

15-163-A



March 30, 2015

Anthony Raguine

Community Development Department

Planning Division

117 NW Lafayette Ave.

Bend, OR 97701-6005

RE: Tree Farm 1: 247-14-000242-CU, 247-14-000243-TP

Tree Farm 2: 247-14-000244-CU, 247-14-000245-TP

Tree Farm 3: 247-14-000246-CU, 247-14-000247-TP

Tree Farm 4: 247-14-000248-CU, 247-14-000249-TP

Tree Farm 5: 247-14-000250-CU, 247-14-000251-TP

Dear Anthony,

Attached please find five appeal applications, attached narratives for the appeal, and one check covering all appeal application fees. Per instructions from County staff, we have provided the appeal fees in one check and the total has been calculated with one base fee of \$2,640, plus 20% for each of the five subdivisions. The total appeal fee for all 5 subdivisions \$13,030.

As we understand, the Board of County Commissioners has until April 13 to decide whether or not to hear the appeal. As outlined in Section III.B of the application, we consent to restart the 150-day clock as of the date of the Board's acceptance of our appeal.

Please let me know if you have any questions.

Thank you,

Romy Mortensen, Project Manager for Tree Farm

SCANNED  
MAR 31 2015



# Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

1x base fee: 2,640  
+

FEE: 2070<sup>00</sup>

## APPEAL APPLICATION

### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): The Tree Farm, LLC Phone: (541) 382-1662 x105

Mailing Address: 409 NW Franklin Ave. City/State/Zip: Bend, OR 97701

Land Use Application Being Appealed: Tree Farm 1: 247-14-000242-CU, 247-14-000243-TP

Property Description: Township 17 Range 11 Section 00 Tax Lot 0209  
(35+34)

Appellant's Signature: Bob O'Malley

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

(over)

**NOTICE OF APPEAL**

Please see attached Notice of Appeal  
Narrative for Tree Farm 1.

## Notice of Appeal Narrative

### I. Specific Reasons for the Appeal.

**A. Nature of the Decision on Appeal.** Deschutes County Hearings Officer Karen Green denied five applications submitted by The Tree Farm LLC ("Applicant") to create a 50-lot, 533-acre Cluster Development west of Bend due to insufficient information relating to the wildfire and wildlife management plans. However, Hearings Officer Green also concluded that it was feasible for the Tree Farm to create appropriate and adequate plans based upon the record. Hearings Officer Green provided detailed guidance to the Applicant with regard to what the plans should contain and address. The Applicant files this appeal in order to address the denials and to correct one ambiguity.

**B. Issues Raised on Appeal.** The following issues on appeal apply to all five of the Tree Farm Decisions.

**1. Wildfire Management Plan.** The Applicant appeals denial of the applications based upon the Wildfire Management Plan. The Applicant will submit a revised Wildfire Management Plan and will submit evidence and argument demonstrating that such plan addresses Hearings Officer Green's decision and complies with the applicable criteria.

**2. Wildlife Management Plan.** The Applicant appeals denial of the applications based upon the Wildlife Management Plan. The Applicant will submit a revised Wildlife Management Plan and will submit evidence and argument demonstrating that such plan addresses Hearings Officer Green's decision and complies with the applicable criteria.

**3. 100-Foot Setback from Building Envelopes on UAR-10 Lots to Open Space.** Deschutes County Code Section 18.128.200(B)(3)(c) provides that, in the WA Combining Zone, a special yard setback of 100 feet is imposed on lots adjacent to the required open space. Therefore, the Applicant's burden of proof proposed 100-foot setbacks on all lots within the WA Combining Zone adjacent to Open Space within the WA Combining Zone. Hearings Officer Green makes findings that the Applicant has provided 100-foot setbacks for all of the Tree Farm Lots, including lots and open space zoned UAR-10 outside of the WA Combining Zone. This is not correct, and is not required by code. The Applicant believes this is likely a drafting error given the voluminous nature of the decisions and the fact that this issue was not contested by any of the parties. The Applicant would like this ambiguity corrected on appeal to avoid future confusion.

**II. The Reasons the Board of Commissioners Should Review the Hearings Officer's Decision.** Hearings Officer Green has required that the Wildfire and Wildlife Management Plans contain substantially more specificity at the time of approval than the County has heretofore required. The Applicant does not object to providing this level of detail and intended to do so during the development phase of the projects. The Applicant views the appeal as an opportunity not only to submit revised wildfire and wildlife plans that will resolve the contested issues in this case, but also as the opportunity to develop a template for wildfire and wildlife protection that will guide future development on rural residential and urban residential lands in

Deschutes County. Hearing this appeal gives the Board the opportunity to set the standard for future rural development in Deschutes County.

### **III. Request for Limited De Novo Review by the Board.**

**A. De Novo Review is Justified by the Significance of the Policy Issues.** Pursuant to DCC 22.32.020(2), the Applicant requests a de novo review of the wildlife and wildfire management plan issues. In order to address Hearings Officer Green's decision and overturn the denial, the Applicant is required to prepare and submit substantially revised wildlife and wildfire management plans, along with additional evidence and argument. For the reasons stated above, new plans are necessary for the Board to "fully and properly evaluate" significant policy issues relevant to the decisions within the meaning of 22.32.020(2)(d). Submittal of new plans will require the reopening of the record to accept the plans and to allow the parties to submit new evidence and arguments with regard to the plans.

**B. 100-Foot setback.** The 100-foot setback ambiguity can be addressed without reopening the record on this issue.

**C. Process.** The Applicant estimates that it will need 60 days from the date that the appeal is accepted by the Board to prepare and submit revised Wildfire and Wildlife Management Plans to the Board for its consideration. This could cause the 150-day local action deadline in ORS 215.427 to be exceeded. By submitting this appeal and request for a *de novo* hearing, the Applicant hereby consents to restart the 150-day clock as of the date of the Board's acceptance of the Applicant's appeal and grant of de novo review.

**IV. No Color Exhibits are Being Submitted with This Notice of Appeal.** Should the Board agree to hear the Appeal de novo, any new color documents will be submitted into the record as provided in the notice of appeal form.