❑ In this case, it has been identified that mining is a type of Industrial use and therefore a Site Design Review land use process is applicable.
- ❑ Examples listed in Finding 17 of the staff report that all require a Site Design Review but are not specifically listed by name include a Hospital, an Apartment Complex, and a Wrecking Yard.



## State Planning Goal 1 Citizen Involvement

It is no accident that State Planning Goal 1 is Citizen Involvement. The ability of citizens to participate in the land use decision making process is a fundamental part of the Oregon land use system.

That is why there are rules that require notice to be given to surrounding property owners for administrative and quasi-judicial decisions, so they can be aware of land use changes around them and have an opportunity to be heard, before decisions are made and have due process rights to appeal those decisions to a higher authority if need be.

# Transportation Impact Analysis (TIA)

## CCZO Section 1450

- ❑ A TIA must be submitted with a land use application for any proposal that is expected to involve...
- **Applicability** – A TIA shall be required to be submitted to the County with a land use application if the proposal is expected to involve one (1) or more of the following:
    - Changes in land use designation, or zoning designation that will generate more vehicle trip ends.
    - Projected increase in trip generation of 25 or more trips during either the AM or PM peak hour, or more than 400 daily trips.
    - Potential impacts to intersection operations.
    - Potential impacts to residential areas or local roadways, including any non- residential development that will generate traffic through a residential zone.
    - Potential impacts to pedestrian and bicycle routes, including, but not limited to school routes and multimodal roadway improvements identified in the TSP.
    - The location of an existing or proposed access driveway does not meet minimum spacing or sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard.
    - A change in internal traffic patterns may cause safety concerns.
    - A TIA is required by ODOT pursuant with OAR 734-051.
    - Projected increase of five trips by vehicles exceeding 26,000-pound gross vehicle weight (13 tons) per day, or an increase in use of adjacent roadways by vehicles exceeding 26,000-pound gross vehicle weight (13 tons) by 10 percent.



## Summary

### Reasons to Support the Initial Decision

- ☐ Mining is a type of industrial use / Law Insider.com definition
- ☐ CCZO Sec.1550 requires a Site Design Review for new industrial uses.
- ☐ The structure and function of the CCZO does not require Site Design Review process to be listed in each zone.
- ☐ There is no record of a mining operating permit ever being issued for this site.
- ☐ The site has been identified as a significant Goal 5 mineral and aggregate resource in the Comprehensive Plan and it has been protected from conflicting uses and zoned Surface Mining where processing and extraction are a permitted use. Review is limited to Design only.
- ☐ The process is consistent with OAR 660-023, Goal 5, which does not preclude additional land use process prior to beginning operation.
- ☐ State Planning Goal 1 Citizen Involvement requires notice to neighbors and the ability to participate in the land use decision making process.



# Recommendation

Based upon the submitted Land Use Compatibility application (LUC 21-15) and other materials provided by the applicant, research about the property and findings in the initial Staff Report, and the findings in this Appeal Staff Report, the Planning Director recommends the Board of County Commissioners make the following finding:

*Mining is an industrial use type that is applicable in Section 1550 Design Review of the Columbia County Zoning Ordinance and that any project to begin mining operations in the SM zone is subject to a Design Review land use process.*

Furthermore, staff recommends the Board of Commissioners uphold the initial Planning Director decision finding the application meets the standards of Section 1044 of the Columbia County Zoning Ordinance and **APPROVES** LUC 21-15 with the conditions of approval listed below:

## **CONDITIONS OF APPROVAL:**

Prior to beginning any surface mining operations on the subject property, the owner/applicant is required to submit the following land use applications and obtain approval from Columbia County Land Development Services:

- A. Pre-Application Conference;
- B. Design Review application ;
- C. Transportation Impact Analysis.

Questions ?

Thank You !



