

Before the Planning Commission

Planning Department File No. 2021-09-013

**CONDITIONAL USE APPLICATION
FOR
TWO NON-FARM DWELLINGS AND TWO NON-FARM PARTITIONS**

Planning Commission Meeting Date: October 28, 2021

1. **APPLICANT:** Nathan Lewis
PO Box 87
Vale, OR 97918
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions.
3. **PROPERTY IDENTIFICATION:** Tax Lot 3700, T18S, R44E, Sec. 7; Assessors Map 18S44E; Malheur County Reference #13347.
4. **PROPERTY LOCATION AND DIRECTIONS:** Approximately 5.5 miles west on Graham Blvd, and then 2.3 miles north on Bully Creek Rd, in Vale OR.
5. **ZONING:** Exclusive Range Use (C-A2).
6. **PARCEL SIZE:** The parcel is 278.25 acres.
7. **PARCEL USE:** The property is currently not being farmed. It is all rangeland and is covered with sagebrush.
8. **SURROUNDING USE:** The parcel is surrounded in entirety by rangeland; except for the property to the south, which is currently being farmed for row crops.
9. **ACCESS:** The proposed partition #1 (the southern partition) will retain the existing access off Bully Creek Rd. The proposed partition #2 (to the north) will be accessed off an existing rangeland road, known as Reservoir Rd, which will be dedicated and publicly accessible.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for the northern proposed non-farm dwelling. The existing dwelling on the proposed southern non-farm partition, has had an approved sanitation system since 1995.
11. **FIRE PROTECTION:** The sites of the proposed non-farm partitions are within the Vale Rural Fire Protection District. (Letter attached).

12. NATURAL HAZARDS: None.

13. WATER RIGHTS: The entire property has no water rights.

14. SOIL TYPE: None of the soils on the parent parcel have been surveyed by the National Resources Conservation Service. Both the proposed partition sites are situated on soils incompatible with farm use, as outlined in OAR 660-033-0130 (4)(c)(B).

15. ZONING HISTORY: In 1999, the parent parcel was subject to two minor property line adjustments with the then adjoining property to the south - tax lot 700 on Assessor's map 18S44E18, Malheur County Ref.#13359. Those adjustments were recorded in 1999 (Malheur County recorded instrument No. 1999-9577 and 1999-9578) and it modified the subject parcel's size by 0.41 acres.

In 2021, the parent parcel was the subject of an administrative decision, which determined that the construction of the Bully Creek Rd had in fact segregated the then parent parcel of 354.86 acres, which extended south of the Bully Creek Rd, into 2 separate parcels. In 1968, Bully Creek Rd was Quit Claimed to Malheur County all right, title and interest in a variable width strip of land by deed recorded April 27, 1970, Malheur County recorded instrument No.109330. This land was acquired in order for the relocation of Bully Creek Rd. To the north of Bully Creek Rd was approximately 278.25 acres and to the south of Bully Creek Rd was a smaller piece of land which was approximately 53.25 acres.

This segregation was recorded on April 26, 2021 (Malheur County recorded instrument No. 2021-1829), which brought the parent parcel to its current size of 278.25 acres.

The existing dwelling on the site of the proposed southern non-farm partition, is a manufactured home built in 1996. A machine shed was added in 2008.

There is no other 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

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

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

Finding: Letter notice was sent to adjoining landowners on October 8, 2021 and published in the Argus Observer on October 8, 2021. No comments were

received.

D. Availability of services and utilities.

Finding: The entire parent parcel is located within the Vale Rural Fire Protection District. All services and utilities are available.

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

Finding: The proposed dwellings will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics, due to the fact that both the proposed partitions are on ground unsuitable for farming. The dwelling located on the proposed partition #1 (the southern partition) had been existing since 1996.

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.

Finding: The proposed dwellings are outside the sage grouse habitat. There is no identified critical fish habitat. Because of those findings, the proposed structure would 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.

Finding: The proposal is 2 non-farm partitions and 2 non-farm dwellings. The proposed partition # 1 (to the south) has an existing dwelling on it. The site of the proposed non-farm dwelling on the proposed partition #2 (to the north) would be at ½ mile from the nearest home site therefore there will be no impacts on adjoining properties.

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

Finding: The proposed dwellings would benefit the 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.

Finding: The site of proposed partition #1 (to the south) will retain the existing access off Bully Creek Rd. The proposed partition #2 will be accessed directly via Reservoir Rd, which is range road and the applicant will have it dedicated as a public access road via the partition plat to be filed. (Letter from Road master, regarding proposed partition #2, included). As instructed by the County Roadmaster, 12-inch culverts will be required to be

put into the approach. Additionally, the driveway will have to comply with the requirements imposed by the Vale Rural Fire Chief: it will have to be an all-weather surface, that has 20' unobstructed width and 13'6" unobstructed vertical clearance. Any access road must include an improved turnaround on roads greater than 150ft in length and not exceed a grade of 10%. If the road is greater than 500 ft in length minimum access road width is 26 ft. The driveway must also be capable of supporting live loads of at least 75,000 lbs.

4. Visual screening of outdoor waste and storage areas.

Finding: The proposed development is for dwellings. Outdoor waste storage will be minimal.

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

Finding: Control of outdoor lighting will not be necessary.

6. 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)

Finding: The proposed non-resource dwellings will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices. The parent parcel is primarily surrounded by properties that are zoned exclusive range use and BLM lands. Some surrounding properties to the south are zoned exclusive farm use devoted to pastures irrigated crops. These properties will not be impacted by the placement of one new dwelling on the proposed northern partition; the dwelling on the southern partition has been existing. The proposed dwellings will have private driveways, designated to only access the proposed dwellings, so there will be no impact to the Bully Creek Rd traffic.

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

Finding: The current farming will continue. All existing farm ground in this proposal will remain unchanged. The granting of this application will not result in loss of natural resources, and the amount of open land used for

agriculture use will not change. Therefore, the proposed use is compatible with farm use.

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

Finding: The sites of both the proposed partitions are not currently being farmed. Therefore, a single-family dwelling on these partitions will not interfere with adjacent farm practices.

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

Finding: Due to the adverse condition of the soils and zoning history of the parcel, there is no other further development anticipated within the study area.

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.

- 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.

Finding: Due to the inexistence of the water rights and adverse condition of the soils on the proposed partitions, it cannot be reasonably put to farm use in conjunction with other land. From these facts, it is concluded that the proposed dwellings will be generally placed on unsuitable land for the production of farm crops and livestock.

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;

Finding: The proposed partition #1 on the south side of the parent parcel will be approximately 19 acres and there is no additional proposed development. The site of the proposed partition #2, to the north will be about 15 acres and will be the site of a new proposed non-farm dwelling. Neither one of the

proposed partitions sites currently have water rights. The remaining range land will not be impacted.

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?

Finding: The proposed partition #2 is located on vacant range land and both partitions are outside of farm operations.

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

Finding: The sites of both partitions are currently undeveloped, not suitable for farming.

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 nonresource 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?

Finding: The soils on both proposed partitions haven't been surveyed by the NRCS and are deemed not suitable for row crops. In addition, there are no water rights on these sites.

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?

Finding: The natural landscaping will be used to minimize the impact and conflict with the farm. The watershed from the proposed non-farm partitions will be generally contained onsite. 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)?

Finding: Both the proposed partitions are for single-family residences 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).

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

OTHER FINDINGS OF FACT

The applicant has submitted additional Findings of fact in the conditional use application.

CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcels: (Parent parcel is tax lot #3700, Section 7, T18S, R44E, Assessor's map 18S44E. Malheur County Reference #13347)

"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 access shall be secured for each individual partition. The new approach for the site of the proposed partition #2, to the north, shall meet all the requirements of the Vale Fire Protection District (Exhibit #1) and of the Malheur County Roadmaster (Exhibit #2)
3. Reservoir Road – the proposed access for the proposed partition #2, to the north, must be dedicated on the proposed partition plat.
4. 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.

CONCLUSION

Based upon the foregoing finding of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a non-farm dwelling and non-farm partition in an exclusive farm use zone.

ORDER

This application for a conditional use permit is approved.

APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission.

Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.



Planning Commission Chair
Kathy Clarich

Date 10-28-2021