

STAFF REPORT

Planning Department File No. 2022-02-006

CONDITIONAL USE APPLICATION FOR PERSONAL USE AIRPORT

Planning Commission Meeting Date: March 24, 2022

1. **APPLICANT:** Larry and Katariina Teufel
4960 Crowley Road
Harper, OR 97906
2. **OWNER OF RECORD:** Katariina Sutphin (Teufel)
4960 Crowley Road
Harper, OR 97906
3. **PROPOSED ACTION:** Conditional Use approval for the modification/alteration of an existing non-conforming use (personal use airport) in an exclusive range use zone.
4. **PROPERTY IDENTIFICATION:** Tax Lots 200 & 201, T26S, R39E, Sec. 13; Assessors Map 26S39E; Malheur County Reference #11596 & 18456.
5. **PROPERTY LOCATION AND DIRECTIONS:** Located approximately 53 miles south on Crowley Road from Harper Junction.
6. **ZONING:** Exclusive Range Use (C-A2).
7. **PARCEL SIZE:** The tax lots are 7,125.36 acres.
8. **PARCEL USE:** Parcel has a legal non-conforming personal use airport and is used as rangeland.
9. **SURROUNDING USE:** Adjoining properties are being used as rangeland. Very few resource dwellings are close to the subject location.
10. **ACCESS:** Access is from Crowley Road. No new access is being requested, and no increase of traffic is proposed.
11. **SANITATION REQUIREMENTS:** No restrooms are proposed. Sanitation is not required.
12. **FIRE PROTECTION:** The proposed hangar is not within a Fire District.
13. **NATURAL HAZARDS:** None.

14. SOIL TYPE: The location of the proposed hangar is outside the boundaries of the NRCS study.

15. ZONING HISTORY: A new office with living quarters for a farm labor dwelling was approved in 2019 on tax lot 201.

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.

Proposed Finding: The County’s Comprehensive goals do not specifically address personal use airports. However, in the Transportation Element, it does state that “the County will encourage the protection and improvements of present airport facilities.” It is assumed that this policy could apply to personal use airstrips as well.

B. Specific plan recommendations

Proposed 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(I).

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

Proposed Finding: Letter notice was sent to adjoining landowners on March 4, 2022 and published in the Argus Observer on March 4, 2022. No opposing comments were received at the time of drafting this Staff Report.

Given the remote location within the County, the proximity to other property owners and the fact that the proposed development lies entirely within the Owner/Applicant’s property, there will be no impact on existing development or viewpoints of property owners in the surrounding area.

D. Availability of services and utilities.

Proposed Finding: Aside from the extension of electrical utility lines within the property, no services or utilities will be affected by the proposed alterations.

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

Proposed Finding: The proposed improvements will have no impact on the

community's social and economic characteristics. The subject property is located in a remote portion of the County and the Owner/Applicant owns and/or controls grazing rights to all lands within a mile radius of the proposed improvements.

- 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: The subject properties and the surrounding areas are used for grazing. The improvement is located within low density sage grouse habitat and is within 3.1 miles of an occupied lek. Therefore, the proposed development is considered a conflicting use and subject to OAR 660-023-0115.

G. General Criteria

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

Proposed Finding: The proposed alteration/modifications will not create any 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.

Proposed Finding: The proposed alterations/modifications will not be visible from the adjoining property owners. Crowley Road is over a mile south of the project areas and will likely not be noticeable from that distance.

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

Proposed Finding: No driveways or right-of-way improvements will be required since the proposed alterations/modifications are internal to the Owner/Applicant's property.

4. Visual screening of outdoor waste and storage areas.

Proposed Finding: Outdoor waste and storage areas will be located inside the proposed hangar building.

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

Proposed Finding: Outdoor lighting may be provided along the proposed hangar building. Given the proximity, no glare is anticipated on the

adjoining property owners.

6. Special criteria listed below, as applicable:

Proposed Finding: No special criteria is applicable to the proposed development.

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: Because the proposed alteration/modification to the personal use airport are internal to the Owner/Applicant's property, the proposed modifications will not force a significant change/cost in accepted farm or forest practices on the surrounding land's range use. This is further supported by the fact that the airport is pre-existing and in use.

MCC 6-6-9-1 – CONTINUATION OF NON-CONFORMANCE: The lawful use of any building, structure or land existing at the time of the enactment or amendment of this title may be continued. Any alteration, restoration or replacement of those uses shall be in accordance with the following provisions, and shall be determined by the planning commission at a public hearing pursuant to ORS 215.130 and the comprehensive plan.

Proposed Finding: The existing airstrip has been in use for over fifty years and is officially registered with the Federal Aviation Administration (FAA). It is referenced as the Crowley Ranch Airstrip and the FAA identifier 78OR.

Since the existence of the airstrip pre-dates Oregon land use planning regulations, the County considers this a legal non-conforming use. The use (as it currently exists) may continue, but it cannot be altered in any way without the appropriate land use review and approval.

In order to alter the existing personal airstrip (i.e. add a hangar building and extent the length of the airstrip), the Owner/Applicant is requesting approval of a Conditional Use.

MCC 6-6-9-2 – ALTERATION: Alteration or completion of any non-conforming use or related structure may be permitted as follows:

- A. When necessary to reasonably continue the use.
- B. When necessary to comply with any lawful requirement for alteration in the use.

- C. When alteration or extension of a non-conforming use does not cause the structure to deviate further from the standards of this title.
- D. When a structure is determined to be suitable for only non-conforming uses, and proposed new uses are determined to be no more detrimental to surrounding properties than the use to be replaced.

Proposed Finding: The Owner/Applicant is requesting a new Conditional Use to allow the alteration/modification of an existing legal non-conforming use. This is necessary in order to comply with County requirements to allow the alteration.

OAR 660-023-0115 – Greater Sage-Grouse

- 7. Conflicting uses. For purposes of protecting sage-grouse habitat, conflicting uses are:
 - a. Large-scale development; and
 - b. Other activities, which require review by the county decision makers pursuant to OAR 660-033-0120 table and are proposed:
 - A. In a core area within 4.0 miles of an occupied or occupied-pending lek;
 - B. In a low-density area within 3.1 miles of an occupied or occupied-pending lek; or
 - C. In general habitat within 3.1 miles of an occupied or occupied-pending lek.

Proposed Finding: The proposed modifications are in an area which is considered a conflicting use for protecting sage-grouse habitat. Due to the size of the modifications (approximately 74,000 square feet or less than 2 acres), the proposed modifications are not considered a large-scale development. However, the proposed improvements would fall under the category of “Other Activities” since they are in a low-density sage-grouse habitat within 3.1 miles of an occupied or occupied-pending lek.

- 9. Program to achieve the goal of protecting significant sage-grouse habitat in core area.
 - b. A county may approve a conflicting use as identified at subsection (7)(b) above upon either:
 - A. Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the away sage-grouse use that habitat; or

- B. Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.

Proposed Finding: The proposed modifications of the Crowley Ranch Airstrip are not located within a core area. However, these same approval requirements apply to protecting significant sage-grouse habitat in low density areas (subsection (10)(b) of this Title).

The Owner/Applicant is currently coordinating with ODFW to confirm whether or not the proposed modifications pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat. If the project receives conditional approval based on ODFW recommendations, it may include minimization techniques and compensatory mitigation to resolve threats to significant sage-grouse habitat.

OTHER PROPOSED FINDINGS OF FACT

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

PROPOSED CONDITIONS OF APPROVAL

1. This approval is valid for two years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.
2. Applicant must meet the requirements of the state building codes as indicated in Exhibit 4.
3. Applicant must meet all requirements of the Oregon Department of Fish & Wildlife in regards to OAR 660-023-0115.

EXHIBITS

1. Owner/Applicant's Application for a Conditional Use
2. Owner/Applicant's Finding's for OAR 660-023-0115-Greater Sage-Grouse
3. Email from John Eden, ODOT
4. Email from Adele Schaffeld, Building Department Official