

**Before the Planning Commission of Malheur County**

**Conditional Use for Property Line Adjustment and One Non-Farm Dwelling**

**Planning Department File No. 2018-08-008**

**Planning Commission Meeting Date: October 25, 2018**

1. **APPLICANT:** **Wally & Julie Sweet**  
**1850 4<sup>th</sup> Ave. West**  
**Vale, OR 97918**  
  
**OWNER OF RECORD:** **Same**
2. **ACTION:** Conditional Use approval for one non-farm dwelling in conjunction with one property line adjustment.
3. **PROPERTY IDENTIFICATION:** Section 36, Tax Lot 1200, T17S, R44E, Assessors Map 17S4436. Malheur County Reference #13157.
4. **PROPERTY LOCATION AND DIRECTIONS:** From Vale, go north on John Day Hwy. to 4<sup>th</sup> Ave. Turn left and travel west one mile to South Rd. C. Continue for ½ mile to the gate on the right side of the road at subject property.
5. **ZONING:** Exclusive Farm Use.
6. **PARENT PARCEL:** The total parcel size is 106.49 acres.
7. **PARCEL USE:** Currently not used. Bare ground with sagebrush and cheat grass.
8. **SURROUNDING USE:** Pasture for grazing and haying. Some dry land sagebrush.
9. **ACCESS:** Off South Road C. (letter attached)
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
11. **FIRE PROTECTION:** The parcel is within the Vale Rural Fire Protection District (letter attached).
12. **NATURAL HAZARDS:** None known.
13. **WATER RIGHTS:** No irrigation rights on proposed parcel.

14. **SOIL TYPE:** Soil on proposed parcel is Class 6, used to be an old feedlot.

15. **ZONING HISTORY:** No 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.
- C. Existing development and viewpoints of property owners in the surrounding area.
- D. Availability of services and utilities.
- E. The effect of the proposed use on the stability of the community's social and economic characteristics.
- 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.
- G. General Criteria
  - 1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.
  - 2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.
  - 3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.
  - 4. Visual screening of outdoor waste and storage areas.
  - 5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.
  - 6. Special criteria listed below, as applicable.
  - 7. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only when 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)

### **SPECIFIC CONDITIONAL USE CRITERIA**

#### **MMC 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
2. Does not interfere seriously with accepted farming practices on adjacent lands;  
and
3. Does not materially alter the stability of the overall land use pattern of the area; and

**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:

iv. 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.

B. As a condition of approval, the owner is required to enter the following statement to be into the chain of title for the non-farm parcel:

**“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 308S.113.**

### **MALHEUR COUNTY COMPREHENSIVE PLAN. GOAL 3: AGRICULTURAL LANDS** (Applicable policies)

1. Public and private land classified by the Natural Resources Conservation Service (formerly US Dept. of Agriculture Soil Conservation Service) as being in Capability Classes I through VI, as well as High Value Farmland as defined by applicable Oregon Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered to be agricultural lands.
2. High Value farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.
3. In addition to county code and the State of Oregon’s land use laws and administrative rules for non-farm dwellings, it is the policy of Malheur County that there be no net loss of farmlands listed on the High Value Farmlands Soils list or soils classified as types I-III by

the Natural Resources Conservation Service.

The soils in the subject area have not been mapped and/or classified. There is no active cultivation of the subject area.

### **ORS 92.192: Property line adjustment**

2. Except as provided in this section, a lawfully established unit of land that is reduced in size by a property line adjustment approved by a city or a county must comply with applicable zoning ordinances after the adjustment.
3. Subject to subsection (4) of this section, for land located entirely outside the corporate limits of a city, a county may approve a property line adjustment in which:
  - a. One or both of the abutting lawfully established units of land are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment; one is as large or larger than the minimum lot or parcel size for the applicable zone...

### **FINDINGS OF FACT**

1. The applicant has submitted proposed findings of fact in the conditional use application. The Planning Commission adopted those findings of fact.
2. Existing development and viewpoints of property owners in the surrounding area (MCC 6-6-7(C)): The owners of surrounding parcels within 750 feet of the border of the parcel were notified by mailed notice, and notice was published in the newspaper of record.
3. There were no objections received by Malheur County. No opponent testimony was heard at the hearing.

### **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 #1200, Section 36, T17S, R44E, Assessor's map 17S4436. Malheur County Reference #13157)

“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. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
3. 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.
4. The final description of the new parcel and resulting parent parcel shall be recorded with the Malheur County Clerk on a partition plat prepared by a surveyor licensed in the State of Oregon. Creating new parcels less than 10 acres must be surveyed by a surveyor licensed in the State of Oregon.
5. Evidence shall be provided showing the lots or parcels upon which the dwellings are proposed to be located have been disqualified for valuation at true cash value for farm use and the back taxes have been paid for the previous ten years.

### **CONCLUSION OF LAW**

All applicable criteria for a Conditional Use Permit for Tax Lot 1200, Section 36, T17S, R44E, Map 17S4436; Reference No. 13157, have been addressed and met in accordance with Malheur County Code Title 6. The permit is approved, and is subject to Conditions of Approval numbers 1 through 5 as stated above.

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Kathy Clarich  
Chair, Malheur County Planning Commission

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Date