

Before the Planning Commission

Planning Department File No. 2022-01-010

**CONDITIONAL USE APPLICATION
FOR Roundabout**

Planning Commission Meeting Date: February 24th, 2022

- 1. APPLICANT:** ODOT – Sean Maloney
1390 SE 1st Avenue
Ontario, OR 97914
- 2. OWNER OF RECORD:** Ray & Vicki Winegar Family Trust (TL 1100) & Dee J. and Torma Winegar Living Trust (TL 1900)
- 3. ACTION:** Conditional Use approval for the realignment of a highway for the construction of a roundabout at the Cairo Junction Intersection of US 20 and OR201.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 1100 & 1900, T18S, R47E, Sec. 19; Assessors Map 18S47E19; Malheur County Reference #7799 & 7816.
- 5. PROPERTY LOCATION AND DIRECTIONS:** Located at the intersection of US 20 and OR201.
- 6. ZONING:** Exclusive Farm Use (C-A1).
- 7. PARCEL SIZE:** Tax lot 1100 is 34.72 acres and tax lot 1900 is 35.67 acres.
- 8. PARCEL USE:** Parcels are used solely for farming.
- 9. SURROUNDING USE:** Adjoining properties are being farmed, with farm dwellings. To the East and South, properties are zoned Rural Service Center.
- 10. ACCESS:** This application is for the realignment of an existing transportation system. Access is not applicable.
- 11. SANITATION REQUIREMENTS:** This application is for the realignment of an existing transportation system. Sanitation will not be applicable.
- 12. FIRE PROTECTION:** This application is for the realignment of an existing transportation system. Fire protection will not be required.
- 13. NATURAL HAZARDS:** None.

14. SOIL TYPE: The soils on the property are predominately class I.

15. ZONING HISTORY: There is no zoning history for this property.

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 6-6-7 regulates the conditional use process for the reconstruction or modification of public roads and highways on exclusive farm use zoned property, as identified as a conditional use in MCC 6-3A-3 (T).

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

Finding: Letter notice was sent to adjoining landowners on February 4, 2022 and published in the Argus Observer on February 2, 2022. No opposing comments were received.

The highway provides access to and from existing developments and the surrounding area. The roundabout will create a safer environment for all travelers.

D. Availability of services and utilities.

Finding: The installation of the roundabout will have a positive impact to the roads of this corridor, as it will improve the safety by saving lives and preventing serious injury.

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

Finding: The proposed roundabout at this intersection will have a positive outcome for the community because roundabouts have been proven to save lives.

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: There are no fish or wildlife habitats near the roundabout.

G. General Criteria

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

Finding: Roundabout design minimizes impact to properties to the east by shifting the intersection alignment to the northwest. Intersection illumination will use focused LED lighting to reduce nuisances at night to adjacent properties. No permanent odor or noise impacts are anticipated above and beyond existing intersection.

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

Finding: The roundabout design includes colored pattern concrete in the interior circle and splitter islands. There are no other landscaping improvements proposed.

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

Finding: Location of driveway access points to properties to the east will be connected directly to the cul-de-sac leg (east leg) of the roundabout.

4. Visual screening of outdoor waste and storage areas.

Finding: No outdoor waste or outdoor waste storage is necessary. This criterion is not applicable.

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

Finding: LED lighting will be installed at the roundabout that is focused on the roadway to avoid glare beyond the right of way. LED illumination is more direct than traditional street lights.

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: ORS 215.203(2)(c) defines “accepted farming practice” as a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

Other uses, besides farming, within a quarter-mile of the project range from an elementary school, car repair, nursery, residences, retail, and self-storage unit and are all dependent on the highway for access to their properties.

The MCC states that the purpose of the EFU, ERU and EFFU zones is to maintain the resource-based economy of Malheur County by permitting the establishment of only those uses that are compatible with agricultural activities. The intent is to ensure that the areas classified as such are preserved and protected from conflicting non-resource uses.

The statewide standard for minimum parcel sizes is 80 acres for farmland. Tax Lot 1100 is 34.72 acres and does not meet the minimum size standard. That being said the adjacent parcel, TL 1001, is under the same ownership and is 31.27 acres. Even if the two parcels were combined they would not meet the minimum parcel size for the EFU zone. The acquisition of 1.09 acres of farm land will not cause the parcel to be nonconforming.

Tax Lot 1900 is 35.67 acres, of which approximately 1 acre is zoned as Rural Service Center (C-RSC). This too does not meet the minimum parcel size of 80 acres for farm land. Approximately .03 acres of the farm zoned land would be acquired to accommodate the oversized load bypass in the southwest quadrant of the roundabout. Tax Lot 1900 will not become nonconforming as a result of the property acquisition.

The parcels will continue to support and complement existing crop rotation and any proposed farm uses. Access to the properties will be available during construction and adequate access will be provided after completion of the project. Any impacts will be negotiated through the right of way process.

The project will not bisect or interrupt critical farm practices. The acquisition of the resource zoned land occurs in the corners of the properties. The project will not cause the properties to be fragmented. Fragmentation can cause adverse impacts on farming practices and production when trying to access another parcel that is separated by a road. Because the proposed project is not fragmenting the subject parcels the adverse impacts to the resource zoned lands are therefore less than if the proposed project were to bisect the land.

The taking of exclusive farm use land for the roundabout will reduce the size of the parcels but not the uses of the subject parcels. While this may impact the income able to be generated by the parcels, nothing in the project is anticipated to increase the cost of conducting farm or forest practices on lands devoted to those uses, much less significantly increase the cost.

The acquisition of the farm land is for an existing use and the modification of the roadway will not create a new use nor will it create an incompatible use. A roadway is a necessary function of any farm operation. The proposed project does however remove some resource zoned land out of production. The subject properties will continue to support and complement existing and proposed farm uses. The siphon irrigation head ditch located west of the roundabout will not be impacted by this project.

The resource zone is intended to guarantee the preservation and maintenance of the areas so classified for farm use free from conflicting non-farm/non-forest uses and influences. The roundabout project will not create a new use; it is in response to a critical infrastructure need to address critical ongoing safety issues occurring at this intersection. The roundabout will remain compatible with farm and agricultural uses. The widened intersection will remove some resource zoned land from production but it will not render the parcels unusable for farm use. Roadways are an integral part of farming and agricultural operations. They provide a means of transportation that is a necessity of any farm operation. The project as proposed will provide a safe and accessible transportation system to all parcels in the area. It does not pose a conflict to existing and permitted uses but provides a safe and efficient transportation network to their benefit. Farm operations that rely on the transport of goods and/or services will benefit from the improved transportation system. All users of the road will benefit from a safe and efficient transportation system.

The intent of this project is to provide for a safe intersection for all users and to prevent future fatalities and injuries that will continue to increase.

OAR 660-012-0065 – Transportation Improvements on Rural Lands, and OAR 660-012-0070 – Exceptions for Transportation Improvements on Rural Land

FINDING: OAR 660-012-0065 describes highway improvements outside UGBs for which exceptions to Statewide Planning Goals are not required. OAR 660-012-0070(1) states “Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.” OAR 660-012-0070 also defines the requirements, which a local government must meet when Goal exceptions are required, including for state highway improvements. The project would comply with the TPR because it would be exempt from the requirement for exceptions to Statewide Planning Goals.

OAR 660-012-0065 - Transportation Improvements on Rural Lands

(5) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) of this rule within an exclusive farm use (EFU) or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:

- (a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;*
- (c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.*

FINDING: State highways must be designed, constructed, operated and maintained in accordance with State and Federal regulations, directives, safety standards, design standards, and construction standards. ODOT must meet applicable standards for alternative design (e.g., lane width, distance between intersections, signal locations and traffic capacity). As a government agency, ODOT is committed and obligated to build a safe and functional road system.

For this project many factors such as; topography, road geometry, engineering standards, existing features and development, and available funding limited the design alternatives for accommodating future traffic on US20/OR201 highways. A roundabout has 75% fewer conflict points than a traditional 4-way traffic signal. A signalized intersection has 32 conflict points as opposed to 8 conflict points with a roundabout.

Based on the purpose and need of this project the following primary goals and objectives have been established:

1. Address the historic safety concerns at the Cairo Junction Intersection
2. Make a long-term fix
3. Employ sound engineering
4. Accommodate farm equipment and large loads

Due to the potential for serious crashes associated with the high turning volumes and high speeds, an upgrade to the traffic control at the intersection is necessary. The ARTS project looked at several potential traffic control scenarios. The intent of the project was to create a long-term solution to the crash issue at this intersection.

A safety analysis was performed for the Cairo Junction intersection. The intersection is a 2016 Top 10% SPIS location. Between 2009 and 2018 this intersection was the site of 31 reported crashes including 15 injury crashes and 1 fatality. Leading crash causes included: turning movements and rear-end crashes. This intersection had a fatal crash that was caused by not yielding at the stop sign.

The OR 201 Corridor Refinement Plan states that the US 20/ OR 201 intersection is forecasted to exceed maximum operating standards through the year 2025. This project was elevated because of safety concerns at the Cairo Junction Intersection. Other issues with this intersection are:

- **High speeds**
- **Acceleration lane adds complexity**
- **High crash history for the ADT (average daily traffic)**
- **Injury crashes and fatalities**
- **SPIS site**
- **Crash rate is higher at the Cairo intersection vs other intersections**

Ultimately two alternatives were considered for the Cairo Junction Intersection at US20/OR 201.

Alternative 1 (Proposed intersection improvement): Roundabout

This alternative would construct a roundabout slightly north of the existing intersection, this option was selected based on the following:

- Installing a roundabout will improve safety for all travelers at this intersection.
 - Improve safety by slowing traffic through the intersection and having it all move the same direction.
 - Reduce the number of crashes.
 - Reduce the number of injury crashes (expect an 80% reduction) and reduce or eliminate fatal injury crashes (based on historical data).
 - Reduce crash severity, low speed sideswipe crashes in roundabouts vs. high speed, head-on or T-bone crashes at signalized intersections.
- Improve traffic flow by reducing wait times to merge during heavy traffic. Average travel time through roundabouts is similar to signalized intersections.
- Meets the goals of the OR 201 Corridor refinement plan in two key areas:
 - Improve safety for local residents and businesses adjacent to Cairo Junction by creating direct links to the east leg of the roundabout at the cul-de-sac connector. This will also reduce the number of highway access driveways near the roundabout, which have a high potential for crashes.
 - The layout allows for the future development of a minor collector roadway connecting OR 201 easterly to Alameda Avenue.

Alternative: Signalized intersection

This alternative would construct a signalized intersection at the exiting intersection location, after examination by professional engineers (consultants and ODOT staff), it was determined that a signalized intersection would not meet standards for the following reasons:

- Unlikely to meet any signal warrants.
- Increased crash history on the OR 201/18th Street signalized intersection since signal installation in 2003
 - The crash rate more than doubled in the 10 years since the signal installation vs. the ten years prior to the signal installation.
- Unable to meet the needs of the OR 201 Corridor refinement plan in two key areas:
 - The plan calls for adding a minor collector roadway serving the Cairo Junction Rural Service Center. This would be challenging at this location due to the irrigation ditch and the location of the storage unit business.
 - The plan calls for improving access to those properties located within the Cairo Junction Rural Service Center. This would be nearly impossible with a signal due to the signal/intersection location, and a signal would likely make access to these properties more difficult (queuing in front of the existing driveway).
 - Challenges with driver expectation requiring OR201 through traffic going 55mph having to come to a complete stop.

The intent of the project was to create a long-term solution to the crash issue at this intersection. After review, a roundabout was proposed to address the crash problem. According to the ODOT traffic manual, a roundabout will reduce all injury crashes by 76%, all crashes by 35% and all fatal crashes by 90%. Additionally, this project will combine access on the east side of this intersection and bring them in as the easterly leg of the roundabout. The roundabout will incorporate splitter islands and reversing curves to calm and slow traffic approaching the intersection to increase safety. This improvement will reduce speeds and the conflict points to increase safety.

A 16-hour pedestrian count performed at the existing intersection in 2019 indicated no pedestrian use. There is one multilane approach that pedestrians may need to cross. This multilane approach leg has a rectangular rapid flashing beacon and raised island between the two lanes providing a refuge for pedestrians.

The signalized intersection alternative could not be supported by state engineers because of these operational and safety issues and was thus dropped from further consideration.

Between 2009 and 2018 this intersection was the site of 31 reported crashes including 15 injury crashes and 1 fatality. Alternative 1 is the only reasonable build alternative that meets the engineering standards for a safe rural highway intersection. The roundabout will

operate efficiently in the near future and the 20-year planning horizon and is within a reasonable cost without considering the raw land costs with the available budget. Roundabouts are proven effective in increasing safety for rural high-speed intersections. The design for the approaches to the roundabout help in reducing speeds. Installing a roundabout at this intersection is expected to:

1. Improve safety by slowing traffic through the intersection and having it all move the same direction.
2. Reduce the total number of crashes.
3. Reduce the number of injury crashes by as much as 80%, and reduce or eliminate fatal injury crashes (based on historical data).
4. Reduce crash severity, crashes that could occur would be low speed sideswipe crashes in roundabouts rather than higher speed head-on or T-bone crashes, which are typical at signalized intersections.
5. Improve traffic flow by reducing wait times to merge during heavy traffic periods. Average travel time to circulate through roundabouts is similar to signalized intersections.
6. Improve safety for local residents and businesses adjacent to Cairo Junction by creating direct links to the east leg of the roundabout at the cul-de-sac connector. This should also reduce the number of highway access driveways near the roundabout, which have a high potential for crashes.

OAR 660-012-0065(5)

B. Assess the effects of the identified alternatives on farm or forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands;

FINDING: Two alternatives that were considered are a traffic signal and a roundabout. The roundabout would acquire about 1.12 acres of farm land, whereas the traffic signal would not acquire any farmland. As noted in the above findings the removal of the 1.12 acres of farmland would reduce the size of the parcels but not the use of the parcels. While this may impact the income able to be generated by the parcels, nothing in the project is anticipated to increase the cost of conducting farm or forest practices on lands devoted to those uses, much less significantly increase the cost.

The Cairo Junction Intersection and highways have coexisted with the surrounding lands and provides access to the properties for farming. The highways provide critical access for intercity and interstate travelers. The realignment of the intersection allows for the ideal design of the roundabout to create a safe intersection.

The design of the roundabout took into consideration farm vehicles and large loads. The roundabout will provide for safer movement of farm vehicles and large loads through this critical intersection. The intent of the project was to create a long-term solution to the crash issue at this intersection.

Roadways are an integral part of farming and agricultural operations. They provide a means of transportation that is a necessity of any farm operation. The project as proposed will provide a safe and accessible transportation system to all parcels in the area. It does not pose a conflict to existing and permitted uses but provides a safe and efficient transportation network to their benefit. Farm operations that rely on the transport of goods and/or services will benefit from the improved transportation system. All users of the road will benefit from a safe and efficient transportation system.

The purpose and need of this project is to address the safety issues at this intersection.

After consideration of the alternatives and further evaluation of each of those alternatives, only one met the purpose and need of the proposed project while avoiding unreasonable economic impacts, or which could be built at a reasonable cost given the available budget. Based on the analysis of the proposed alternatives, only Alternative 1 was a reasonable alternative that met the requirements for safe highway operations and could be constructed at a reasonable cost without considering raw land costs. The impacts to protected farmlands are the result of the need to address the safety concern of the intersection and to accommodate efficient movement of traffic in this area and to meet the project goals and objectives.

OTHER FINDINGS OF FACT

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

TESTIMONY DURING PUBLIC HEARING

1. Opposition

a. Vicki Winegar
353 Brown Bear Way
Fruitland, ID 83619

- i. Opponent is the owner of the properties in question. In short, she feels like her opinion doesn't count, even though they own the property. She had questions as to why the application does not require a signature from the property owner. She also testified about her general distrust of ODOT. As a farmer of the property for over 30 years, she also does not recollect that the intersection is as dangerous as ODOT is stating.

FINDING: Malheur County Code 6-9-5(C)(1) allows for an

application to be submitted without the property owner's signature, if it is submitted "on behalf of a public entity or public utility having the power of eminent domain..." Therefore, because ODOT is a public entity which has the power of eminent domain, the application did not require a signature from the property owner.

Additionally, although the applicant is emotionally connected, she did not speak to the substantive criteria, nor did she bring forth additional criteria to be considered. Her general distrust of ODOT has no bearing on this application.

CONDITIONS OF APPROVAL

1. This approval is valid for three years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

EXHIBITS

1. Letter from Applicant dated January 25, 2022
2. Conditional Use Application
3. Additional Findings of Fact from Applicant
4. Tax Lot Map
5. Drawing of Proposed Roundabout
6. Roundabouts and First Responders Pamphlet
7. Roundabouts and Rural Highways Pamphlet

CONCLUSION

Based upon the foregoing findings 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 the realignment of a highway for the construction of a roundabout 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