



# Crook County Counsel's Office

Mailing Address: 300 NE Third St., Prineville, OR 97754  
Physical Address: 301 NE 3<sup>rd</sup> St., Prineville, OR 97754

• Phone: 541-416-3919  
• Fax: 541-447-6705

July 12, 2022

To: Crook County Court  
Re: *Staff report for land use appeal no. 217-22-000451-PLNG*  
***Second appeal – Brasada Ranch Phase 15***

Owner / Applicant:

FNF NV Brasada, LLC  
c/o Brent McLean  
16986 SW Brasada Ranch Road  
Powell Butte, OR 97753

Appellants:

BR Community Coalition  
c/o Megan K. Burgess, Peterkins Burgess  
222 NW Irving Avenue  
Bend, OR 97703

Agent for Owner:

Adam Conway  
DOWL  
963 SW Simpson Ave., Suite 200  
Bend, OR 97702

Location of Property:

Map	Section	Tax Lots
16S 14E	26	2805
16S 14E	26	2806

The County Court is responsible for reviewing an appeal of the Planning Commission regarding Phase 15 of the Brasada Ranch destination resort. As further explained below, this is the second appeal to reach the Court on this matter.

This staff report proceeds as follows:

- A. Brief procedural history.
- B. Appellants' issues on appeal.
- C. Recommendation on each issue.
- D. Conclusion.

The hearing for this second appeal is scheduled for Wednesday, July 20, 2022.

## **A. Brief Procedural History**

FNF NV Brasada, LLC submitted a tentative plan for the 15<sup>th</sup> subdivision phase of the Brasada Ranch destination resort. On March 17, after a hearing before the Planning Commission, the application was approved with conditions. On or about March 29, BR Community Coalition filed an appeal to the County Court, which held an on-the-record hearing on April 28, 2022.

The County Court remanded the approval to the Planning Commission, with instructions to consider the appellants' new evidence that was not considered in the Planning Commission's prior decision.

The Planning Commission held a remand hearing on May 11, and after considering the entire record, on May 24 issued findings and a decision approving the application. BR Community Coalition appealed this second approval to the County Court, which has scheduled a second on-the-record hearing.

## **B. Appellants' Issues on Appeal**

The appellants in both appeals are the BR Community Coalition, represented by the law firm Peterkin Burgess. This second appeal was received within the statutory deadline, and is therefore timely. The appellants submitted written comments to the second Planning Commission hearing, and therefore under Crook County Code 18.172.110(6) have standing to bring this appeal to the County Court.

The appellants raise two issues, each addressed in turn:

- (1) The applicant is required to show the existence, location, use, and surface of trails within easements shown on Phase 15 final plat because Brasada Ranch is a destination resort with public use of open space that is also the residential common area owned by the Brasada Ranch Homeowner's Association.
- (2) Each as-built cabin only qualifies as one lodging unit based on the absence of fire-rated lock-off doors and firewalls that must exist to create legal, safe, and code-compliant independent overnight rental units for use by the general public.

The appellants make several requests of the County Court:

- That the County Court reverse the Planning Commission's decision.
- That the County Court "instruct the Applicant to either show the public trails on the final plat or, if public use trails are desired after the final plat is recorded, seek replat approval to show the trails on the replat."
- That the County Court should reverse the Phase 15 tentative plat approval "until the Applicant proves that the existing cabins qualify as overnight lodging units as required under the Brasada Ranch destination resort approval and in compliance with all fire and building codes necessary to create safe overnight lodging units."
- That the County reimburse the fee paid for this second appeal, "having paid the same fee on the first appeal."

## **C. Recommendation on Each Issue**

- (1) *Whether trails are required to be shown on the Phase 15 final plat.*

The appellants argued before the Planning Commission that the applicant's submission for the Phase 15 tentative plat approval does not comply with Condition No. 15 of the 2004 Brasada Ranch Final Development Plan: "The applicant shall provide a detailed depiction of the final location, surfacing, and size of all trails within a phase prior to preliminary plat

approval for each phase of the resort development.” Their argument is that unless all of the trails in the destination resort are adequately shown, the Phase 15 tentative plat application is fatally defective.

The applicant responded by arguing that this Condition 15 only applies to the conceptual trail system proposed in the original development plan, but that neither Condition 15 nor the original approval of the destination resort prohibits creating additional trails. The applicant further argued that the County Code simply does not require land use approvals to install trails.

The Planning Commission found that Condition 15 applied to the original Final Development Plan’s conceptual trail system. If there are trails being proposed for any subsequent phase as may be submitted for review, then a detailed depiction of the final location, surfacing, and size of such trails *within that phase* must be provided before the tentative plan can be approved. The applicant did submit a map with the proposed location, surfacing, and size of the trails for Phase 15. If there are problems with the trails for previously platted phases, there are means by which those problems could be addressed. However, those means do not include a denial of the Phase 15 land use application on the basis of defects in previous phases.

The Planning Commission, however, did find that there are instances when trails may be subject to land use approval: as one example, CCC 18.116.040(12) provides that alterations and nonresidential uses within the 100-year flood plain, and alterations and uses on slopes exceeding 25 percent, are allowed only if the applicant submits and the Planning Commission approves a geotechnical report demonstrating adequate stability and mitigation measures. That code section specifically includes trails as within its ambit.

Staff Response to Appeal Issue # 1: The applicant has submitted substantial evidence of the location, surfacing, and size of the trail system within Phase 15 sufficient to meet its obligations under Condition 15 of the original Final Development Plan approval. The better interpretation of Condition 15 is that it does not allow the denial of otherwise adequate applications on the basis that previously approved tentative plat applications did not demonstrate the required information for those phases’ trail systems.

- (2) *Whether each cabin only qualifies as one lodging unit if there is insufficient evidence of fire-rated lock-off doors and firewalls, and that they are permanently, separately rented.*

One of the statutory requirements that developers of destination resorts must meet is the maintenance of a number of overnight lodging units, equal or greater than a specified ratio compared to residential lots. Under Crook County Code section 18.116.040(3)(b), and as applicable here, that ratio is 2.5 : 1. That is, the developer must have at least one overnight lodging unit<sup>1</sup> for every two-and-a-half residential lots within the resort.

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<sup>1</sup> Under CCC 18.116.030 (5), “Overnight lodgings” means permanent, separately rentable accommodations, which are not available for residential use. Overnight lodgings include hotel rooms, lodges, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle

The Planning Commission found that there are currently 244 overnight lodging units and 595 residential lots. This is within the ratio's maximum of up to 610 residential lots. The proposed Phase 15 would increase that number by 50, to 645 residential lots. Brasada would normally be required to construct 35 additional overnight lodging units to comply with the ratio should the 50 additional residential lots be platted.

The applicant has proposed that, pursuant to CCC 18.116.040(3)(d) it would submit a bond or similar security to secure the completion of the remaining overnight lodging units. The Planning Commission imposed a condition that such a bond be in place prior to the construction of the proposed improvements.

The applicant has submitted several hundred pages of room reservations, in an effort to show that the units used to meet the overnight lodging unit ratio are actually being rented and are being rented separately.

The appellants have argued that a unit cannot be considered an overnight lodging unit unless it has separate fire-rated lock-off doors and firewalls, and that the applicant has not demonstrated that the units currently used to meet the required ratio are both permanent and separately rentable.

*Staff Response to Appeal Issue # 2:* The better interpretation of Section 18.116.030(5) is that the term "permanent" refer to being permanently affixed to the ground, as opposed to a temporary placement such as RVs, trailers, manufactured homes, or other similar accommodations. This is the interpretation that the Planning Commission adopted.

The material submitted by the applicant constitutes substantive evidence that the units used by Brasada Ranch to comply with the overnight lodging unit ratio are "separately rentable accommodations" as required by 18.116.030(5). Therefore, the definition of overnight lodging unit has been met.

### *(3) Whether the appeal fee must be refunded*

Staff does not understand the appellants to argue that a failure to refund the fee paid for this second appeal amounts to grounds for further appeal itself. Nevertheless, the appellants request reimbursement of this appeal's fee, "having paid the same fee on the first appeal."

The County Code includes a provision addressing filing fees, and requests for refunds. CCC 18.172.050 reads:

All fees described in this section shall hereafter be set annually as determined by the county court.

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parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(1) All fees for permits, variances, zone map amendments, comprehensive plan amendments, zone text amendments, appeals, and any other necessary review or permits pursuant to this title shall be set annually as determined by the county court.

(2) Acceptance and filing of an application is not considered complete until all applicable fee(s) are paid to the county.

(3) Refunds.

(a) If the applicant withdraws a land use application prior to the mailing of the notice on the matter, the applicant may apply to the department for a refund of a fee paid for that action.

(b) If the applicant withdraws a land use application before the seventh working day prior to the commencement of the first hearing on the matter or prior to the action of the director, the applicant may apply to the department for a partial refund of a fee paid for that action.

(c) No refunds or partial refunds shall be granted by the director if the applicant withdraws a land use application on or after the seventh working day prior to the commencement of the first public hearing on the matter or after action of the director.

(d) The director shall within five working days of receiving an application for a refund or a partial refund make a determination whether to grant the refund or partial refund. If the director makes a determination to grant a refund or a partial refund, the director shall make the appropriate refund or partial refund of that fee to the applicant within 30 days.

(e) The applicant may file with the county court an appeal of a determination by the director to deny a refund or a partial refund of a land use application fee. The county court may grant a refund or a partial refund of a land use application fee upon good cause shown by the applicant.

(f) For purposes of this subsection, "partial refund" shall mean the filing fee less notice and reasonable staff costs.

(4) Fees charged for processing permits shall be no more than the actual or average cost of providing that service.

Under the most recently adopted fee schedule, an appeal to the County Court requires a deposit of \$2,050.00 + 20% of original application fee. This amount is required at time of appeal submission. Further, the appellant is required to submit the transcript of the relevant hearings at the appellant's expense.

The Code describes a number of instances when a refund or partial refund would be considered, but none of these instances include the circumstances present here. Under the County Code, the fees charged are no more than the actual or average cost for providing the requested service. The Community Development Department conducts periodic reviews to ascertain those actual or average costs.

*Staff Response to Appeal Issue # 3:* The County's Code does not contain a provision to cover this type of appeal. While much of the evidence is what the County Court has already reviewed, and similar arguments were presented at the first hearing, this is nevertheless a separate appeal.

Further, the fees are calculated not to generate revenue, but to reflect the costs which processing an appeal incurs upon the taxpayers. There is an opportunity cost with any public action. Time spent on one activity is necessarily time that cannot be spent working on other public purposes. This appeal, like all land use appeals, is not exempt from that opportunity cost. Given the absence of a Code provision authorizing a refund in these circumstances, and the costs imposed upon the taxpayers that the appeal necessitates, there is an insufficient basis to issue a refund.

#### **4. Conclusion**

For the reasons discussed above, Staff recommends that the County Court adopt the findings of the Planning Commission as its own Findings, and approve the application.

Submitted by:  
Eric Blaine, County Counsel

CC: Community Development



**Crook County**  
**Community Development**  
300 NE 3<sup>rd</sup> Street, Prineville, OR 97754  
(541)447-3211

## Staff Memo to the Crook County Court

July 27, 2022

**RE: Additional testimony submitted by the Applicant and Appellant in regard to the Brasada Ranch Phase 15 Appeal. File 217-22-000993-PLNG (Appeal of record 217-22-000451-PLNG).**

On July 20, 2022, a hearing was held before the Crook County Court regarding the above listed appeal application. During the hearing, it was noted that the Applicant had submitted additional testimony which was not addressed by staff or included in the record. At the request of the Appellant, the County Court approved keeping the record open to allow the Appellant the ability to respond to the submittal. This memo will be a supplement to the staff report submitted at the initial hearing on July 20 and will address the additional testimony.

### **A. Exhibit 5: Submittal by the Applicant on July 18, 2022.**

The Applicant submitted additional testimony addressing the Appellants appeal submittal, and included specific requests that they wish the County Court to make a determination on. The requests are addressed below with staff's response.

#### **1. Trails**

In response the Appellants appeal, the Applicant has requested the following:

- a. *The Applicant respectfully requests that the County Court confirm the trails are not required on the Applicants temporary or final plats.*
- b. *The Applicant respectfully requests that the County Court Confirm that neither easements nor dedications are required for trails on common areas.*
- c. *The Applicant respectfully requests that the County Court confirm that neither the Development Plan Approval nor Crook County Code limits trails within Brasada Ranch to (1) those shown in the Approved Development Plan or (2) those identified "prior to the preliminary plat".*

**STAFF RESPONSE:** The Appellants first request has already been adequately addressed in the staff report from the Planning Commission Decision 217-22-000451-PLNG. On page 4 of the decision, the finding states:

*Staff agrees with the first statement, in that condition 15 does not require trails within all of the proposed phases, only that an applicant provide a detailed depiction of the final location, surfacing, and size of all trails within a phase prior to preliminary plat approval for each phase of resort development.*

*Staff interprets Condition 15 as requiring an applicant to provide the stated information regarding trails prior to preliminary plat approval; not that the trails must be depicted on the approved preliminary plat. The Planning Commission agreed with that interpretation and believes the Applicant has demonstrated compliance with this provision by providing the additional information regarding Phase 15 trails in its response to the Notice of Appeal.*

The Applicants use of the word “temporary” is interpreted to mean Tentative Plan, which is typically the first step in the subdivision process. Tentative Plan approval is then followed by the final plat approval. Nowhere in Condition 15 does it state that trails must be shown on the Tentative Plan or Final Plat, only that an applicant provide a detailed depiction of the final location, surfacing, and size of all trails within a phase prior to preliminary plat approval for each phase of resort development. Staff does not recommend further addressing the Planning Commissions findings on this matter.

The Applicant’s second request asks the Court to confirm that neither easements nor dedications are required for trails in common areas. The Planning Commission addressed this request within the decision on Page 21, which states:

*Title 17 certainly does include requirements that existing and proposed easements shall be identified on the tentative plan, but it is not the role of the Planning Department or the Planning Commission to interpret what qualifies as an easement. It is the responsibility of the Applicant and their surveyor to identify any easements, which are a civil matter not regulated by the Planning Department. The only parties involved in the enforcement of easements are the grantors and the grantees of an easement.*

The Planning Commission has already determined that it is not the role of the Planning Department or Planning Commission to determine what qualifies as easements. This can be carried forward to include the County Court, and more specifically it is not required within the Crook County Code to make this determination. It is the sole responsibility of the Applicant and their Surveyor to identify any easements, which are a civil matter not regulated by the Planning Department. The request puts the County in a position that would not be legally defensible or supported by criteria within the Crook County Code.

The third request asks the court to decide on whether trails within Brasada Ranch are limited to those shown in the Approved Development Plan, or those identified “prior to the preliminary plat”. In staff’s opinion, the Applicant is requesting a determination that is beyond the scope of the current Phase 15 review. The request is asking for a determination based on the original Final Development Plan review that would be best processed through a Declaratory Ruling (CCC 18.174). The request falls under that chapter of the code, as it aligns with the following provisions:

**18.147.005 Availability of declaratory ruling.**

*(1) Subject to the other provisions of this chapter, there shall be available for the county’s comprehensive plans, the county’s land division ordinance (CCC Title [17](#)) and Crook County zoning ordinance (CCC Title [18](#)), a process for:*

*(\*\*\*)*

*(b) Interpreting a provision or limitation in a land use permit issued by the county or quasi-judicial plan amendment or zone change (except those quasi-judicial land use actions involving*



*property that has since been annexed into the city of Prineville) in which there is doubt or a dispute as to its meaning or application;*

## **2. Overnight Lodging Units**

In response to the Appellants' appeal, the Applicant has requested the following:

- a. For the reasons set forth above, The Applicant respectfully requests that the County Court find that the cabin OLU's approved before 2019 and built to the R-3 standard are indeed OLU's.*

**STAFF RESPONSE:** The Applicant is attempting to submit additional evidence to argue that the Overnight Lodging Units constructed to date qualify as OLU's. Substantial evidence exists on the record in the form of evidence submitted by the Applicant and a decision rendered by the Planning Commission. The Overnight Lodging Units constructed prior to 2019 were approved by Planning and the local Building Official to the standards they determined applied, which were the R-3 Building Code standard. In 2019, the local Building Official then determined that the R-1 Building Code standard was the correct standard that Overnight Lodging Units must meet. Through coordination with the county, it was determined that the previously constructed Overnight Lodging Units would not need to meet the R-1 standard, but any constructed after that time would need to be constructed to the R-1 standard. The request has already been addressed through past policy interpretation by the County, no further determination is necessary from the County Court.

## **B. Exhibit 6: Submittal by the Appellant on July 25, 2022.**

In response to the submittal by the Applicant that was not included in the record by staff, the Appellants submitted additional argument. Argument is directed at each of the Applicant's topics addressed in their additional testimony. The arguments are addressed below with staff's response.

### **A. Trails**

The Appellant again argues and incorrectly interprets the Planning Commission's findings to mean that the Applicant must show the final location, surfacing, and size of trails on the "preliminary plat" (tentative plan) and final plat. They further argue the intent of Condition 15, and state that the final location of the trails must be confirmed prior to tentative plan approval, and that trails would not be allowed in any other location other than what was submitted prior to tentative plan approval.

**STAFF RESPONSE:** As determined by the Planning Commission on page 5 of decision 217-22-000451-PLNG:

*In analyzing Condition #15, the Appellant's testimony, and the Applicant's testimony, the Planning Commission chose to adopt amended findings to be incorporated into the original decision with edits. Their decision reflects the staff analysis above stating that if trails are proposed when a subdivision phase is submitted for review, a detailed depiction of the final location, surfacing, and size of all trails within a phase shall be provided prior to preliminary plat (tentative plan) approval for each phase of resort development. As it relates to Phase 15, the Applicant submitted an updated map with their proposal depicting the location, surfacing, and size of the trails. The Applicant's testimony during the hearing spoke to the fact that the trails on the updated map are not within any of the lots proposed for Phase 15, and are surrounding Phase 15 in the common areas, with one trail going through a common area on the western side of the phase (See Exhibit 3). The evidence the Appellant submitted about trail issues in previous phases does not link to any issues with the currently proposed Phase 15. Any issues*

*with previous phases should be addressed through an alternative review procedure, rather than appealing the currently proposed subdivision phase. The Applicant has submitted a map depicting the final location, surfacing, and size of all trails within the phase, which was provided prior to tentative plan approval. The Appellant's grounds for appeal in regard to trail depiction is denied, and the Planning Commission finds, for the reason stated herein, that Applicant's tentative plan application for Phase 15 complies with Condition #15 from the final development plan for the destination resort.*

The Applicant submitted additional evidence through the first appeal demonstrating the final location, surfacing, and size of trails within Phase 15, and the commission found the request to comply. The Appellants arguments are based on potential hypothetical scenarios that have not occurred yet, and issues within past phases which do not affect the development of the current subdivision phase. Staff continues to recommend adopting the Planning Commissions determination regarding the Appellants arguments to trails within the resort.

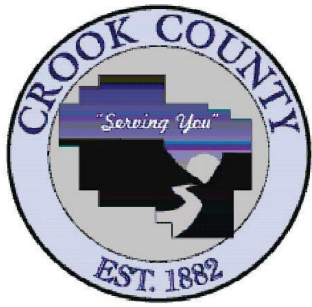
**B. Overnight Lodging Units**

The Appellant argues that "Rooms in a house that cannot be separately rented due to fire code violations are no longer available for overnight rental and can no longer be counted to meet the 2.5:1 ratio that applies to the county's review of each tentative plan application that seeks to authorize the construction of more single-family houses".

**STAFF RESPONSE:** Again, substantial evidence exists on the record in the form of evidence submitted by the Applicant and a decision rendered by the Planning Commission. The Planning Commission has determined that based on that evidence, and the definition of Overnight Lodging Units, the request complies. The Overnight Lodging Units constructed prior to 2019 were approved by Planning and the local Building Official to the standards they determined applied, which were the R-3 Building Code standard. In 2019, the local Building Official then determined that the R-1 Building Code standard was the correct standard that Overnight Lodging Units must meet. Through coordination with the county, it was determined that the previously constructed Overnight Lodging Units would not need to meet the R-1 standard, but any constructed after that time would need to be constructed to the R-1 standard.

Sincerely,

Brent Bybee, Planning Manager  
Crook County Planning Department



Received  
Crook County  
Jun 13 2022  
Planning Dept

(Original) RECORD # 217-22-000451-PLNG

Appeal Record # 217-22-000993-PLNG

Planning Commission: \$250

County Court: \$2050.00 + 20% of initial application fee  
(deposit) Actual costs with deposit required at time of appeal

Crook County Community Development/ Planning Division

300 NE 3<sup>rd</sup> Street, Room 12, Prineville Oregon 97754

Phone: 541-447-3211

[plan@co.crook.or.us](mailto:plan@co.crook.or.us)

[www.co.crook.or.us](http://www.co.crook.or.us)

## APPEAL PETITION TO PLANNING COMMISSION or COUNTY COURT

### Appellant Information

Name: BR Community Coalition

Mailing Address: c/o Michael W. Peterkin and Megan K. Burgess, Peterkin Burgess, 222 NW Irving Avenue

City: Bend State: OR Zip: 97703

Day-time phone: ( 541 ) 389 - 2572 Cell Phone: (            )            -           

Email: [mpeterkin@peterkinburgess.com](mailto:mpeterkin@peterkinburgess.com) and [mburgess@peterkinburgess.com](mailto:mburgess@peterkinburgess.com)


If group, name of representative: Michael W. Peterkin and Megan K. Burgess, Attorneys

Land Use Application Being Appealed: (file number) 217-22-000451-PLNG (former file/record no. 217-21-001013-PLNG)

### Property Description:

Township 16 South Range 14 East WM Section 26 Tax lot(s) 02805 – part 1614000002805

Township 16 South Range 14 East WM Section 26 Tax lot(s) 02806 – part 1614000002806

Appellant's Signature: 

Date: 06/13/22

I/We, the undersigned, wish to appeal the decision made by the Crook County Planning Commission regarding application no. 217-22-000451-PLNG, that a final decision was made on the 24<sup>th</sup> day of May, 2022.

### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The appeal shall be in writing and shall contain:
  - a. Name, signature, and address of the appellant(s).
  - b. Reference to the application title and case number, if any;
2. A statement of the nature of the decision:
  - a. A statement of the specific grounds for the appeal, setting forth the error(s) and the basis of the error(s) sought to be reviewed: and

- b. A statement as to the appellant's standing to appeal as an affected party.
3. Proper filing fee in accordance with Section 18.172.050.
4. If the decision appealed from is a decision made without a hearing or without notice to area property owners, written notice of appeal must be filed within twelve (12) calendar days of the date written notice of the decision is mailed to those entitled to such notice. With respect to all other appeals, written notice of appeal must be filed within 10 calendar days of the date written notice of the decision is mailed to those entitled to decision. If the last day of the appeal period falls on a Saturday, Sunday or legal holiday, the notice of appeal is due on the next business day.
5. An appeal shall be filed:
  - a. With the County Court for appeals from final decisions by the Planning Commission;
  - b. With the Planning Commission for appeals from final decisions by the Planning Director or Planning Department staff; and
  - c. Shall cite the specific "Zoning Ordinance Section" and "Comprehensive Plan Policies" alleged to be violated.

The Notice of Appeal must include the items listed above. Failure to complete all of the above will render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

**TRANSCRIPT:** The appellant must provide a copy of the transcript of the proceedings (at the appellants' expense) appealed to the County Planning Department not less than seven (7) calendar days before the hearing date set by the County Court or Planning Commission.

**SCOPE AND STANDARD OF REVIEW OF APPEAL:** An appeal to the County Court is not a new hearing; it is a review of the decision. Subject to the exception in paragraph (6) below, the review of the final decision shall be confined to the record of the proceeding below, which shall include, if applicable:

1. All material, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and received by the Commission or Court as evidence.
2. All material submitted by Crook County Staff with respect to the application.
3. The transcript of the Planning Commission hearing(s).
4. The written final decision of the Commission and the petition of appeal.
5. Argument (without introduction of new or additional evidence) by parties or their Legal representative.
6. The appellate body may, at its option, admit additional testimony and other evidence from an interested party or party of record to supplement the record of prior proceedings. The record may be supplemented by order of the appellate body upon written motion by a party. The written motion shall set forth with particularity, the basis for such request and the nature of the evidence sought to be introduced. Prior to supplementing the record, the appellant body

shall provide an opportunity for all parties to be heard on the matter. The appellate body may grant the motion upon a finding that the supplement is necessary to take into consideration the inconvenience of locating the evidence at the time of initial hearing, with such inconvenience not being the result of negligence or dilatory act by the moving party.

An appeal from the Planning Director or Planning Department staff to Planning Commission shall be de novo; meaning that the burden of proof remains with the applicant and that new testimony and evidence, together with the existing Planning Department file, may be received at the hearing on the appeal.

**STANDARD OF REVIEW ON APPEAL:** The burden of proof remains with the applicant. The burden is not met by merely showing that the appellate body might decide the issue differently.

**APPELLATE DECISION:** Following the hearing of the appeal, the appellate body may affirm, overrule, or modify the Planning Commission's final decision.

This appeal is made pursuant to Section 18.172.110 of the Crook County Code. The required fee has been received by the Crook County Planning Department as the filing fee for this appeal.

I / We are appealing the decision for the following reasons: (be specific)

**See Attached Letter**

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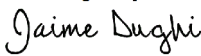
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**Name** (print)

Jaime Dughi  
Treasurer/Member/Authorized Representative

**Signature**

DocuSigned by:  
  
0D5DDDEEC62A24CD...

**Address**

15326 SW Hope Vista Drive  
Powell Butte, OR 97753

***(If additional space is needed attach another sheet)***

Each party that authorizes the "Representative" to speak on their behalf must submit a letter stating so, which is signed, dated, and attached to this appeal.

**RE: Appeal Petition**  
**Record No. 217-22-000451-PLNG**  
**(former Record No. 217-21-001013-PLNG)**

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To Whom It May Concern:

I, Jaime Dughi, Treasurer, member, and authorized representative of BR Community Coalition, appellant in the above-referenced matter, hereby authorize Megan K. Burgess and/or Michael W. Peterkin or Peterkin Burgess to speak, submit written documentation, or otherwise appear on behalf of BR Community Coalition on behalf of its members regarding the above matter.

DocuSigned by:

*Jaime Dughi*

0D5DDEEC62A24CD...

6/13/2022

Jaime Dughi, Treasurer/Member/Authorized Representative  
BR Community Coalition

Date

Jaime Dughi  
15326 SW Hope Vista Drive  
Powell Butte, OR 97753



June 13, 2022

**Via Email to:** [plan@co.crook.or.us](mailto:plan@co.crook.or.us)

Crook County Community Development/Planning Division  
Attn: Crook County Court  
300 NE 3<sup>rd</sup> Street  
Prineville, OR 97754

**Re: Appeal of Planning Commission Decision After Remand  
Brasada Ranch Subdivision Phase 15  
File Number: 217-22-000451-PLNG, formerly No. 217-21-001013-PLNG**

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### **Appeal Standing and Request for Hearing**

This letter supports the BR Community Coalition's ("the Coalition") appeal from the Planning Commission Decision dated May 24, 2022, after remand by the County Court ("Planning Remand Decision"). The Planning Remand Decision was served on the Coalition by notice dated May 31, 2022. Thus, this appeal is timely. Further, the Coalition has standing to appeal the Planning Remand Decision under CCC 18.172.110 (6) because it provided written comments to the Planning Commission on remand and appeared before the Planning Commission on remand through its attorneys. The complete record for file number 217-22-000451-PLNG (former file/record no. 217-21-001013-PLNG) including transcripts is incorporated and made part of this appeal. Finally, the Coalition requests a public hearing<sup>1</sup> before the County Court under CCC 18.172.110 (2).

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<sup>1</sup> Please see Appellant's Notice of Availability letter (dated 06/13/22) submitted herewith which provides dates that Appellant and its attorneys are available for the requested hearing.

*Michael W. Peterkin* ♦ *Megan K. Burgess* ♦ *Christian Malone* ♦ *Taylor Hale*

### **Issues on Appeal**

(1) The applicant is required to show the existence, location, use, and surface of trails within easements shown on Phase 15 final plat because Brasada Ranch is a destination resort with public use of open space that is also the residential common area owned by the Brasada Ranch Homeowner's Association.

(2) Each as-built cabin only qualifies as one lodging unit based on the absence of fire-rated lock-off doors and firewalls that must exist to create legal, safe, and code-compliant independent overnight rental units for use by the general public.

### **Appeal Request**

The County Court should reverse the Planning Commission's decision and instruct the Applicant to either show the public trails on the final plat or, if public use trails are desired after the final plat is recorded, seek replat approval to show the trails on the replat. Further, the County Court should reverse Phase 15 tentative plat approval until the Applicant proves that the existing cabins qualify as overnight lodging units as required under the Brasada Ranch destination resort approval and in compliance with all fire and building codes necessary to create safe overnight lodging units. Finally, the Coalition requests reimbursement of its appeal fee, having paid the same fee on the first appeal.

Sincerely,



Michael W. Peterkin





June 13, 2022

**Via Email to:** [plan@co.crook.or.us](mailto:plan@co.crook.or.us)

Crook County Community Development/Planning Division  
Attn: Crook County Court  
300 NE 3<sup>rd</sup> Street  
Prineville, OR 97754

**Re: Appeal of Planning Commission Decision After Remand  
Brasada Ranch Subdivision Phase 15  
File Number: 217-22-000451-PLNG (former file no. 217-21-001013-PLNG)**

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**NOTICE OF APPELLANT'S AVAILABILITY**

Dear Crook County Court:

This letter is to inform you of Appellant and Counsel for Appellant's availability for the above-referenced matter. Due to litigation (including trials and appellate briefs), business, and personal matters already scheduled, Appellant BR Community Coalition and its attorneys, Michael W. Peterkin and Megan K. Burgess of Peterkin Burgess, have limited availability for a hearing on the Appeal of Planning Commission Decision After Remand, which is submitted herewith. Appellant and its counsel are currently available on the following dates:

- July 25-29, 2022
- August 1-5, 2022

Please refrain from scheduling any hearings or other similar matters requiring a response or attendance from myself or my client unless it is on one of the above-listed dates of availability. Thank you.

Sincerely,

Michael W. Peterkin

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*Michael W. Peterkin* ♦ *Megan K. Burgess* ♦ *Christian Malone* ♦ *Taylor Hale*