Josephine County, Oregon

Community Development – Planning Division
700 NW Dimmick, Suite C / Grants Pass, OR 97526
(541) 474-5421 / Fax (541) 474-5422
E-mail: planning@co.josephine.or.us

REMAND APPLICATION

PETITIONER INFORMATION

Petitioner's Name(s): _____ Tel: _____

Mailing Address: _____

Representative: _____ Tel: _____

Mailing Address: _____

Email Address: _____ _____

DECISION REMANDED

Original Applicant's Name: _____

Date of Board Action: _____

Remanding Court or Board: _____

Date of Mailing of Remand Decision: _____

Purpose of Remand Hearing: ❑ Modified Findings **Only** ❑ New Evidentiary Hearing

Petitioner's Status: ❑ Party to LUBA or Court Appeal

❑ **NEW FINDINGS ATTACHED**

❑ **WRITTEN STATEMENT OF ISSUES FOR REMAND HEARING ATTACHED**

ORIGINAL FILE INFORMATION

Owner's Name: _____ Tel: _____

Mailing Address: _____

Applicant's Name: _____ Tel: _____

Applicant's Address: _____

Legal Description: TWN____ RNG ____ SEC ____ ____ QQ ____ Tax Lot(s) _____

Original Application: _____

Nature of Original Request: _____

Revised 10/2016

APPLICANT'S STATEMENT OF UNDERSTANDING

I _____, have filed an **REMAND APPLICATION** with the Community Development – Planning Division to be reviewed and processed according to state and county requirements. I acknowledge the following disclosures:

1. I understand that any representations, conclusions, opinions or positions taken by staff in the pre-application review of this request cannot be considered final, and that only the Board of County Commissioners has the authority to make a final decision regarding this appeal.

2. I understand I may ask questions and receive input from planning staff, but acknowledge that I am ultimately responsible for all information and documentation submitted with this application. I further understand planning staff cannot legally bind the county to any fact or circumstance that conflicts with state or local laws, and in the event a conflict occurs, all such statements or agreements are void.

3. I understand this appeal will result in a full evidentiary hearing before the Board of County Commissioners (a *de novo* hearing) and that it will be fully open to the public. I further understand new issues may be raised and new evidence, information or testimony may be offered. I further understand the burden of proof in this hearing is on the applicant to demonstrate the application is supported by applicable criteria. I acknowledge the criteria and standards for approving or denying this request have been made available to me.

4. I understand I am entitled to have a lawyer or a land use consultant appear with me (or for me) at any appointment, conference or the appeal hearing.

5. I understand the processing of my application may require a site visit, which may include officials from other agencies, and photographs are commonly taken. Advance notice of the visit will be provided when the site is also a personal residence.

DATE: _____, 20_____.

_____ _____

OWNER/APPLICANT * OWNER/APPLICANT *

* *If the applicant is someone other than the owner, a power of attorney must be on file from the owners authorizing the application*

RURAL LAND DEVELOPMENT CODE

33.110 - REMANDS - LAND USE BOARD OF APPEAL

In all cases, a copy of the opinion on remand shall be filed with the Planning Director to be included in the permanent file.

33.120 - PARTICIPATION IN LAND USE BOARD OF APPEAL (LUBA)

The County shall not participate in appeals filed with the LUBA. The response to an appeal shall be left to the party whose interests are, or may be, affected by a modification, reversal, or remand upon appeal. Only in those cases that represent a significant issue to the entire County, or establish a precedent that may be detrimental to County interests, will the Board and the County Legal Counsel consider participating in a response.

33.130 - REHEARING

Hearings to consider remanded land use decisions shall be governed by the applicable rules for applications, hearings and appeals as set forth in this code, except as follows:

A. A remand proceeding shall be initiated by an appeal application on forms prescribed by the Planning Director, together with the fee for remand hearings. The application must be filed within 45 days from the date of the final opinion and order remanding the county's decision. Except as provided in subsection B below, only the applicant as defined in Section 11.030 of this code may file a remand application.

B. All remand proceedings shall be conducted exclusively by the Board unless the Board delegates jurisdiction to another review body by resolution. This grant of jurisdiction is intended to supersede any other grant of jurisdiction in this code. In addition, the Board reserves the right to initiate a remand proceeding pursuant to Section 31.030 of this code.

C. The applicant in a remand proceeding shall specify in the application whether the remand hearing will be confined to the record of the earlier proceeding or whether the remand hearing will involve the introduction of new evidence. In the event the remand hearing is confined to the earlier record, the applicant shall submit amended findings with the remand application. The remand hearing shall be confined to the earlier record unless the review body opens the record for new evidence pursuant to Sections 33.080.E or 33.090.F.

D. Participation in the remand hearing shall be strictly limited to those persons or organizations who were legal parties in the higher appeal. Procedures shall therefore be limited in the following respects:

    1. Written notice shall be given only to the persons or entities who were parties to the higher appeal.

    2. Only parties to the higher appeal may present arguments (in the case of a hearing on the record), or present evidence, witnesses, testimony and arguments (in the event new evidence is allowed) in the remand hearing.

3. Josephine County shall always be considered a party in the remand proceeding even if it did not submit briefs or make arguments in the higher appeal(s).

E. The remand hearing shall not consider any issue or issues other than those specified for remand in the remanding decision, and no other evidence, testimony or arguments shall be allowed regarding other issues within the scope of the Board's original action.

F. The following special time limits shall apply to remand applications:

1. The review body shall take final action on a remand application within 90 days of the effective date of the final remand order; and

2. The effective date of the final order is the last day for filing a petition for judicial review of a final order of LUBA, or if judicial review of LUBA's order is sought by the Oregon Court of Appeals or the Supreme Court, the 90-day period shall not begin until final resolution of the judicial review; and

3. In any case, the 90 day period shall not begin until the applicant requests in writing that the county proceed with the application on remand; and

4. The 90 day period may be extended for a reasonable period of time at the request of the applicant; and

5. The 90 day period applies only to decisions wholly within the authority and control of the county; and

6. The 90 day period does not apply to a remand proceeding concerning an amendment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land use regulation that was forwarded to the Director of Land Conservation and Development under ORS 197.610.

G. The prevailing party shall prepare the findings of fact for the decision on remand unless the Board designates someone else to prepare them.

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