

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES  
APPEAL STAFF REPORT**

February 9, 2021

Appeal of Land Use Compatibility for New Surface Mining Operation

**FILE NUMBER:** LUC 21-15 (Appeal)

**APPLICANT:** Curtis Shuck  
25275 Loten Way, Veneta, OR 97487

**OWNER:** Lost Creek Rock Products LLC (Mel McDougal)  
PO Box 518, Creswell, OR 97426

**AGENT:** Law Office of Bill Kloos PC (Kim O’Dea)  
375 W. 4<sup>th</sup> Avenue, Suite 204, Eugene, OR 97401

**LOCATION:** Beaver Falls Quarry is located on Beaver Falls Road

**MAP ID NO.:** 7411-00-01000 (Tax Acct. # 27871)

**ZONING:** Surface Mining (SM)

**SIZE:** 74.58 acres (46.23 acres impacted by the proposed use)

**REQUEST:** The applicant has appealed the decision to approve with conditions, the Land Use Compatibility 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. Specifically, the applicant is requesting to remove conditions of approval 1a and 1b.

**APPLICATION COMPLETE:** 11/26/2020                      **150 DAY DEADLINE:** 03/24/2021

**INITIAL DECISION DATE:** 01/21/2021                      **APPEAL RECEIVED:** 01/25/2021

## **APPLICABLE 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.

## **SUMMARY INFORMATION:**

On January 21, 2021, Columbia County Planning issued a decision approving the Land Use Compatibility Statement (LUC 21-15) with conditions requiring additional land use applications. A timely appeal was received on January 25, 2021 requesting conditions 1a and 1b be removed. The matter is being scheduled for a public hearing before the Columbia County Board of Commissioners. The original proposal is summarized below.

The applicant, Curtis Shuck, is requesting to begin operations of an aggregate mining operation on the subject property as a permitted outright use, without any further land use applications. The mining operation will include the excavation and processing of aggregate into gravel. A temporary portable office and truck scales will be located on the property, as well as the storage of heavy equipment on the site.

According to the applicant, the Land Use Compatibility Statement (LUCS) has been submitted to establish that standards listed in Section 1040 of the Columbia County Zoning Ordinance (CCZO) have been met. The subject property is zoned (SM) Surface Mining and is listed on the Columbia County Comprehensive Plan Part XVI, Article VI, Table XVI-1 as an Active Aggregate Site with Active Mining and Land Reclamation Permits as of January 20, 1984. It should be noted, there is no record of this site ever having an approved operating permit from the Oregon Department of Geologic and Mineral Industries (DOGAMI) or from Columbia County, to actually begin mining operations. There may have been some exploratory excavation in the 1960's and 1970's, however there has not been any active mining on the site for at least 40 years.

Submitted with this LUCS application is the DOGAMI Operating Permit application for a new open pit, multiple bench, sidehill cut, surface mining operation to extract Basalt aggregate material. Mining methods will include drilling and blasting, ripping and loading, crushing, washing screening, shovel/loader/scrapper and stockpiling. Equipment to be used will be loaders, dozers, excavators, trucks, screeners, crushers and drilling equipment. Excess surface water is

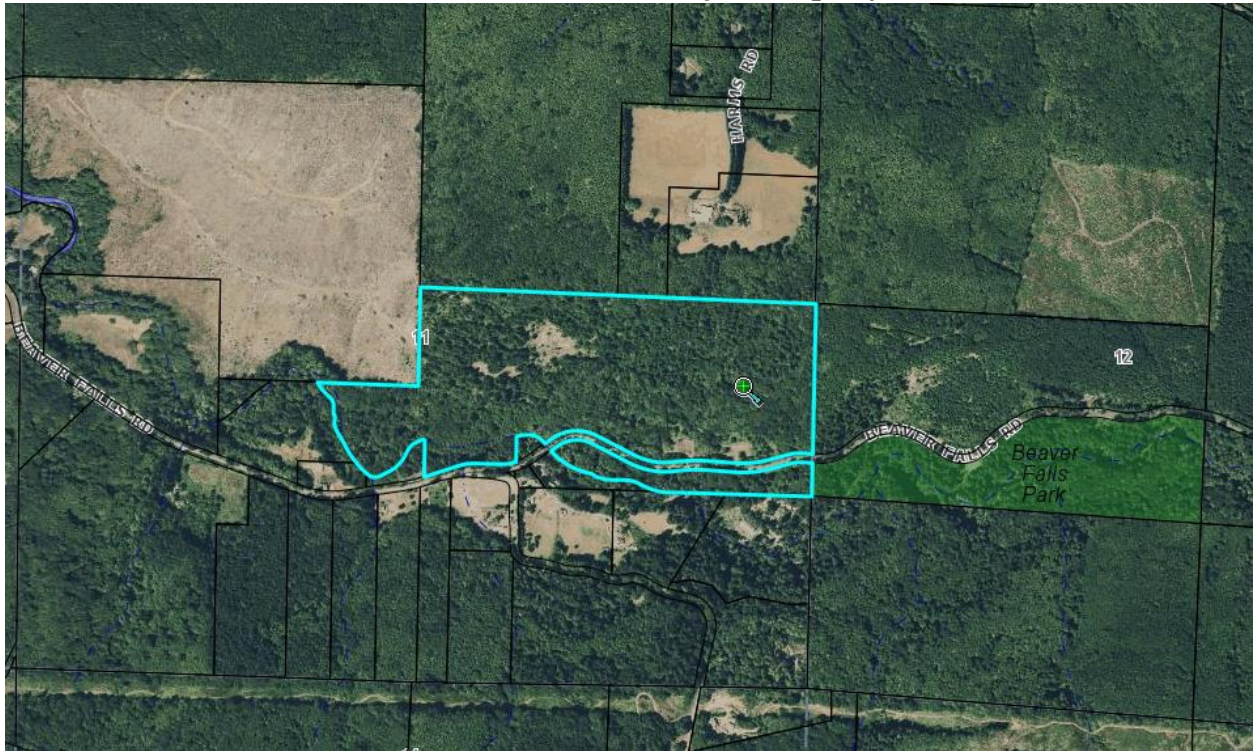
proposed to be captured in a stormwater retention/detention pond. Soil and overburden will be stockpiled on site and reused as part of the reclamation plan.

The majority of the property has been recently logged, however the riparian areas along the creek and most of the buffer areas have been left intact with existing vegetation still in place. A portion of the subject property does contain Beaver Creek and its associated riparian area, wetlands and floodplain. There is a minimum of a 50' wide buffer area around the entire property that increases to at least 100' near the creek. The applicant proposes no activity within 100' of the creek and no operations including vegetation removal within the riparian area, wetlands or floodplain. It should also be noted that a portion of the subject property lies south of Beaver Falls Road. This portion of the property is not included within the operating permit boundary and will have no mining operations conducted on it. The total area to be affected by mining related activities is 46.26 acres. The post mining use of the property will be Forestry.

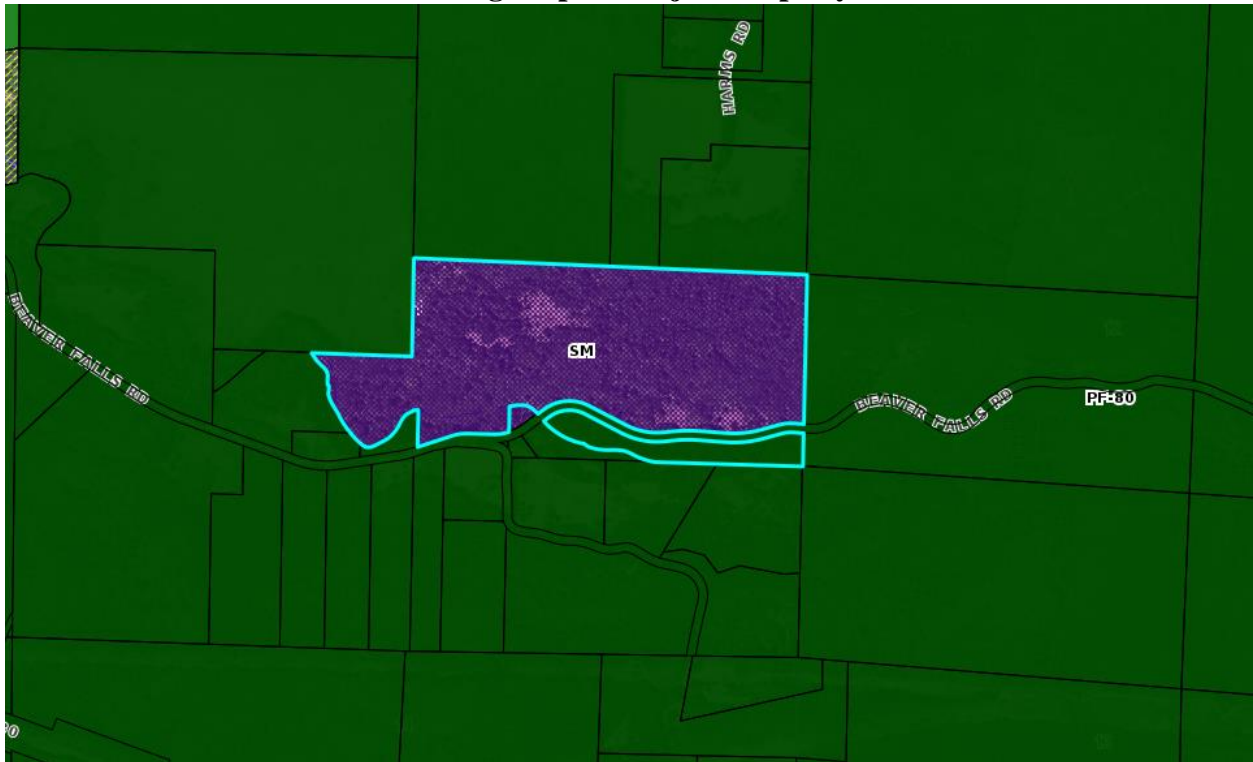
The proposed site plan does not include the location of a sub-surface septic system and a well. If a septic system and well are installed, they will need to meet required setbacks and obtain the appropriate installation permits. The County Sanitarian has yet to conduct a Lot Evaluation for the site and the applicant has yet to drill a well and record a well log with the Oregon Water Resources Department. Electrical and other utilities can be extended to the subject property along Beaver Falls Road. Emergency services are provided to the subject site by the Clatskanie Rural Fire District and the Columbia County Sheriff.

The Clatskanie-Quincy Environmental BEAK Maps indicate the site is not located in any Big Game Habitat Area, there are no threatened, endangered or sensitive wildlife, plant and animal species nor are there any significant natural areas.

**2018 Aerial View of Subject Property**



**Zoning Map of Subject Property**



## REVIEW CRITERIA, ANALYSIS, FINDINGS & FACTS:

### Section 1040

### SURFACE MINING [SM]

- 1041 Purpose:
- .1 To provide for development and utilization of deposits of aggregate and resource materials.
  - .2 To provide for the protection and utilization of these resources in a manner which does not conflict with other land uses.
  - .3 To assure economy in handling and transportation costs by locating removal, processing, and storage activities in as close proximity to the point of end use as feasible.
- 1042 Permitted Uses: The following uses shall be permitted subject to compliance with Section 1044 and all other applicable rules, standards, or statutes governing such uses, including the Columbia County Comprehensive Plan, the Surface Mining and Land Reclamation Ordinance, the Zoning Ordinance of Columbia County, and Oregon Department of Environmental Quality rules governing sewage disposal, air, and water quality:
- .1 Removal, excavation, and processing of aggregate materials.
  - .2 Equipment and structures, except residences, which are necessary or accessory to the operation of an aggregate site.
  - .3 Storage of heavy equipment necessary for operation.
  - .4 Agricultural practices except marijuana growing and producing.
  - .5 Aggregate stockpiling.
  - .6 Sedimentation ponds when used in conjunction with aggregate removal operations.
  - .7 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).
  - .8 Concrete and asphalt batch plant on a temporary basis not to exceed 60 days.

**Finding 1:** The applicant proposes removal, excavation, and processing of aggregate materials, storage of heavy equipment, siting of accessory structures such as a portable office and truck scale, aggregate stockpiling and a sedimentation pond. These are all uses that are specifically listed as permitted in the SM zone. It should be noted that there is no record of an operating permit issued by the County or DOGAMI for this property in the last 40 years.

1044 Operating Standards: All mineral resource operations either permitted or allowed by conditional use, shall conform to the following standards:

- .1 The landowner and operator shall be jointly responsible for signing the application.
- .2 The operator and landowner must remain in compliance with, and be responsible for, all the requirements of affected agencies.
- .3 Lot or parcel size: The minimum parcel size for a permitted or conditional use shall be 2 acres.

**Finding 2.** The owner (Mel McDougal) and operator (Curtis Schuck) have signed the application. The subject property is 74.5 acres, which is greater than 2 acres in size, and the area within the operating permit is proposed as 46.23 acres.

- .4 Operating Setbacks: Each aggregate site within the district shall observe the following minimum setbacks:
  - A. No extraction or removal of aggregate is permitted within 50 feet of the right-of-way of public roads or easements of private roads.
  - B. No extraction or removal of aggregate is permitted within 50 feet of another property, nor within 200 feet of a residence or zoning district which allows a residence as a permitted use, without written consent of the property owner(s).
  - C. Processing equipment and batch plants shall not be operated within 50 feet of another property without written consent of the property owner(s). Processing equipment and batch plants shall not operate within 50 feet of a public road right-of-way.

**Finding 3:** The proposed mining area maps included with the application show a minimum 50 foot setback from all property lines. The subject property is not adjacent to any zone that allows a residential use as a permitted use. It should be noted that the mining area will be greater than 200 feet from any residence. There are no activities proposed within 50 feet of another property or public road right-of-way. Other than the access into the property, the 50 foot buffer will remain untouched and vegetated.

- .5 Operating Hours: Operation shall not start before 7:00 a.m., nor continue after 6:00 p.m. daily, except as authorized by Subsection 1046. The Department may exempt isolated aggregate sites from the established operating hours. Notice of the proposed change in operating hours must be provided to all property owners within a 1,000 foot radius of the aggregate site and to owners of property adjacent to private aggregate site access road. If no request for a public hearing is made within ten calendar days of mailing said notice, the operating hours shall be changed as requested by the aggregate operator. The Commission may, at any time, require

resumption of standard operating hours. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the County. The Department may approve one period of extended operation beyond the 7:00 a.m. to 6:00 p.m. operating hours once every six months, not to exceed a two week period.

**Finding 4:** The applicant has no objection to the operating hours being limited to 7 am to 6 pm daily.

- .6 **Visual Impacts:** Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of 25 feet. Screening shall be provided at the boundary of the property on which the surface mining operation is located. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:
  - A. A sight-obscuring fence or wall;
  - B. A landscaped berm or preservation of a natural slope;
  - C. Use of native vegetation, or plants and trees with demonstrated ability to thrive under the anticipated conditions.

**Finding 5:** The existing native vegetation within the 50 foot buffer area is sufficient to provide screening of the mining operation. Additional screening with fences, walls and berms will not be necessary as long as the existing native vegetation remains. It should be noted there are several residential uses located across the street from the site and there is a public park (Beaver Falls Park) located to the southeast of this site. It will be important to maintain the entire 50 foot buffer area with a thick screen of mature vegetation along Beaver Falls public road.

- .7 **Access:** The operation shall have access to a public road with two-way capacity. The County may impose weight/load restrictions and/or require the operator to post an adequate surety bond for road repairs. An on-site access or service road used for mining shall be dust-free at all points within 300 feet of a public road or residence off the property being mined.

**Finding 6:** Beaver Falls County Road is a paved public road with two-way access. The specific road impacts to the road and the need for a surety bond will be reviewed once the applicant submits a Transportation Impact Analysis (CCZO Sec. 1450). Also, once the Design Review application (CCZO Sec. 1550) is submitted, the more detailed plan will be reviewed to determine if a wheel wash will be required in order to keep the public road dust free. Prior to any operations, a County road access permit will be required to connect the driveway to Beaver Falls County Road. Additional information will also be required to address the weight, direction and other new traffic impacts created by large trucks visiting the site.

- .8 **Noise:** Each aggregate site shall operate with the applicable noise standards required by the Department of Environmental Quality or other state or federal agencies.

**Finding 7:** The applicant does not object to operating the site within the applicable noise standards required by Oregon DEQ and DOGAMI and will be limited to operating hours of 7am to 6pm.

- .9 **Water Quality:** All aggregate sites in the district shall be operated in a manner which will not create turbidity, cause siltation, deposit undesirable materials, or adversely affect water temperatures in any stream, drainage, or river. In addition, the operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies. Provisions for settling ponds, diversion dikes, channels, and other structures may be required to protect these water resources.

**Finding 8:** The applicant proposes a sedimentation pond, to capture surface water on the site, slow it down, and settle it, so turbid water can release its sediment load into the pond, prior to it reaching Beaver Creek. Oregon DOGAMI will review the stormwater plan as part of the operating permit to ensure that the site will be operated in a manner that will meet state and federal water quality standards.

.10 **Archeological Sites:**

- A. Prior to excavation - All sites proposed for excavation shall be inventoried for their archaeological significance in accordance with standards set by the State Archaeologist. If an area proposed for excavation is found to contain an archaeological site(s), the Planning Commission shall hold a public hearing, in accordance with Section 1603, to review testimony regarding the site(s) and establish measures to mitigate potential conflicts as necessary.
- B. The State Archaeologist shall be notified of such public hearings.  
During Excavation - If an archaeological site(s) is found during excavation, all work which would impact the site shall halt immediately and the requirements outlined in Section 1044.10A shall be met.

**Finding 9:** The site is not listed in the Columbia County Comprehensive Plan as an inventoried cultural resource. Oregon DOGAMI will coordinate with the State Archaeologist as part of the operating permit. Columbia County will also send notice to the State Historic Preservation Office (SHPO) as part of the Design Review application.

- .11 **Erosion:** The erosion of surfaces affected by mining activities shall be controlled by plantings of ground cover and other modes which protect these surfaces.
- .12 **Slopes and Grading:** Excavations, both above and below water level, shall be maintained in an operationally and environmentally safe condition by complying with standards established by the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991), the Oregon Safety and Health Act of 1970 (19 U.S.C. 651 et. seq.), the Department of Geology and Mineral Industries, and the regulations of other affected agencies.
- .13 **Land Reclamation:** A land owner or operator of an aggregate site shall, in advance of any excavation of aggregate materials, prepare and submit a site reclamation



plan in accord with the requirements of the Surface Mining and Land Reclamation Ordinance. Reclamation must return the land to natural condition or return it to a state compatible with the livability, value, and appropriate development of the affected land and adjacent property. Reclamation shall begin within 12 months after mining activities cease on any segment of the area where mining has occurred and shall be completed within 3 years after mining activities cease. This does not apply to any land being used as plant site, stock pile, or work area for ongoing extracting mining operation.

**Finding 10:** Erosion control, slopes and grading plan, and land reclamation is all administered by Oregon DOGAMI as part of the operating permit.

## **COLUMBIA COUNTY ZONING ORDINANCE**

### **Sec. 1100 FLOOD HAZARD OVERLAY**

#### 1105 Development Permit

- .1 A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 1104. The permit shall be for all structures allowed by the underlying zone, including manufactured homes, as set forth in the "Definitions", and for all development including fill and other activities, also set forth in the "Definitions". The following exceptions apply for the storage of equipment or materials:
  - A. any temporary storage within any zoning district, and
  - B. permanent storage connected with residential use located out of the floodway.

**Finding 11:** The subject property is crossed by Beaver Creek and its associated floodplain, in the southwest portion of the property. The applicant has chosen not to mine in this portion of the property and it is not included within the operating permit boundary. The applicant further protects this area with a vegetated buffer that is at least 100 feet from the creek. Reference the attached map titled Operating Permit Site Plan Map. Because no development activities will take place within the designated special flood hazard area, no floodplain development permit will be required.

#### 1173 Activities Prohibited within the Riparian Corridor Boundary

In addition to the prohibitions in the underlying zone, the following activities are prohibited within a riparian corridor boundary, except as provided for in Sub-sections 1175 and 1176 of this Section:

- A. The alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended.

- B. The removal of riparian trees or vegetation.

**Finding 12:** The applicant proposes no development within a riparian corridor boundary. Reference the attached map titled Operating Permit Site Plan Map.

## **COLUMBIA COUNTY ZONING ORDINANCE**

### **Section 1450 TRANSPORTATION IMPACT ANALYSIS (TIA)**

1450 Transportation Impact Analysis: A Transportation Impact Analysis (TIA) must be submitted with a land use application if the proposal is expected to involve one or more of the conditions in 1450.1 (below) in order to minimize impacts on and protect transportation facilities, consistent with Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule.

- .1 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:
  - A. Changes in land use designation, or zoning designation that will generate more vehicle trip ends.
  - B. Projected increase in trip generation of 25 or more trips during either the AM or PM peak hour, or more than 400 daily trips.
  - C. Potential impacts to intersection operations.
  - D. Potential impacts to residential areas or local roadways, including any non-residential development that will generate traffic through a residential zone.
  - E. Potential impacts to pedestrian and bicycle routes, including, but not limited to school routes and multimodal roadway improvements identified in the TSP.
  - F. 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.
  - G. A change in internal traffic patterns may cause safety concerns.
  - H. A TIA is required by ODOT pursuant with OAR 734-051.
  - I. 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.

**Finding 13:** A Transportation Impact Analysis (TIA) is required for this project. The applicant has not provided transportation information for this project. From the above list, staff identifies the following that will likely apply; A change in land use from Forestry to Surface Mining, An increase in trip generation. Intersection impacts to the east with Beaver Falls Road and Delena Mayger Road and Delena Road and traveling west on Beaver Falls Road impacts with Mustola Road, Quincy Mayger Road and Inglis Road. Beaver Falls Road does cross land that is zoned Rural Residential to the east and to the west of the subject property. The access driveway location will need to be analyzed for sight distance. The proposed surface mining operation is expected to generate large vehicle traffic in excess of 26,000 pounds gross vehicle weight. Any one of these is enough to trigger the TIA requirement. The TIA will be required to be submitted with the Design Review land use application.

- .2 Consistent with the County’s Guidelines for Transportation Impact Analysis (TIA), a landowner or developer seeking to develop/redevelop property shall contact the County at the project’s outset. The County will review existing transportation data to establish whether a TIA is required. It is the responsibility of the applicant to provide enough detailed information for the County to make a determination. An applicant should have the following prepared, preferably in writing:
  - A. Type of uses within the development
  - B. The size of the development
  - C. The location of the development
  - D. Proposed new accesses or roadways
  - E. Estimated trip generation and source of data
  - F. Proposed study area

If the County cannot properly evaluate a proposed development’s impacts without a more detailed study, a TIA will be required. The County will provide a scoping summary detailing the study area and any special parameters or requirements, beyond the requirements set forth in the County’s Guidelines for Transportation Impact Analysis, when preparing the TIA.

**Finding 14:** The applicant has not provided any estimated trip generation data and/or the proposed study area. Staff recommends the applicant contact Columbia County Public Works Road Department who will provide a scoping summary, the study area, and any other special parameters such as bridge weight capacity that will be used in the development of the TIA.

- .3 Approval Criteria. When a TIA is required, a proposal is subject to the following criteria:
  - A. The TIA addresses the applicable elements identified by the County Public Works Director and the County's Guidelines for Transportation Impact Analysis;
  - B. The TIA demonstrates that adequate transportation facilities exist to serve the proposed development or, identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the County Public Works Director and, when state highway facilities are affected, to ODOT;
  - C. For affected non-highway facilities, the TIA establishes that mobility standards adopted by the County have been met; and
  - D. Proposed public improvements are designed and will be constructed consistent with County Road Standards and access spacing standards in the Transportation System Plan.

**Finding 15:** Columbia County will apply the above standards to the TIA once it is submitted with the Design Review land use application.

.4 Conditions of Approval.

- A. The County may deny, approve, or approve a proposal with conditions necessary to meet operational and safety standards; provide the necessary right-of-way for improvements; and to require construction of improvements to ensure consistency with the future planned transportation system.
- B. Construction of off-site improvements may be required to mitigate impacts resulting from development that relate to capacity deficiencies and public safety; and/or to upgrade or construct public facilities to County Standards. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

**Finding 16:** The County may require on-site and off-site improvements as conditions of approval associated with this development project. The specific conditions of approval will be included with the Design Review land use application that will include the TIA information.

## **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.

### 1551. Types of Site Design Review:

- A. Type 1: Projects, developments and building expansions which meet any of the following criteria:
  - 1. Are less than 5,000 sq.ft. and are less than 10% of the square footage of an existing structure.
  - 2. Increase the number of dwelling units in a multi-family project.
  - 3. Increase the height of an existing building.
- B. Type 2: Projects, developments and building expansions which meet any of the following criteria:
  - 1. Have an area of 5,000 sq.ft. or more, or are 10% or more of the square footage of an existing structure.
  - 2. Change the category of use (e.g., commercial to industrial, etc.).
  - 3. New off-site advertising signs or billboards.
  - 4. Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.

1552 Design Review Process: The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

**Finding 17:** Surface mining is an industrial use, therefore, the Site Design Review process is applicable. This project will have an area of 46.23 acres which is greater than 5000 square feet, therefore it will be reviewed as a Type 2 Design Review that will be heard by the Planning Commission. A condition of approval will be added requiring the applicant to submit a Design Review land use application prior to beginning operations at the subject property.

Section 1550 above, lists use types where the Site Design Review process is applicable. The relevant question surrounds the Planning Director interpretation that mining is considered an Industrial use. The applicant has submitted material that alleges that mining is not an industrial use. A simple google search of “what is an industrial use?” found the following definition on Law Insider.Com:

***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”.*

Both of these definitions show that mining operations are considered industrial by nature and the plain and simple notion that mining is an industrial type use is supported by these definitions. The first definition calls out ‘mining’ in the body of the definition. The second definition lists processes that are typically associated with industrial and mining activities.

The applicant proposes an open quarry surface mining operation that will include aggregate processing (screening and crushing of rock) and stockpiling of materials, storage of heavy equipment and the placement of a portable office structure, and a truck scale. Aggregate material will be transported offsite via heavy trucks. While surface mining is a specific type of industrial use, it is still industrial in nature, as is shown by the second definition above which specifically calls out *processing, preparing, altering, and the storage of building and construction equipment.*

In comparing the impacts from surface mining operations and impacts from other typical industrial uses, many similarities are observed because mining is a specific type of industrial use just as surface mining is a specific type of mining (opposed to underground or placer mining). Both mining and other industrial uses create noise, dust, vibration, air quality and water quality impacts. Both mining and other industrial uses frequently produce transportation impacts due to increased trips and large heavy truck traffic. Both mining and other industrial uses are often aesthetically unpleasing, unsightly, and generally not compatible with non-industrial uses such as community, governmental, institutional, commercial, and residential uses.

An important distinction between mining and other industrial uses is, aggregate can only be extracted from its original location in the ground. State Planning Goal 5 recognizes this distinction and the importance of the resource, that is why Counties are required to identify these locations, protect them for future use, and protect them from encroaching residential conflicts. In this case, the community has protected the subject property for mining. August 1, 1984 was the effective date of Ord. No. 84-4 when the subject property was identified as a significant Goal 5

mineral and aggregate resource in Part XVI, Article VI of the Columbia County Comprehensive Plan (CCCP) and was zoned SM for surface mining.

In Table XVI-1 of the CCCP the subject property is recognized and listed as an Active Aggregate Site with an Active Mining and Land Reclamation Permit. As was stated previously in this report, at that time, the site had a provisional permit for mining, however there is no record of it ever having an operating permit from DOGAMI or from Columbia County. DOGAMI's website explains:

If it is determined at any time that third-party permits or approvals are required, DOGAMI may be required to issue a Provisional Operating Permit to the applicant.

DOGAMI's website also notes that "Operating permits must be renewed annually until mining and reclamation are complete."

A likely explanation for why only a provisional permit was issued is, the owner of the property in the 1970's applied for an operating permit from DOGAMI to mine the site. The site was given a provisional permit at that time pending additional actions necessary from the owner. Columbia County reviewed all DOGAMI active mining sites when they were developing their list of active mining sites for the County's original comprehensive plan and since this property had a provisional permit it was added to the list of sites to protect. The owner at that time never followed through with the additional actions necessary for obtaining the actual operating permit, so mining was never actually authorized to begin on the site.

Without documentation that the site ever received a full operating permit from DOGAMI or the County, there is no evidence the site has actually gone through a land use process to obtain an operating permit, therefore, it is subject to the DOGAMI permitting process in place now. The applicant, Lost Creek Rock Products, has made application to DOGAMI for an operating permit. DOGAMI is required to communicate with the local entity (Columbia County) to determine if all local land use permitting is in order. The County reviews the permit history of the site and the scope of the proposed mining activity, to determine if a Site Design Review is required and which level of land use process (Type I or Type II is required). The County communicated to DOGAMI that a Site Design Review land use process was required prior to beginning operation with its August 20, 2020 email correspondence to Cari Buchner and Nicholas Tatalovich of DOGAMI.

The applicant argues in their submittal that "Mineral and aggregate" processing/extraction is not listed as an industrial use in any section of the CCZO", however surface mining and various aspects of its associated operations, along with the required review process, are identified as follows in the CCZO:

- The Primary Agriculture (PA-80) zone, lists "Surface mining for mining of more than 1,000 cubic yards of material or for the excavation preparatory to mining..." and "Processing as defined by ORS 517.750 of aggregate..." as a conditional use subject to Planning Commission review. Reference CCZO Section 306.4.
- The Primary Forest (PF-80) zone lists "Exploring, Mining and processing...mining and processing of mineral and aggregate resources as defined in ORS chapter 517" as a conditional use subject to Planning Commission review. Reference CCZO Section 505.2.
- The Surface Mining (SM) zone lists "Removal, excavation, and processing of aggregate material" as a permitted use. Reference CCZO Section 1042.1.

Since mining is a type of industrial use, the provision of Section 1550 site Design Review apply and new industrial uses larger than 5,000 sq.ft. are classified as Type II which are reviewed by the Planning Commission.

Surface mining uses in the PA-80 and PF-80 zones are reviewed as a conditional use by the Planning commission who can review if the use is appropriate for the location and could potentially determine that the use is not allowed in that location. In contrast, within the SM zone surface mining uses are a permitted outright use and are protected in the comprehensive plan as a goal 5 resource. Consequently, the review standards are limited to design only and the use cannot be denied as long as it is consistent with CCZO Section 1044. CCZO Section 1040 allows for site design review of surface mining proposals because there is the possibility that a proposal may be designed in a manner that is inconsistent with the criteria listed in CCZO Section 1044.

That is the difference between being a conditionally allowed use and a permitted use in the zone and shows how the community has protected the site for surface mining operations. Now that there is interest in fully permitting and initiating mining operations on the site, it is subject to review by the County to ensure compliance with State and local standards. The Design Review land use process, found in Section 1550 of the CCZO, is the method used for this type of process. This process recognizes that mining is allowed on the property, that decision has already been made and it is an allowed use. This process cannot be used to deny mining on the site, only to review how the site will be designed.

Section 1550 contains a list of broad use categories that indicates a Site Design Review is required for “all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses”. This is not a not a list of zoning designations or specific uses, instead these are broad categories of use types.

Within the broad category of “Industrial” the CCZO provides for the classification of industrial uses into several different zoning districts depending on their level of intensity and distinct characteristics. The industrial zone districts utilized by Columbia County are RIPD, M-1, M-2, M-3, and SM. The RIPD zone is located in Article IV – Rural Development Districts, of the CCZO because this zone is located outside of urban growth boundaries and not in a Farm or Forest Resource zone. The M-1 through M-3 zones are located in Article V- Suburban Districts, of the CCZO because these districts are located within an urban growth boundary (UGB). The SM zone is located in Article VI – Special Districts..., because this zone can be located inside or outside of a UGB, depending upon wherever the significant resource is located within the ground. Surface mining is a very specific zone district that limits uses to industrial operations specific to the extraction and processing of aggregate resources.

The CCZO is not written in such a way that it specifically states that Site Design Review is required in each zone district. That is not how this zoning ordinance is structured. It is left to the simple language in the applicability statement of Section 1550.

For Example, a Hospital is listed as a permitted use in the C-3 General Commercial zone, CCZO Section 820. Nowhere in Section 820 does it state that a Design Review is required prior to development, but a hospital is a type of commercial use, therefore CCZO Section 1550 applies. Again, CCZO Section 720, Multiple Family Residential, lists Apartments as a permitted use in the zone. The MFR zone does not indicate that a Design Review process is necessary, but Section 1550 requires Site Design Review for multi-family residential projects. These examples show that the CCZO is not written with specific links or connections in each zoning district back to Section 1550



but that Site Design Review can be applied just by applying the simple language in the opening statement of Section 1550.

This methodology is applied also to industrial type uses. An Automobile Wrecking Yard is listed as a permitted use in CCZO Section 930 of the M-1 Heavy Industrial zone and a Site Design Review is required per Section 1550. Similarly, since mining is a type of Industrial use, CCZO Section 1550 Site Design Review is applicable. The magnitude of the proposed operations is further evaluated and the level of site design review process (Type I or Type II) is then determined.

It is important to note that affording the community an opportunity to comment is the heart of Oregon land use system and that opportunity to comment occurs through a land use process prior to new development or an expansion of use on a property. This land use process is an important step in achieving compliance with State Planning Goal 1, Citizen Involvement.

As stated previously, surface mining is allowed on the site and that is not up for debate. The comprehensive plan and zoning of the property have protected the subject property because it does contain a significant mineral resource. Mining is permitted in the SM zone and the Design Review land use process is the method to provide for citizen participation to ensure the site is designed and operated in a manner that is consistent with the community standards identified in Section 1550 of the CCZO. Ensuring compliance with these design standards will further protect the site from impacts from adjacent properties and those who travel in the surrounding area, as well as protect environmentally sensitive areas, and thus protect the site from law suits and claims of impacts from surrounding uses.

The subject proposal is consistent with CCZO Section 1044, however, staff finds the reason it is consistent with Section 1044 is because a design review and transportation impact analysis is required to determine whether the proposal is consistent with CCZO Sections 1044.7 and 1044.10. CCZO Section 1044.7 specifically states that “[t]he County may *impose* weight/load restrictions and/or require the operator to post an adequate surety bond for road repairs.” (Emphasis added.) Staff finds that a TIA and design review is required to make this determination. CCZO Section 1044.10 specifically states that “[i]f an area of proposed excavation is found to contain an archaeological site(s), the Planning Commission shall hold a public hearing, in accordance with Section 1603, to review testimony regarding site(s) and establish measures to mitigation potential conflicts as necessary.” The subject application proposes evacuation as an operational activity. However, the application does not contain sufficient information for staff to determine whether there are archaeological sites within the subject area. As such, there is the possibility that proposed excavation areas will require further review by the County based on CZZO Section 1040.10. The Design Review land use process is the method for communication with the State Historic Preservation Office and is required to determine if the property will be subject to additional conditions of approval related to archeological resources.

In conclusion, staff has shown in finding 17 that mining is a type of industrial use and that the language in the opening applicability statement of Section 1550 requires a Site Design Review land use process prior to beginning development, redevelopment, expansion, or improvement of all industrial uses. The structure of the zoning ordinance was analyzed and specific examples given showing the CCZO does not have specific links or connections between each zone and Section 1550, Site Design Review. Additionally, there is no evidence the subject property has ever received a full operating permit from DOGAMI or from Columbia County to begin mining of the property. Furthermore, this finding indicates that while the property was added to the CCCP Active Mining Sites list, and is-protected as a Goal 5 resource, and is zoned Surface Mining SM, a land use process

is still necessary to establish mining on the subject property. The need for a Design Review process has been communicated to DOGAMI and is the appropriate land use process to provide for citizen participation and protect the site from future lawsuit by showing that it meets the accepted community standards of CCZO Section 1550.

1553 Pre-application Conference: A pre-application conference is required for all projects applying for a Site Design Review, unless the Director or his/her designate determines it is unnecessary. The submittal requirements for each application are as defined in this section and the standards of the applicable zone, and will be determined and explained to the applicant at the pre- application conference.

1554 Pre-application Conference Committee: The committee shall be appointed by the Planning Director and shall consist of at least the following officials, or their designated staff members. Only affected officials need to be present at each pre-application conference.

- A. The County Planning Director.
- B. The County Director of Public Works.
- C. The Fire Marshal of the appropriate Rural Fire District.
- D. The County Building Official.
- E. The County Sanitarian.
- F. A city representative, for projects inside Urban Growth Boundaries.
- G. Other appointees by the Planning Director, such as an Architect, Landscape Architect, real estate agent, appropriate officials, etc.

**Finding 18:** A condition of approval will be added to this decision requiring a pre-application conference prior to submittal of the Design Review land use application. At this time the applicant has not submitted a pre-application conference or Design Review application. Condition 1a requires a pre-application conference prior to the Design Review application. -Application of CCZO 1550 as stated in Finding 17 confirms the need for a Design Review Application. The first step in that process is a pre-application conference. Staff recommends that condition 1a remain.

## **Section 1600 ADMINISTRATION**

### **Section 1614 Requests for Special Hearings:**

In addition to Special Hearings ordered by the Board of County Commissioners on its own initiative, Special Hearings may be initiated by the Board at the request of the Planning Director or his designate, or a majority of the Planning Commission, for any quasi-judicial land use application or type of quasi-judicial land use application.

**Finding 19:** The Planning Director requested the Board of Commissioners to hear the quasi-judicial appeal hearing of LUC 21-15 because it involves a significant interpretation of the Columbia County Zoning Ordinance that will also be applicable to other properties in the County not associated with this application.

## Section 1700 APPEALS

### 1701 Appeal Procedures:

#### .1 General Procedure:

A land use decision, as it is defined in ORS 197.015(10), made by the Director, Hearings Officer (in lieu of the Planning Commission), Planning Commission, or the Design Review Board shall be final at the end of 7 calendar days following the date notice of the decision is mailed to the applicant, and other persons entitled to notice of the decision as provided by ORS 197.763, unless a notice of appeal of decisions to the Planning Commission or the Board of Commissioners is filed with the County Clerk's office. A notice of appeal can be obtained from the Planning Department or from the Clerk's office and shall contain: [effective 7-15-97]

- A. The name, address, and telephone number of the person filing the notice;
- B. An identification of the decision sought to be reviewed, including the date the decision was made; and
- C. In the case of decisions by the Planning Commission or Hearings Officer, the specific reasons why the decision should be modified or reversed.

.2 Appeals of the Planning Commission's decision regarding administrative actions of the Planning Director or decisions of the Design Review Committee shall be to the Land Use Board of Appeals. [effective 7-15-97]

.3 Any person entitled to notice of the decision as provided by this ordinance or by state law who desires to appeal the decision shall file the notice of appeal with the required fee. Failure to file a notice of appeal, or make payment of the required fee, within the designated time limit, shall be a jurisdictional defect and shall preclude review.

.4 When a notice of appeal is properly and timely filed in compliance with this section, and timely payment of the filing fee is made, a de novo appeal hearing shall be scheduled at the earliest opportunity. Notice of the hearing shall be mailed to the appellant, the applicant, the property owner, if different from the applicant, and any other persons who requested notice of the appeal hearing in writing. Notice of the appeal hearing shall be published in a newspaper which covers the property subject to the appeal. Notice of the appeal hearing shall be mailed to the parties and distributed to the newspapers no later than 7 days prior to the scheduled hearing date. [effective 7-15-97]

1702 Appeal of a Planning Director's Action: Any land use decision by the Director, or Design Review Board may be appealed to the Planning Commission by persons who appeared before the lower decision making body, either in person or in writing. The appeal may concern the approval or denial of an application or any conditions attached to the approval of an application.

**Finding 20:** The applicant submitted a timely notice of appeal, within 5 days of the decision. The notice of appeal included all of the information required by Section 1701 above. The appeal is of a Director's decision that can be heard by the Planning Commission, however, in this case the issue has been elevated to the Board of Commissioners pursuant to CCZO Section 1614. Reference Finding 19.

## OREGON REVISED STATUTES

**197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.** The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

- (1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

**Finding 21:** The applicant has provided a notice of appeal including a written statement raising the issue they wish to be heard by the Board of Commissioners. To summarize, the applicant does not believe that any additional land use applications, such as a Design Review and Pre-Application Conference (Conditions 1a and 1b) are required in order to begin aggregate mining operations on the subject property.

### ORS 197.763

- (2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
  - (A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
  - (B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
  - (C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- (b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

**Finding 22:** Notice of the appeal public hearing was mailed to the applicant, owner and agent as well as to property owners within 250 feet of the subject property. Additionally, notice was provided to the Rainier-Fern Hill Citizen Planning Advisor Committee. The applicant did not request notice be mailed to DLCD, so it was not.

### ORS 197.763

- (3) The notice provided by the jurisdiction shall:
- (a) Explain the nature of the application and the proposed use or uses which could be authorized;
  - (b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
  - (c) Set forth the street address or other easily understood geographical reference to the subject property;
  - (d) State the date, time and location of the hearing;
  - (e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
  - (f) Be mailed at least:
    - (A) Twenty days before the evidentiary hearing; or
    - (B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;
  - (g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
  - (h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
  - (i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
  - (j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

**Finding 23:** Notice of the appeal hearing explained the nature of the application was a Land Use Compatibility to allow surface mining and extraction of aggregate on the subject property. The notice did list the applicable review criteria, however, the property does not currently have a street address, so the assessor map and tax lot number were used for identification. The date and time of the hearing and a link and phone number were provided for access to the virtual public hearing. The notice did include the required statement regarding the failure to raise an issue may preclude appeal based on that issue. Notices were mailed on January 28th and 29th and clearly stated the hearing would be held on February 17<sup>th</sup>. Contact information, how to review the documents and obtain copies, when the report will be available and how to submit testimony and the criteria for the hearing procedure were all included within the notice.

#### **COMMENTS RECEIVED:**

On January 31, 2021, LDS Planning did receive comments from neighbors, Donald and Lois Palomaki. The Palomakis, are opposed to the excavation of the subject property and are particularly concerned that their deep well will be damaged. Reference Attachment 11.

**Finding 24:** While the neighbor's concerns may be valid, they are not relevant to the review criteria for the appeal of this application (LUCS 21-15). These types of concerns may be better addressed through the DOGAMI operating permit review or possibly the Design Review land use process.

## **CONCLUSION & RECOMENDATION:**

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:**

1. 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.

\* Please note these land use applications will likely include additional conditions of approval.

## **Attachments:**

1. Applicants Notice of Appeal
2. Notice of Appeal Public Hearing
3. Affidavits of Mailing
4. Affidavits of Publication
5. August 20, 2020 email with DOGAMI
6. LUC 21-15 Initial Staff Report
7. Submitted application and maps
8. Vicinity Map
9. Zoning Map
10. Aerial Photo
11. Comments Received from Neighbors
12. CCZO Section 1040 Surface Mining
13. CCZO Section 1550 Site Design Review
14. CCCP Part XVI Goal 5, Article VI Surface Mining