



# Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

## APPEAL APPLICATION

FEE: \$4065.90

### 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): Bend Park and Recreation District, c/o Bryant, Lovlien & Jarvis, P.C. Phone: (541) 382-4331

Mailing Address: 591 SW Mill View Way City/State/Zip: Bend, OR 97703

Land Use Application Being Appealed: 247 -18-0001 05-CU and 247 -18-0001 64-5P

Property Description: Township 17 Range 12 Section 25 Tax Lot 200

Appellant's Signature:

**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)



**BEFORE THE DESCHUTES COUNTY COMMUNITY  
DEVELOPMENT DEPARTMENT**

247 -18-0001 05-CU/  
247 -18-0001 64-5P

)  
)  
)  
)  
)  
)

**NOTICE OF APPEAL**

**APPLICANT/OWNER:**

Bend Metropolitan Park and Recreation District  
799 SW Columbia Street  
Bend, Oregon 977A2

**ATTORNEY:**

Garrett Chrostek  
Bryant, Lovlien & Jarvis, P.C.  
591 SW Mill View Way  
Bend, Oregon 97702

**LOCATION:**

The property is identified on Deschutes County Assessor's Map No. 17-12-25, as Tax Lot 200 and has an address of 2169A Neff Road, Bend. The parcel is shown in the following map:

**REQUEST:**

Conditional use and site plan review to expand Big Sky / Luke Damon Sports Complex in the Exclusive Farm Use Zone.

**I. STANDING:**

Appellant Bend Parks and Recreation District ("BPRD") is the Applicant in the matter that is the subject of this appeal and appeared in proceedings below both in writing and at the public hearing.

**II. STATEMENT DESCRIBING SPECIFIC REASONS FOR APPEAL:**

BPRD concurs with a majority of the Hearings Officer's decision in these proceedings. However, BPRD objects to several of the conditions of approval and requests clarification on other matters. Accordingly, BPRD asserts that the decision is in error for the following reasons:

1. The Hearings Officer erroneously imposed Condition of Approval #8 precluding "organized events" at "bike park west" or at the R/C vehicle track. Applicant never proposed such a condition nor suggested that no events would ever occur. These facilities are located within the "Luke Damon Sports Complex". As the name suggests, the overall park is intended for "organized events" and the BPRD Board of Directors authorized the

funding of these facilities with the anticipation that events would occur. BPRD requests that the condition be removed or, in the alternative, that the Board impose a reasonable limit on the number of “organized events” at these facilities.

2. The Hearings Officer excessively restricted use of the northern portion of the park under Condition of Approval #9. BPRD agrees that placing event headquarters or spectators within 250 feet of the northern property is not appropriate and had no such intent. However, restricting the actual cross-country and bicycle users during “organized events”, which create little in any additional impacts as compared to “unorganized users”, from using this area unduly limits this park feature. BPRD also does not understand the prohibition on making connections between the perimeter trail and “bike park east”.
3. The Hearings Officer erroneously imposed Condition of Approval #11. Similar to Condition of Approval #8, BPRD did not propose a prohibition on amplified sound with respect to “bike park west” or the R/C vehicle track or suggest that no amplified sound would ever occur. Amplified sound is generally necessary to hold events and is contemplated by the Deschutes County Code to promote safety at events. The submitted sound study demonstrates that amplified sound can occur within the park without breaching applicable DEQ and County Standards. If needed, appropriate conditions of approval could be crafted regarding amplified sounds for events at “bike park west” and the R/C vehicle track.
4. The Hearings Officer improperly imposed Condition of Approval #17. Evidence in the record demonstrated that electronic remote-control vehicles emit very little noise (there was no evidence to the contrary other than a bare allegation from one opponent) and far less than the amplified noise investigated in the noise study (which found amplified noises to be compliant with DEQ standards). The electric vehicle track is located more than 500 feet from any residential property (with an intervening road and fire station). This condition of approval is not supported by any evidence in the record and an unnecessary use of public funds.
5. Finally, the Hearings Officer employed an excessively broad definition of “organized events” that expressly encompassed cross-country practices and likely would cover such things as vehicle trials by student R/C clubs and Mount Bachelor Ski Education Foundation trainings. As identified above, the hearings officer then imposed a complete ban on “organized events” at “bike park west”, the R/C course as well as a partial ban at “bike park east”. Small-scale “*organized activities*” such as cross-country practices, R/C club meetings, and athletic trainings should not be subject to any restrictions, particularly in a public park developed as a sports complex. If the Board elects to regulate larger events at “bike park west”, “bike park east”, and the R/C course, there should be a clear delineation as to what constitutes a regulated event.

### III. REQUEST FOR REVIEW:

For the foregoing reasons, BPRD requests that the Board of County Commissioners hear the review *de novo*, but only with respect to the specific appeal issues.

The Board is authorized under DCC 22.32.027(2) and (3) to conduct a *de novo* review and pursuant to DCC 22.32.027(4) may limit the scope of review to the issues listed in this notice of appeal. *De novo* review for the specified appeal items is appropriate to allow introduction of additional evidence related to the identified conditions of approval to rebut the assumptions and arguments made by the Hearings Officer, which in several instances were not raised during the course of the public hearing below.

The Board should hear the appeal because it will resolve plain error in the hearings officer's decision, clarify conditions of approval for a public facility, and facilitate BPRD's delivery of demanded public services.

### IV. SCHEDULING

BPRD is willing to be flexible in the scheduling of any proceedings on appeal before the Commissioners including affording additional time for the Commissioners to hear the appeal.

SUBMITTED this 10<sup>th</sup> day of September, 2018.

BRYANT, LOVLIE & JARVIS, P.C.

By:   
GARRETT CHROSTEK, OSB#122965  
Of Attorneys for Applicants

