

## STAFF REPORT

Planning Department File No. 2024-09-011

### CONDITIONAL USE APPLICATION FOR A NON-FARM DWELLING AND A NON-FARM PARTITION

Planning Commission Meeting Date: March 27, 2025

1. **APPLICANT:** Marchelle Burnham  
759 Mendiola Road  
Nyssa, Oregon 97913
2. **PROPERTY OWNER:** Melvon S. Davis Trust  
2150 Highway 201  
Nyssa, Oregon 97913
3. **PROPOSED ACTION:** Conditional Use approval for one (1) non-farm dwelling (existing home site) and one (1) non-farm partition. Proposed non-farm partition of existing home will be 2 acres. Remaining parent parcel will be 72.35 acres, applicant was awarded 2 acres in 1981 from her parents' divorce. She has and is living on the 2 acres in the existing dwelling.
4. **PROPERTY IDENTIFICATION:** Tax Lot 400, T21S, R46E, Section 14; Malheur County Reference #10589. Located at 2180 Highway 201, Nyssa, Oregon 97913
5. **PROPERTY LOCATION AND DIRECTIONS:** The property is located between Hwy 201, Mendiola Rd. and Lean Lane in Nyssa, Oregon.
6. **ZONING:** Exclusive Farm Use (EFU)
7. **PARCEL SIZE:** The property is 74.35 acres.
8. **PARCEL USE:** The property is currently being farmed.
9. **SURROUNDING USE:** The property is surrounded by active farms which includes farm dwellings on the properties directly adjacent to the subject parcel.
10. **ACCESS:** The proposed non-farm partition/ dwelling has direct access off of Mendiola Road.
11. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system for the existing dwelling has existed on this property for 40 years.

**12. FIRE PROTECTION:** The property is within the Adrian Fire Department, which has been in place for 40 years.

**13. NATURAL HAZARDS:** None.

**14. WATER RIGHTS:** There are currently no water rights associated with the 2 acre portion of the property to be split from the 74.35 acres.

**15. SOIL TYPE:** The soils on the property are predominately of class II, class III, and class IV (soil map attached to Application). The location of the existing dwelling is within the class IV.

**16. ZONING HISTORY:** There is no known zoning history.

#### **GENERAL CONDITIONAL USE CRITERIA**

**MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY:** In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations

**Proposed Finding: MCC 6-6-8-1 regulates the conditional use process for a non-farm dwelling and MCC 6-6-8-2 regulates the conditional use process for a non-farm partition.**

- C. Existing development and viewpoints of property owners in the surrounding area.

**Proposed Finding: Letter notice was sent to adjacent landowners, and published in the Argus Observer on July 3rd, 2024. No written public comments have been received.**

- D. Availability of services and utilities.

**Proposed Finding: The electrical and telephone services have been in place for this property for 30 years.**

- E. The effect of the proposed use on the stability of the community's social and economic characteristics.

**Proposed Finding: The proposed non-farm dwelling and partition (existing home) will not have any effect on the farming/ranching practices so as would interfere with the stability of the community's social and economic characteristics. Use of the property will remain the same. The existing dwelling and proposed non-farm partition is on land that historically has not been used for farming.**

- F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur

County.

**Proposed Finding: There is no identified critical fish habitat. Because of these findings, the proposed application does not interfere with traditional fish and wildlife.**

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

**Proposed Finding: The property is currently and has been used for the same purpose for the last 40 years. The existing structures will remain as they currently are.**

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

**Proposed Finding: There are no proposed landscaping changes. The landscaping will stay the same way as it has for the last 40 years. It is currently landscaped as yards adjacent to the home with bare ground surrounding**

Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

**Proposed Finding: The driveway was previously established in 1981 and is a standard driveway. There are no additional access points or rights-of-way being sought.**

3. Visual screening of outdoor waste and storage areas.

**Proposed Finding: The property currently has trash barrels and storage bins on the property consistent with a residential home. There are no proposed changes to the visual screening of outdoor waste and storage area.**

4. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

**Proposed Finding: The only outdoor lights currently installed on the property are front porch lights, barn lights, outdoor patio lights, and motion lights. These lights do not create a glare beyond the property limits more than any other residential home lighting.**

5. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

**Proposed Finding:** The property currently has pasture for horses and cows and a small garden is maintained. The neighboring farm properties are currently farmed, growing onions. There is also some bare ground and a grove of trees in the area surrounding the property. There are already power lines stalled on the property.

The proposed changes will not require additional water nor impedes access to the neighbors, as this proposal will not change the current use of the property. Therefore, this proposal will not affect the cost of, or force a significant change to, the current accepted farm practices in the surrounding areas.

#### **SPECIFIC CONDITIONAL USE CRITERIA**

##### **MCC 6-6-8-1 - NONRESOURCE DWELLINGS IN EFU, ERU OR EFFU ZONES:**

###### **A. The use:**

1. Is compatible with farm uses and is consistent with ORS 215.243; and

**Proposed Finding:** The proposed partition is compatible with both farm uses and ORS 215.243 because the property being partitioned will likely never be used as farm ground even if the current home was removed. The ground is not suitable for farming for reasons stated elsewhere in this application. No usable farm ground will be removed nor impeded by this proposal. Instead, ground better suited for farming can continue to be used for that purpose.

2. Does not interfere seriously with accepted farming practices on adjacent lands; and

**Proposed Finding:** No. The house is currently physically separated from the rest of the farming ground in this parcel by natural, physical barriers. The property is not used for access for either the rest of the parcel or by any neighboring parcels. There is no source of water that is shared with the larger parcel. There will be nothing added that needs to be mitigated.

3. Does not materially alter the stability of the overall land use pattern of the area; and

**Proposed Finding:** The property is too small to be productive and is physically separated from the majority of the farm ground so it is unsuitable for the production of farm crops and livestock. The proposed parcel follows a natural barrier and is sufficiently large enough to accommodate the home, barn, yard and surrounding areas.

**Added by OAR 660-033-130(4)(a)(D) - June 1, 1998:** In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall;

- i. Identify a study area for the cumulative impacts' analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries and the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.
  - ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm / lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph:
  - iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.

**Proposed Finding: There is a natural buffer (trees) on the southwest side of the property and a drain ditch road to the north of the property. There are fields currently being farmed on the other two sides of the property with no additional buffer needed.**

- B. As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the non-farm parcels: (the use of a straw-man may be necessary):

“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state

laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.” Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.113.

**Proposed Finding: This statement will be placed on the deed.**

**MCC 6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:**

A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue;

**Proposed Finding: The partition and use as non-farm dwelling is compatible with agriculture uses. The home site and farming have existed together for the past 40 years and is physically separate from the farm land.**

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

**Proposed Finding: The site of the proposed non-farm partition/ dwelling is located outside of the current farming operations.**

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

**Proposed Finding: The site of the non-farm partition and dwelling is currently not suitable for farming. The land use patterns will remain the same and will not be altered – home site, farm site and dry farm land.**

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:
  - a. If located on range or agricultural lands, are the proposed non-resource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.

- b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses?

**Proposed Finding: There will be no adverse change in the soil or slope stability as the buildings on the property have been there for at least 40 years and no changes to the buildings are proposed.**

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

**Proposed Finding: The natural landscaping will minimize the impact and conflict with the farm ground/ parent parcel to the south and north. The proposed development will meet environmental standards for air and water quality.**

6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)?

**Proposed Finding: The proposed non-farm partition is for the existing single-family residence that fit the criteria listed in ORS 443.400(5) through (10).**

7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

**Proposed Finding: There are no historical dwellings that are located on the parcel.**

## **PROPOSED CONDITIONS OF APPROVAL**

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcel: (Parent parcel is Tax Lot 1700, T20S, R45E; Assessor's Map 20S45E; Malheur County Reference #10116.)

*"The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities*

*that conflict with nearby resource uses.”*

2. Evidence shall be provided showing the parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and the back taxes have been paid for the previous ten (10) years.
3. Adequate access shall be secured for the non-farm partition as set out by the Weiser Fire District and Oregon DOT. The driveway shall be constructed to meet the International/Oregon Fire Code requirements.
4. Any new structures on the non-farm partition must meet International/Oregon Fire Code requirements for structure design, considering the minimum fire-flow requirements for structure size and constructions. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
5. This approval is valid for four years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

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Carol Parker, Malheur County Planning Director

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Date

## **EXHIBITS**

1. Conditional Use Permit application
2. Site Plan
3. Soils Map