

Before the Planning Commission

Planning Department File Nos. 2022-08-011, 2022-08-012, 2022-08-013

**CONDITIONAL USE APPLICATION
FOR
ACTIONS 1-3 AS DESCRIBED BELOW**

Planning Commission Meeting Date: September 22, 2022

- 1. APPLICANT:** Brett & Andrea Buchholz
792 Owyhee Avenue
Nyssa, Oregon 97913
- 2. PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions. Additionally, approval for two property line adjustments following the CUP.
- 3. PROPERTY IDENTIFICATION:** Tax Lot 800, T20S, R46E, Sec.26; Assessors Map 20S46E26; Malheur County Reference #10387.
- 4. PROPERTY LOCATION AND DIRECTIONS:** West of the intersection of Owyhee Avenue and Highway 201. This property also has a solar farm.
- 5. ZONING:** Exclusive Farm Use (C-A1) and Rural Service Center (C-RSC).
- 6. PARCEL SIZE:** The parcel is 288.20 acres.
- 7. PARCEL USE:** Farm dwelling; large solar farm. This property has also been approved for a wireless telecommunication tower.
- 8. SURROUNDING USE:** All adjoining properties are in Exclusive Farm Use (C-A1). This property also abuts to rural service center zoned property.
- 9. ACCESS:** US Highway 201 and Owyhee Avenue.
- 10. SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for the non-farm dwellings.
- 11. FIRE PROTECTION:** The parcel is within the Adrian Rural Fire District. (Letter Attached).
- 12. NATURAL HAZARDS:** None.
- 13. WATER RIGHTS:** The only water rights located on the proposed 6.67-acre parcel

which is part of Action 3 below. The portion of property in question is zoned C-RSC (Rural Service Center). The portion of the property has already received a Goal 3 and Goal 14 Exception. As a result, Malheur County Goal 3, specifically Policy 7, which requires no net loss of farmlands, does not apply to this portion of the property.

14. SOIL TYPE: There is a portion of the C-RSC land which is a class I soil type. The proposed non-farm dwellings will be placed upon soiled classified as class III soil types.

15. ZONING HISTORY: In 2014 a conditional use permit was approved for solar panels. The panels were constructed in 2015. In 2020 the primary dwelling was approved for an addition. Lastly in 2022, a new 199-foot wireless telecommunication tower was approved. Additionally, a legal unit of land determination was completed (Planning Action Number 2022-05-019) in 2022.

I. Action 1: Conditional Use Permit for 2 non-farm partitions and 2 non-farm dwellings:

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 non-farm dwellings. MCC 6-6-8-2 regulates the non-resource partitions in the exclusive range use zone.

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

Finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on August 31, 2022. No comments were received.

D. Availability of services and utilities.

Finding: The parcel is located within Adrian Rural Fire Protection District.

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. The possible addition of two (2) family/single-family residence will add to the County's economics and maintain the student

population at Adrian School.

- 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. While the Snake River is nearby and east of Owyhee Junction, there are no known potential impacts.

G. General Criteria

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

Finding: There will be no significant increase of activities or operation beyond the minimal use of the two non-farm dwellings.

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

Finding: There should be typical small residential landscaping not to exceed 0.5 acres as allowed by domestic wells surrounding the proposed dwellings.

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 proposed sites are accessible from public roads. The landowner will abide by the requirements from Department of Transportation, County Road Department, Rural Road District, and the Rural Fire Department.

4. Visual screening of outdoor waste and storage areas.

Finding: This proposal is for two non-farm dwellings. Outdoor waste should be minimal.

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

Finding: The potential development should be consistent with the neighboring parcels.

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 ground, due to high groundwater, is extremely alkali and is non-productive ground. The proposed dwellings will be adjacent to the Rural Service Center.

SPECIFIC CONDITIONAL USE CRITERIA

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

A. Conditions For Allowance: The use:

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

Finding: The proposed dwellings will be located between the solar panels and the land currently zoned as Rural Service Center. The dwellings will have little to no impact on farm use and will therefore be compatible.

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

Finding: The proposed dwellings will be located between the solar panels and the land currently zoned as Rural Service Center. The proposed parcels are non-productive.

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.
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 parcel: (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 adverse conditions of the soil and the proximity to the Rural Service Center and solar panels, the subject parcel cannot be reasonably put to farm use in conjunction with other land. The parcels are away from any water delivery system for the farm ground. From these facts, it is concluded that the proposed dwellings are generally 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 sites are currently non-productive ground due to adverse soils. These sites are also adjacent to both the exiting solar panels and the rural service center zoned property. The new parcels are not compatible with farm uses.

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: There are some irrigated row crops on the neighboring properties, that the dwelling will have no effect on.

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

Finding: The proposed parcels are consistent with the neighboring parcels in the Rural Service Center Zone and will not interfere with the existing solar panels.

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?

Finding: The proposed parcels will be sandwiched between the existing solar farm and existing parcels in the rural service center zone.

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 proposed parcel is located upon lands that are non-productive and have generally poor soil due to high groundwater and an alkaline ground surface. The development of the land will not impact any watersheds, fish and wildlife habitats, soil and slope stability, air and water quality, or outdoor recreation areas.

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: The proposed partitions are for single-family residences that fits 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.

- II. Action 2: Consideration of a property line adjustment between two parcels not designated on the County maps (designated by applicant as a PLA between 20S46E26 tax lot 1400 and tax lot 1500).

FINDING: The purpose of this proposal is the adjust the boundary of the subject properties to a line consistent with the zoning map.

Prior to the property line adjustment, Tax Lot 1400 consists of approximately 78.70 acres and Tax Lot 1500 consists of 146.58 acres.

Upon completion of the property line adjustment, Tax lot 1400 will consist of approximately 224.49 acres and Tax Lot 1500 will consist of approximately 0.79 acres.

- III. Action 3: Tentative approval for a partition of EFU and C-RSC

MCC 7-7-3 – Requirements for Tentative or Conditional Approval:

- A. No application for partitioning in any zone shall receive tentative approval unless the following minimum requirements are met:
1. A minimum of five (5) years since the subject land was last involved in a partition creating three (3) parcels. If only two (2) parcels were created, the third parcel may be created without resetting the five (5) year clock.

FINDING: No partitions have been granted for this property in the past.

2. Proposal is in compliance with the comprehensive plan, transportation system plan and applicable zoning.

FINDING: This partition will result in the creation of a lot in exclusive farm use and a lot in rural service center. The EFU portion will be equal to 207.12 acres and the rural service center parcel will be 6.67 acres. Both of these new parcels meet or exceed the minimum parcel size of the respective zone.

3. Proposal does not conflict with acquired public access easements within or adjacent to the partition and contributes its appropriate share to widening, extension and improvement of public rights of way and easements.

FINDING: This proposal does not conflict with acquired public access easements adjacent to the partition. No widening, extension or improvement of public rights of way and easements are required.

4. Each parcel is suitable for the use intended or offered.

FINDING: The newly created lots will be used for purposes allowed in Malheur County Code as a rural service center zoned parcel.

5. An approved water rights division plan is provided if water rights are involved in the action.

FINDING: At this time, there is no proposal to develop the newly created 6.67-acre parcel. At the point in time that this property is developed, the applicant will be required to work with the State or Water District to transfer the water rights.

6. A statement from the administrative officer of any incorporated city within six (6) miles of the proposed partition stating any recommendations planning, engineering or other appropriate staff of the city have regarding the proposed partition.

FINDING: There is no recommendation from any city within six (6)

miles of the proposed partition.

- B. In addition to the requirements specified in subsection A of this section, no partition in any zone other than EFU, ERU, or EFFU shall receive tentative approval unless all required public services and facilities are available and adequate or are proposed to be provided by petitioner.

FINDING: All public services are available and accessible.

- C. The planning director or his designate shall complete his technical review of partition proposals and then forward to the planning commission all partition proposals which create lots for which a street or road dedication is necessary in order to provide the frontage each parcel must have upon a public road or street (major partition).

FINDING: There is adequate frontage of the parcels to public rights of way. The proposal does include a private access easement. As a condition of approval, the applicant should be required to file a road maintenance agreement along with the partition plat.

- D. The county shall provide notice to the Oregon department of transportation (ODOT) as required by OAR 60-12-045(2)(f).

FINDING: Notice was provided to ODOT on September 8, 2022 via email.

CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcels:

“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 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 (10) years.
3. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.

4. This approval for Action 1 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.
5. Action 2 must meet all requirements of the Planning Director and County Surveyor to finish the property line adjustments.
6. The site plan for the proposed non-farm dwelling can be approved by the Planning Director and does not require modification of the approved Conditional Use Permit.
7. Adequate access must be constructed as in accordance to the standards prescribed as per ODOT/Road District and Fire District's regulations. An ODOT or Nyssa Rural Road Assessment's District permit approach must be obtained prior to development approval.

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 the three (3) actions, in an exclusive farm use zone.

ORDER


This application for three (3) actions referenced above 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