



**Benton
County**

**COMMUNITY DEVELOPMENT
DEPARTMENT**

Community Development Department

Office: (541) 766-6819
360 SW Avery Avenue
Corvallis, OR 97333

co.benton.or.us/cd

APPLICATION

APPEAL OF A DEVELOPMENT DEPARTMENT DECISION

File # LU-26-39

Fee: \$250

Appellant

Name: Daniel Rosenberg and Jennifer Gervais Bus Phone: 541-757-9041
Address: 8500 NW Oak Creek Dr. Home Phone: 541-740-4181
City & Zip: Corvallis, OR 97330 Email: danrosenberg.oregon@gmail.com

Other individuals to be notified of this application:

Name Address City & Zip

Steve and Terri Cook, 8600 NW Oak Creek Drive, Corvallis, OR 97330

The appellant hereby requests the Planning Commission to consider the following decision:

File Number: LU-26-030-Snack Time Trail Nature of Application: Conditional Use Permit Modification

Decision: Approved with Conditions Decision Date: September 18, 2026

Assessor's Map & Tax Lot Number: T 11S S, R 5 W, Section(s) 7 and 8, W.M., Tax Lot(s) 115050000300

REQUIRED: State the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated. Failure to cite specific Plan or Code provisions will nullify your appeal. See BCC 51.830. Attach additional sheets if necessary.

See attached appeal statement.

Signature

October 1, 2026

Date

(For Office Use Only)

Date Application Received: 09/1 Receipt Number: _____

File Number Assigned: LU-26-39 Planner Assigned: PS

Hutchinson Cox

Zack P. Mittge • Special Counsel
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October 1, 2026

Via Hand Delivery

Petra Schuetz, Benton County Planning Official
Benton County Community Development
4500 SW Research Way
Corvallis, OR 97333

RE: Appeal of Snack Time Trail
County File No.: LU-26-030
Appellants: Daniel Rosenberg & Jennifer Gervais, Steve Cook & Terri Cook
Our File No.: 14859/13620

Dear Ms. Schuetz:

On behalf of Daniel Rosenberg and Jennifer Gervais and Steve Cook and Terri Cook, we hereby submit the following appeal challenging Benton County's proposed Conditional Use Permit to add the approximately .94-mile Snack Time Trail to LU-16-077 (LU-26-030). Please include this letter in the record of these proceedings and provide copies of all future notices associated with this appeal process to this office.

Benton County's appeal requirements are set out in section 51.830 of the Benton County Code. For ease of reference, we set out the same below in bold italics followed by a brief response demonstrating compliance with the applicable standard.

51.830 - Filing an Appeal.

The appeal requirements of this section are jurisdictional. Failure to fully comply with the appeal requirements of this section is a jurisdictional defect. An appeal shall be filed with the Planning Official no later than 5:00 p.m. on the final day of the appeal period. The appeal must be filed in writing on the form provided by the Planning Official, and shall include:

This appeal conforms to each of the requirements set out in section 51.830 as is set forth herein. It is being filed in writing on the form provided by the Planning Official not later than the final day of the appeal period. These requirements are satisfied.

(1) A statement of the reasons for the appeal, citing the specific Comprehensive Plan or Development Code provisions which are alleged to be violated;

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This appeal is taken from a decision that was made without a hearing, and state law provides that the hearing before the Planning Commission shall be a “de novo hearing” and “shall not be limited to issues raised in the notice of appeal.” ORS 215.416(11)(a)(D) & (E)(ii). As such, the county cannot make the specification of issues in a notice of appeal a “*jurisdictional* bar to obtaining the initial evidentiary hearing required by ORS 215.416(3) and (11).” *Landwatch Lane County v. Lane Co.*, 79 Or LUBA 96 (2019).

With those statutory limits in mind, we hereby provide the following statement of issues to inform the Planning Commission’s review of the Planning Official’s decision:

1. The Planning Official exceeded her jurisdiction by approving modification of a conditional use permit application which has expired or become void under LU 16-077 and section 53.230.
2. The Planning Official exceeded her jurisdiction by purporting to approve a modification of a conditional use permit application as an administrative action when section 53.225 required that the modification be processed as a new request for a conditional use permit and that the decision be made by the Planning Commission under 51.605(1)(b).
3. The decision violates section 53.225 as the applicant has not demonstrated that a change in circumstances that warrants modification of LU 16-077.
4. The decision violates section 53.215(1) by allowing a proposed use which seriously interferes with uses on adjacent property, with the character of the area, and with the purposes of the zone.
5. The decision violates section 53.215(2) by allowing a proposed use which imposes an undue burden on public improvements, facilities, utilities or services available to the area.
6. The decision violates section 53.215(3) by not complying with additional criteria required for the specific use by the code.
7. The decision violates section 60.215(1) of the Forest Conservation Zone by approving a mountain bike route that is not appropriate for the forest environment.
8. The decision violates section 60.215(1) of the Forest Conservation Zone and OAR 660-034-0040 by approving development of a mountain bike route without the required park master planning.

9. The decision violates section 60.220(1)(a) by allowing a route which will force a significant change in or significantly increase the costs of accepted farming or forest practices on agriculture or forest lands.
10. The decision violates section 60.220(1)(b) by significantly increasing fire hazard or significantly increasing fire suppression costs or significantly increasing risks to fire suppression personnel.
11. The Planning Official makes a decision which is not supported by adequate findings addressing the relevant criteria.

(2) A statement of the standing to appeal; and

Section 51.825 provides that “any person may appeal a decision of the Planning Official to the Planning Commission.” The appellants are persons who may appeal the decision of the Planning Official to the Planning Commission.

In addition, appellants were entitled to notice under ORS 215.416(11)(c)(A) and received notice of the Planning Official’s decision. They are also adversely affected by the authorization of an expanded trail system, as they own property within sight and sound of the McDonald-Dunn Research Forest and are impacted by the increased traffic congestion on upper Oak Creek Drive, decreased traffic safety for vehicles, pedestrians and cyclists, adverse impacts to emergency response, and increased fire risk which are encouraged by the expansion of the trail system.

This requirement is satisfied.

(3) Payment of the filing fee established by order of the Board of Commissioners.

The appellants include the \$250 filing fee established by the Board of Commissioners consistent with state law. ORS 215.416(11)(b).

This requirement is satisfied.

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Conclusion

As the appellants have demonstrated compliance with each of the requirements applicable for filing an appeal, we hereby respectfully request that the County proceed with the initial evidentiary hearing in this matter before the Planning Commission in accordance with ORS 215.416(11)(a)(D) and (E) and ORS 197.797.

Very truly yours,

HUTCHINSON COX



Zack P. Mittge

ZPM/df

Enclosures: Appeal Form
Application Fee - \$250