

**APPLICANT SUBMISSION
(APPEAL TO CROOK COUNTY COURT)
PHASE 15 TENTATIVE PLAT**
Brasada Ranch
File No. 217-22-000451-PLNG

CROOK COUNTY
APR 25 2022
PLANNING DEPT

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The Crook County Planning Commission approved a tentative plat application for Brasada, Phase 15, pursuant to a decision issued March 17, 2022, File No. 217-21-001013-PLNG. Subsequently, the decision was appealed by the BR Community Coalition ("Appellant"), which the Appellant states includes 18 of 644 total owners at Brasada Ranch. The Applicant is not aware of which eighteen owners specifically are members of Appellant.

In response to the appeal, the Applicant provides this submission in advance of consideration of the matter by the Crook County Court.

The Applicant addresses the issues raised by the Appellant per the numbers used in the Staff Report issued by the Crook County Planning Staff on April 21, 2022.

1. Final Development Plan Conditions of Approval

Applicant Response: The Appellant wants to remove trails that have been used by owners and guests for over a decade and forever limit the Applicant and Association's right to improve and maintain common areas throughout the community. The Appellant hopes to achieve these goals by having the County rewrite the original Brasada Ranch Development Plan Condition No. 15. And to convince the County to do that, the Appellant claims language from the 2003 Development Plan Approval and Condition No. 15 require all trails to be shown on "final plats," yet neither states this requirement.

- In the 2003 Development Plan approval, the Applicant's predecessor proposed to depict the "final location, surfacing, and size of the trails" on "future subdivision plats." Contrary to the Appellant's claims, there is NO mention of "final plat" within this language. In any event, because the County adopted the language in Condition No. 15 below, the Condition governs the issue and supersedes the Applicant's language above.
- Condition No. 15 of the original Development Plan requires that the Applicant provide "a detailed depiction of the final location, surfacing, and size of all

trails within a phase prior to the preliminary plat approval." Again, there is NO mention of "final plat" within this Condition, contrary to the Appellant's contention.

- The Appellant is also mistaken to presume that the Brasada Ranch trail system is limited to those shown in the original Development Plan or "prior to the preliminary plat." To be clear:
 - o Condition No. 15 governs only the conceptual trail system proposed by the Applicant in Exhibit A of the original Development Plan (included herein as Exhibit 1). Nothing in the Approval nor Condition No. 15 states that the Applicant may not provide additional trails to the Brasada Ranch Community.
 - o Moreover, the Applicant does not need to show every possible trail in the subdivision plats as the County Code does not require land use approvals to install trails. So long as the Applicant, or Association for that matter, has a legal right to construct a trail, no land use approval is necessary. For example, within Brasada Ranch, in addition to the undeveloped lands, there are multiple platted Common Areas that, per the Declaration, "the Association owns for the common use and enjoyment of the Owners."

For the reasons set forth above, the Applicant respectfully requests that the County Court find that Condition No. 15 of the original Development Plan does not require that trails be shown on the final plat.

Additional Clarifications Regarding Matters Outside This Appeal

Location, surfacing, and size of Trails In and Around Phase 15: The Applicant's Phase 15 Application included a map of existing trails in and around Phase 15, but it did not depict the surfacing and size of the trails. The Applicant has attached an updated Phase 15 trail map (Exhibit 2) which provides the location, surfacing, and size of three existing trails in or around Phase 15 and one correction.

- Three Existing Trails
 - o The Red Trail is a new, existing trail that owners and guests use for walking, hiking, and biking; the surface is a packed aggregate or crushed stone (unpaved); the length is approximately 1.4 miles.
 - o The Blue Trail is an existing trail that owners and guests use for horseback riding, walking, hiking, and biking; the surface is weathered high desert (similar to the trail surface throughout the adjacent BLM lands and around Prineville Reservoir); the length is approximately 2.6 miles; the surface of the red-dotted portion of this trail will be changed to match the surface of the Red Trail by Spring 2023, conditions permitting; the balance of the Blue Trail will be adjusted to match the surface of the Red Trail over time as the Applicant continues development.
 - o The Yellow Trail is an existing trail that owners and guests use for

horseback riding, walking, and hiking; the surface will remain a weathered high desert (similar to the trail surface throughout the adjacent BLM lands and around Prineville Reservoir); the length is approximately 0.8 miles.

- Unplatted Trails on Future Common Area: The Red Trail will enter the boundaries of Phase 15 in one location noted by a green circle. The balance of the Red Trail and all the Blue and Yellow Trails are outside the boundaries of Phase 15, yet they are actively used by owners and guests today. If the County prefers, a Phase 15 condition of approval could be added to obligate the Applicant to record a temporary easement in favor of the residential owners association (all owners and guests) over these trails. Such an easement could terminate when the land on which these trails are located is platted, and the trails become common areas.
- Clarity and Correction: An existing trail, which will be abandoned, has been removed from the map, and a line that was inadvertently included in the prior map as "Proposed Trail (Future)" has been removed.

Easements Are Not Required for Trails as The Appellant Claims: The Appellant is mistaken to presume that a trail cannot exist without an easement. Most trails in residential or resort subdivisions in Central Oregon are in common areas without specific easements. The point of "common areas" is that they are open to all owners. No separate easement is required to allow an owner or its guests to use the common area or a trail located in a common area.

The Appellant observes that there is an existing trail within Brasada Ranch Phase 2 that is subject to an easement. That Phase and easement is a unique situation given:

- The land on which that trail is located is "Neighborhood Common Area" under Brasada Ranch's CC&Rs, and therefore that land is solely for the use of owners within that particular neighborhood.
- For that reason, the Applicant created an easement over the trail portion of that piece of land so that all owners within Brasada Ranch could use the trail, even if they did not otherwise have any rights to the piece of property on which the trail is located.

2. Final Plat Requirements.

Applicant Response: As stated in the Staff Report, the objections raised by the Appellant relate to final plat approval. The Phase 15 Application is a tentative plat approval. As Staff notes, the final plat will comply with all applicable state and County requirements. As detailed above, the Applicant is also willing to grant a separate, temporary easement at the time of final plat approval, which easement would permit all lot owners, including the Phase 15 lot owners, to use the trails that are not yet part of a plat, but that surround and will serve Phase 15. Such an easement could terminate when the land on which these trails are located is platted, and the trails become common areas.

3. Improvement Agreement Requirements.

Applicant Response to Bonding: The Applicant concurs with the Staff's analysis of the Appellant's bonding claim.

Applicant Response to Pedestrian Routes: The Applicant agrees that the trails in and around Phase 15 provide a pedestrian route, but the Applicant seeks to clarify that even if the trails were not provided, sidewalks would NOT be required.

As the Staff Report states, CCC 17.40.030(5) reads:

"Sidewalks may be required to be installed on at least one side of a public street and in any special pedestrian way within the subdivision; except that in the case of primary or secondary arterials, or special type industrial districts, the planning commission may approve a subdivision without sidewalks, if alternative pedestrian routes are available; and provided further, that in the case of streets serving residential areas having single-family dwellings per gross acre, the requirement of sidewalks shall not apply, provided there is no evidence of special pedestrian activity along the streets involved."

Respectfully, and for the reasons set forth herein, the Applicant contends that the circumstances of Phase 15 do not require sidewalks.

- **Permitted but Not Required:** CCC 17.40.030(5) *permits* ("may be required to be installed") but does not obligate the County to require sidewalks, and the County has never required sidewalks in a Phase at Brasada Ranch. Furthermore, this noted section only authorizes sidewalks to be required in two circumstances: (i) on one side of a public street; and (ii) in any special pedestrian way. Within Brasada Ranch, there are no public roads and, to Applicant's knowledge, no "special pedestrian ways" (Applicant notes that there appears to be no definition of "special pedestrian way" in the County's code.)
- **Neither Sidewalks Nor Trails Are Required:** CCC 17.40.030(5) includes a provision that sidewalks should not be required "if alternative pedestrian routes are available." To the extent Staff or the Appellant is reading these criteria to mean that if sidewalks are not provided in a particular phase, then there must be an alternative pedestrian route (such as, presumably, a trail), the Applicant notes that such an interpretation would contradict the plain language of the code. The "alternative pedestrian route" language is within a separate clause from the rest of the section that ONLY deals with "primary or secondary arterials, or special type industrial districts." None of these exist in Phase 15, or indeed, within the whole of Brasada Ranch.
- **Not Required When a Dwelling Per Acre:** CCC 17.40.030(5) includes a provision that the requirement of sidewalks shall not apply to "streets serving residential areas having single-family dwellings per gross acre...provided there is no evidence of special pedestrian activity along the streets involved." Phase 15 is such a low-density residential area as the total single-family dwellings are fifty (50), and the total gross acreage is fifty-three point three (53.30) acres (therefore, 1.1 single-family dwellings per gross acre). Moreover, it

seems unlikely that there will be "special pedestrian activity along the streets involved," given:

- Sidewalks were never contemplated in the original Development Plan and never included or required in previous phases; therefore, any sidewalks in Phase 15 would not connect to any others.
- Phase 15 is surrounded by common-use trails that will be much more scenic than road sidewalks for exercise, walking pets, and more.
- When the Phase 15 owners wish to exercise in the Athletic Club, play the Golf Club, dine at the Ranch House, let their pets run at the off-leash area, most if not all owners will choose to use their vehicle or street-legal golf cart because all these amenities and services are located approximately 2.0 miles away in the community core.

For the reasons set forth above, the Applicant respectfully requests that the County Court find that sidewalks are not required within Phase 15 or any part of Brasada.

Applicant Response to Trail Dedications: The Staff Report states that the Applicant submitted a trail map "that depicts proposed trails for Phase 15, proposed trails for future phases, existing trails that will be removed, and existing trails that will remain." Staff then notes that Applicant must "ensure that all dedications are included in the final plat." As explained above, the bulk of the trails are outside the Phase 15 boundaries, and the Red Trail will only cross Phase 15 along the private roadway that is a common area and available for the common use and enjoyment of the owners and guests. Therefore, no trail dedications are necessary. As the Applicant has suggested, the Applicant is willing to record a temporary easement in favor of the residential owners association (all owners and guests) over these trails. Such an easement could terminate when the land on which these trails are located is platted, and the trails become common areas.

For the reasons set forth above, the Applicant respectfully requests that the County Court find that trail dedications are not required within Phase 15 or any part of Brasada.

4. Overnight Lodging Units.

Applicant Response: As the Staff Report notes, the Planning Commission's request for a map will supplement the existing reporting and demonstrate further compliance. The Applicant will submit the requested map to the Planning Commission the week of May 2, 2022. The Applicant also points out that (i) Brasada Ranch currently includes two hundred and forty-three (243) overnight lodging units within ninety-one (91) individually owned cabins and one (1) Applicant-owned Ranch House, and (ii) that the cabins are deed-restricted and must be made available for rent forty-five (45) weeks per year. The Applicant may have stated during the Planning Commission Meeting that "it" or "we" have two hundred and forty-three (243) overnight lodging units, but the statement did not intend to imply they were all owned by the Applicant.

CONCLUSION

Over the past year, there has been much talk about trails at Brasada Ranch among the owners, County, and Applicant. The Applicant has worked tirelessly to solicit input from all owners, including Town Hall meetings, surveys, conference calls, and face-to-face discussions. The Applicant has shared its plans for trails publicly and well in advance of any development. The Applicant finds it unfortunate that it cannot satisfy the 18 of 644 owners represented by the BR Community Coalition. Regardless, the Phase 15 Application complies with County Code and the approved original Development Plan. Therefore, the Applicant respectfully requests that the County Court reject the appeal and uphold the approval issued by the Crook County Planning Commission.

EXHIBIT 1

Exhibit A of Brasada Ranch's original Development Plan

The map below was included in the original Development Plan and set forth a general plan for future trails. The original Development Plan decision recognized that such trails would need to be adjusted to, among other things, accommodate on-the-ground conditions, to address known concerns raised by the BLM, and to adapt to market and other conditions. Neither the 2003 Application nor the original Development Plan Decision ever refer to this general plan for future trails as the only trails that could ever be constructed and improved within Brasada Ranch.

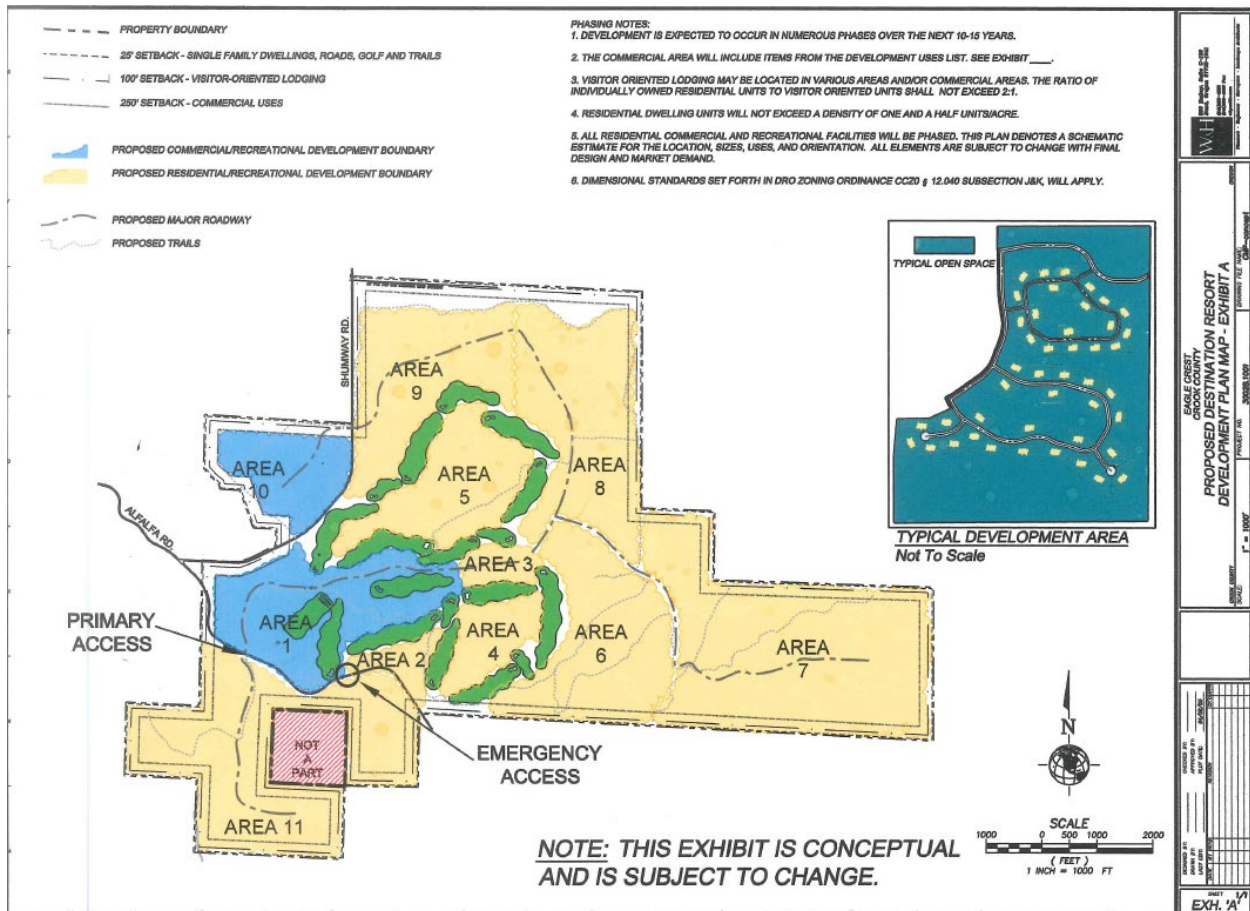
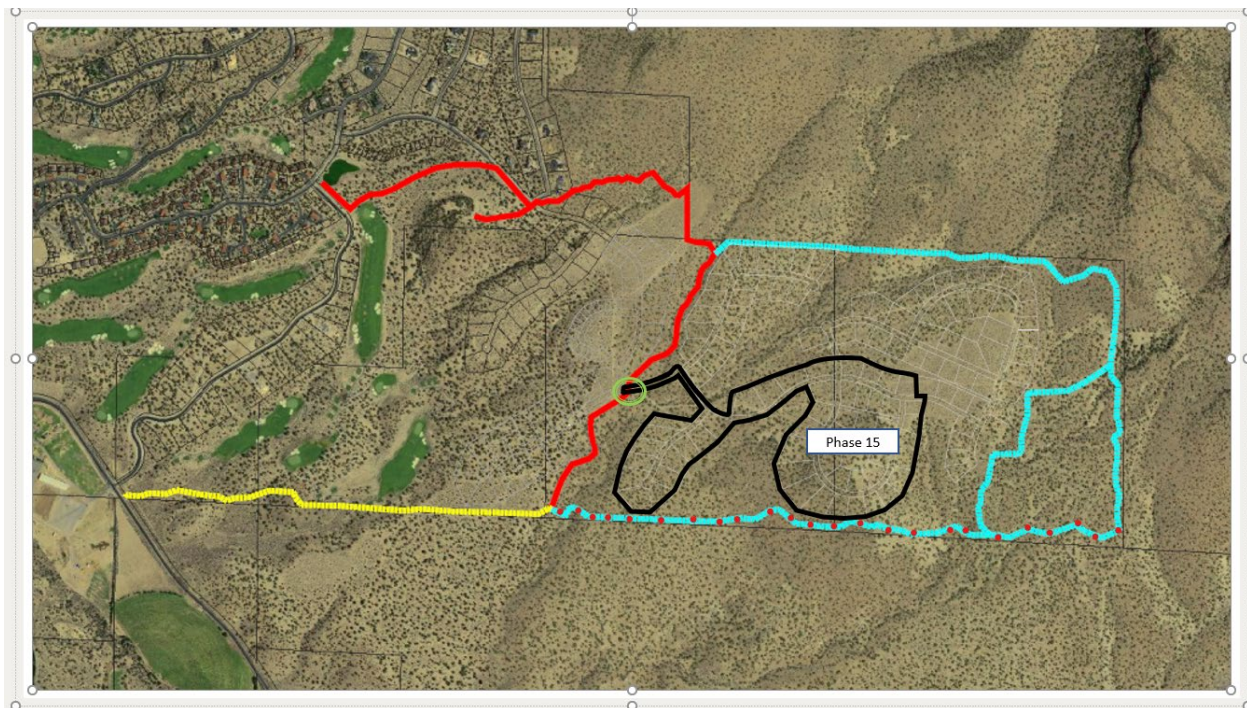


EXHIBIT 2

Updated Trail Map

The following map includes those trails in and around Phase 15; it does not include all trails within Brasada Ranch.



- The Red Trail is a new, existing trail that owners and guests use for walking, hiking, and biking; the surface is a packed aggregate or crushed stone (unpaved); the length is approximately 1.4 miles.
- The Blue Trail is an existing trail that owners and guests use for horseback riding, walking, hiking, and biking; the surface is weathered high desert (similar to the trail surface throughout the adjacent BLM lands and around Prineville Reservoir); the length is approximately 2.6 miles; the surface of the red-dotted portion of this trail will be changed to match the surface of the Red Trail by Spring 2023, conditions permitting; the balance of the Blue Trail will be adjusted to match the surface of the Red Trail over time as the Applicant continues development.
- The Yellow Trail is an existing trail that owners and guests use for horseback riding, walking, and hiking; the surface will remain a weathered high desert (similar to the trail surface throughout the adjacent BLM lands and around Prineville Reservoir); the length is approximately 0.8 miles.
- The Green Circle denotes the one area where a trail will cross the boundaries of Phase 15; at this intersection, the Applicant will add a walkway, striping, signage, and speed bumps that the engineers can review during the roadway reviews.