

KLAMATH COUNTY PLANNING COMMISSION

In and For the County of Klamath, State of Oregon

IN THE MATTER OF THE)
 APPLICATION FOR AN)
 ADMINISTRATIVE ZONE)
 CORRECTION NO. 75-15) O R D E R
 BY BROOKS RESOURCES)
 CORPORATION)

This matter having come on before the Klamath County Planning Director upon the application for an Administrative Zone Correction pursuant to Article 117, Ordinance No. 17, the same being the Klamath County Zoning Ordinance, said application requesting a zone correction from F (Forestry) and SP-1 (Rural Residential) zones to SP-16 (Planned Unit Development) zone, a description of the real property referred to in said application being the

N $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 1; E $\frac{1}{2}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 11; and NW $\frac{1}{4}$ of Section 12, Township 23 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; and

said Planning Director having examined the application, and conducted other studies as required, the Planning Director hereby makes the following Findings of Fact:

1. A description of the real property for which a zone correction is requested by the applicant, Brooks Resources Corporation, is

N $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 1; E $\frac{1}{2}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11; and NW $\frac{1}{4}$ of Section 12, Township 23 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon,

consisting of 1,080 acres, more or less.

2. The land in question is currently zoned F and SP-1.

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ORDER: ADMIN. ZONE CORRECTION 75-15
BROOKS RESOURCES CORPORATION
Page 2 of 8

4270

3. The requested zone correction is for an SP-16 zone, which also requires a Conditional Use Permit.

4. The part of Klamath County affected by this application was zoned December 7, 1972.

5. In December, 1969, Brooks Resources Corporation purchased 1,520 acres for \$380,000 of which 920 acres is part of the land subject to this Order. The value attributed to this 920 acres is \$230,000. The land was deeded to applicant in return for a promissory note, the terms of which were 10 percent down, 6 percent interest per annum, the balance over 10 years. An additional 40 acres was deeded to applicant by Brooks Scanlon, Inc. in return for a promissory note in the amount of \$18,000 on the same terms as above.

6. Between December, 1969, and December, 1971, Brooks Resources Corporation spent \$25,108 on planning and preliminary engineering specifically for developing a recreational-residential Planned Unit Development, hereinafter designated P.U.D., called Wagon Trail Ranch, as evidenced by a Master Plan on file in the Klamath County Planning Department.

7. On December 28, 1971, the Wagon Trail Ranch Planned Unit Development concept was approved by the Klamath County Planning Commission and is so recorded in the minutes of their meeting on that date.

8. On February 23, 1972, the Planning Commission gave conditional approval to Tract Numbers 1056, 1057 and 1058 which are part of the area known as Wagon Trail Ranch. After subsequent redesign of these plats to comply with Planning Commission conditions and Planning Commission approval thereof, Wagon Trail Acreages Number One, Plat No. 1056, Wagon Trail Acreages Number One, First Addition, Plat No. 1075, and Wagon Trail Acreages Number Two, Plat No. 1057, were approved by the Klamath County Board of Commissioners on September 5, 1972, and recorded.

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ORDER: ADMIN. ZONE CORRECTION 75-15
BROOKS RESOURCES CORPORATION
Page 3 of 8

9. On August 30, 1972, the Wagon Trail Ranch Declaration, Restrictions, Protective Covenants and Conditions were recorded creating the Wagon Trail Ranch Property Owners' Association, hereafter named Association, and the above-mentioned plats were made subject thereto, which is 224 acres out of the 1,080-acre project area which is the subject of this application.

10. In 1972, at Wagon Trail Ranch, 102 lots were engineered and built; approximately five miles of roads were constructed; three miles of canals and riding trails were built; plans were drawn for a recreation hall and swimming pool; two and one-half miles of underground power lines were installed; and a new sales office was built.

11. Prior to December 7, 1972, ten (10) lots were sold on the above-mentioned plats, as documented by Exhibit "M" in Brooks Resources Corporation's application.

12. Access to the above-described property from Masten Road, a Deschutes County Road, was created providing year-round access with maintenance of said access roads by said Association.

13. Actual expenditures at Wagon Trail Ranch prior to December 31, 1972, totaled \$194,235 as verified by auditor's report, Exhibit "N". The breakdown of expenditures was as follows:

Development:	
Administration	\$ 16,899
Capitalized interest and taxes	42,733
Platting, surveying, engineering and construction supervision	50,764
Amenities	351
Roads	44,710
Utilities	4,462
Other	1,316
Subtotal	161,235
Land:	
Promissory note payments-principal	25,000
Promissory note payments-interest	8,000
Total Cash Out	\$194,235*

ORDER: ADMIN. ZONE CORRECTION 75-15
BROOKS RESOURCES CORPORATION
Page 4 of 8

*These figures show expenditures through December 31, 1972, but it is estimated that approximately \$4,500 was expended between December 7 and December 31 of 1972.

14. During 1972, Brooks Resources Corporation made commitments in advertising to spend an estimated additional \$193,000 in developing Wagon Trail Ranch as a P.U.D. If these commitments were not made, those who have already purchased property at Wagon Trail Ranch would probably have sufficient legal grounds to rescind their purchases and demand return of monies paid to applicant. The estimated expenditures were as follows:

River common property, 100 acres at \$250 per acre	\$ 25,000
Recreation hall and swimming pool	135,000
Additional utilities	14,500
Paved entry road	18,500
Total	<u>\$193,000</u>

15. Exhibits referred to herein are on file in the Klamath County Planning Department, County Courthouse, Klamath Falls, Oregon, and may be examined at reasonable times.

16. Since the purchase of Wagon Trail Ranch in 1969, the following expenditures have been made through December 31, 1974:

Development:	
Administration	\$ 20,975
Capitalized interest and taxes	42,733
Platting, surveying, engineering and construction supervision	66,232
Amenities	117,784
Roads	93,832
Utilities	25,605
Structures	22,928
Other	7,397
Subtotal	<u>397,486</u>
Land:	
Promissory note payments-principal	57,000
Promissory note payments-interest	25,000
Total	<u>\$479,486</u>

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ORDER: ADMIN. ZONE CORRECTION 75-15
BROOKS RESOURCES CORPORATION
Page 5 of 8

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17. Total expected expenditures at Wagon Trail Ranch through 1983 are as follows:

Development:	
Administration	\$ 66,267
Capitalized interest and taxes	42,733
Platting, surveying, engineering and construction supervision	183,000
Amenities	117,000
Roads	125,000
Utilities	65,000
Other	9,000
Subtotal	608,000
Land:	
Principal	240,000
Interest	80,000
Total	<u>\$928,000</u>

18. The ratio of pre-December 31, 1972, expenditures to total projected expenditures is as follows:

$\$194,235 / \$928,000 = 1 \text{ to } 4.78 \text{ or } 21\% \text{ (actual)}$

$\$387,235 / \$928,000 = 1 \text{ to } 2.4 \text{ or } 42\% \text{ (committed* plus actual)}$

19. Brooks Resources Corporation has expended about \$18,000 for employee time, communication and fire fighting equipment since 1970 in conjunction with the Walker Range Fire Patrol.

20. Applicant's real property was and is subject to Klamath County Ordinance No. 14, the subdivision ordinance which was enacted on October 8, 1969.

21. The Klamath County Zoning Ordinance No. 17 and maps associated therewith are applicable in this case.

22. There was, by my own hand, lawful notice given of public hearings proposing adoption of county-wide zoning on December 7, 1972.

*Committed means those expenditures contracted or currently budgeted but not yet contracted or expended as of December 7, 1972.

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23. I affirm that land use studies conducted prior to completing the Klamath County Comprehensive Land Use Plan and Zoning Ordinance No. 17 did not include applicant's land, and that for this reason, in part, proper zoning and land use designations were not determined.

Based upon the above Findings of Fact, the Planning Director hereby makes the following Conclusions of Law:

1. Out of the total 1,080 acres more or less, applicant's land, consisting in part of 224 acres and constituting Tract Numbers 1056, 1057, and 1075, was lawfully recorded and constitutes lawful use of the land and must be properly zoned under the terms of Section 11.007 of Ordinance No. 17. This land is not subject to the substantial expenditure test defined in Section 15.018-"S" of Ordinance No. 17.

2. The balance of applicant's property not above enumerated and consisting of 856 acres more or less, is subject to said substantial expenditure test.

3. The ratio of pre-December 31, 1972, expenditures to total projected development costs was 1 to 4.78 or 21% actual, and 1 to 2.4 or 42% actual plus committed, and are sufficient to partially constitute a conclusion of substantial expenditure inasmuch as said expenditures are in excess of ratios found acceptable in a somewhat similar case by the Oregon Supreme Court in Clackamas County versus Holmes.

4. The owner appears to have exercised good faith by appearing before the Klamath County Planning Commission on December 28, 1971, and securing Commission approval of their Planned Unit Development concept, when they were not required to do so, although such presentation is in conformance with Section 4.20 of Ordinance 14, the Subdivision Ordinance, and owner further appears to continue thereafter to have exercised good faith by substantially adhering to said plan in making subsequent improvements to the land in recording said plats.

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5. The owner had constructive notice of proposed zoning adopted on December 7, 1972.

6. The type of expenditures are peculiar and specific to recreation-residential development of applicant's land and appear to not be useful for any other use of the land and especially only for forest and wood fiber production.

7. After flying over and traveling through the applicant's property, I find that the applicant's property, while being suitable for ranching and forestry purposes, appears to be well-suited for recreation-residential use and zoning by virtue of its variety of natural features and riverside location commonly sought for residential-recreation purposes and as such appears to be a significant factor in determining this case.

8. The ultimate project cost of \$928,000 appears to be a substantial factor in arriving at a conclusion in this matter.

9. Expenditures in the amount of \$18,000 for fire suppression purposes, over and above normal fire suppression efforts for ranch or forestry purposes, appear to be related expressly to said recreation-residential development and appear to be a contributing factor in determining this case.

10. If a zone correction to SP-16 is approved in this pending matter, applicant should subsequently request, at no cost to applicant other than the cost of preparing information for presentation, that the Klamath County Planning Director initiate a Conditional Use Permit at county expense on behalf of applicant.

11. The land in question was zoned F and SP-1 unintentionally and erroneously.

12. Prior to December 7, 1972, the land in question was actually used as a Planned Unit Development and such use existed lawfully.

13. The proper zone description for the use lawfully existing prior to December 7, 1972, is SP-16 (Planned Unit Development).

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ORDER: ADMIN. ZONE CORRECTION 75-15
BROOKS RESOURCES CORPORATION
Page 8 of 8

14. Even if there had not been actual use of the land in question as a Planned Unit Development, substantial expenditures as defined by the Klamath County Zoning Ordinance No. 17, were made prior to December 7, 1972, which are more consistent with the land's use as a Planned Unit Development for recreation-residential purposes than with other uses which could be made of the land.

NOW, THEREFORE, IT IS HEREBY ORDERED that application for Administrative Zone Correction No. 75-15 submitted by Brooks Resources Corporation, requesting a zone correction from F (Forestry) and SP-1 (Rural Residential) zones to an SP-16 (Planned Unit Development) zone, and a Comprehensive Land Use Plan designation change from Forestry to Recreation-Residential on Area Map No. 2 and on Ordinance No. 17 Zoning Map No. 2, a description of the real property referred to in said application being

N $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 1; E $\frac{1}{2}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2; N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11; and NW $\frac{1}{4}$ of Section 12, Township 23 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon

is hereby provisionally approved and that the county zoning and land use maps, Areas No. 2, be corrected to show such zone correction, which ORDER shall become a permanent ORDER after the expiration of the required appeal period which expires on

June 4 1975.

DONE and dated this 5th day of May 1975.

APPROVED AS TO FORM

Robert D. Smith
County Legal Counsel

Pat Gordon
Klamath County Planning Director

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of KLAMATH COUNTY PLANNING DIRECTOR

this 7th day of MAY A. D., 1975 at 8:30 o'clock P.M., and duly recorded in
Vol. M 75 of DEEDS on Page 4869

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WM. D. MILNE, County Clerk

By Hazel D. Dugan Deputy

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