

**Before the Planning Commission**

**Planning Department File No. 2023-09-017**

**CONDITIONAL USE APPROVAL  
FOR  
ONE NON-FARM DWELLING AND ON NON-FARM PARTITION**

Planning Commission Meeting Date: October 26, 2023

1. **APPLICANT:** Daniel & Lynn Fulleton  
3550 Fulleton Rd  
Vale, OR 97918
2. **PROPERTY OWNER:** Daniel & Lynn Fulleton  
1878 US Hwy 20  
Vale, OR 97918
3. **ACTION:** Applicant stipulated to a modified application for Conditional Use approval for one non-farm dwellings and one non-farm partitions. The proposed non-farm partition will be approximately 1.96 acres and will include the existing home site.
4. **PROPERTY IDENTIFICATION:** Tax Lot 11400, T18S, R44E, Sec. 36; Assessor's Map 18S44E; Malheur County Reference #13620.
5. **PROPERTY LOCATION AND DIRECTIONS:** The property is located about 3 miles southwest of Vale, on US Hwy 20, at 1878 US Hwy 20, Vale, OR: from Vale, head southwest on US Hwy 20 for about 2 miles to Bench Rd. Continue on Hwy 20, past Bench Rd for about  $\frac{3}{4}$  of a mile. The site of the proposed partitions will be on the right, at the private drive leading to the existing house at 1878 US Hwy 20.
6. **ZONING:** Exclusive Farm Use (C-A1).
7. **PARCEL SIZE:** The property is 81.75 acres as per last recorded survey; however, a previously executed survey, conducted in 2015, found that the property is at least 90.64 acres. The size of the property was never formally updated, since that survey was never filed.
8. **PARCEL USE:** The property is currently being farmed (row crops and feed crops, such as beets, onions, grains, hay and corn). There is also a residence and other residential improvements.
9. **SURROUNDING USE:** The property is surrounded in entirety by farms with farm dwellings .
10. **ACCESS:** The non-farm partition will have access off Hwy 20, via easement on the shared drive. A permitted approach was originally approved in 2012 by ODOT (see

Exhibit #2) and there are no additional new requirements from ODOT that must be met now (see Exhibit #5).

- 11. SANITATION REQUIREMENTS:** The new non-farm partition already contains a dwelling. No new sanitation requirements are necessary.
- 12. FIRE PROTECTION:** The site of the proposed non-farm partition is within Vale Fire and Ambulance District. (see Exhibit #4).
- 13. NATURAL HAZARDS:** Almost the entire parent parcel is within the regulatory 100-year floodplain area. The sites of the proposed non-farm partition is located exclusively within the regulatory 100-year floodplain area.
- 14. WATER RIGHTS:** The property has 74.4 acres of water rights. There are 1.8 acres of water rights on the site of the proposed non-farm partition #2, which will be approximately 3.68 acres (Map and letter attached – Exhibit #3).
- 15. SOIL TYPE:** The soils on the entire parent property are of class II.
- 16. ZONING HISTORY:** The existing dwelling was constructed in 1951 and several residential and farm improvements were added over the years.

In 2008, a Conditional Use Permit for a non-farm dwelling and a non-farm partition was approved (CUP #2008-12-007). A partition plat was never filed to formally complete the partition. In 2015, the owners initiated a process of applying for a conditional use permit for 2 non-farm dwellings and 2 non-farm partitions, but was process was never completed either.

There is no other known zoning history.

## **GENERAL INFORMATION:**

The Applicant submitted an application for two non-farm partitions and two non-farm dwelling. During the hearing over the matter, the Planning Commission and the Applicant reviewed the application. At that time, it was discussed that one (proposed parcel 1) of the two proposed partitions were allowed by law (proposed parcel 1 is allowed, proposed parcel 2 is not allowed as per the unrecorded partition plat submitted by the Applicant), the other proposed partition (proposed parcel 2) was not allowed. It was not allowed because the second partition was generally suitable for farm use because the entirety of the proposed parcel had water rights. It was at this time that the Applicant then stipulated to the modification of the request for two non-farm partitions to include only one non-farm partition and one non-farm dwelling. The findings of this Order are for the stipulated modification of the application during the Planning Commission hearing, and does not include approval for the second non-farm partition.

## **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 6, 2023 and published in the Argus Observer on October 6, 2023. No letters of comment were received.**

D. Availability of services and utilities.

**Finding: The entire parent parcel is located within the Vale Fire and Ambulance 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 dwelling 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 the site of the proposed partition #1 is on land that historically hadn't been used for farming.**

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 1 non-farm partition and 1 non-farm dwelling. The nearest home site will be more at least 600 ft away and there will be no impacts on adjoining properties due to natural barriers and the location of the highway.**

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

**Finding: The existing dwelling 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 proposed non-farm partition will have access off US Hwy 20 via the existing approach that was granted by ODOT in 2012 (Exhibit #2). Since that approach will provide access to both resulting parcels, an easement agreement will be required, to define the standard width and length requirements. The anticipated length of the easement will be less than 500 ft and it shall have a minimum width of 20 ft, unobstructed, and 13'6" unobstructed vertical clearance.**

**The new drive-way that will be constructed must follow the International/Oregon Fire Code and it must be an all-weather surface. Any access road must include an improved turnaround on roads greater than 150' in length and not exceed a grade of 10%. The driveway must also be capable of supporting live loads of at least 75,000 lbs. The driveway angle of approach/departure cannot be less than the design limitations of the Fire Department apparatus.**

4. Visual screening of outdoor waste and storage areas.

**Finding: The proposed development is for a dwelling. 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 dwelling 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. There will no net loss of the farmed ground on the parent parcel. The parent parcel is surrounded by properties that are zoned exclusive farm use. These properties will not be impacted by the placement of one new dwelling on the proposed non-farm partitions. The proposed dwelling will have a private driveway, designated to only access the proposed dwelling, so there will be no impact to US Hwy 20 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 site of the proposed non-farm partition is not currently being farmed. The single-family dwelling, on this partition, is existing and therefore 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 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.

**Finding: The site of the proposed non-farm partition has not been historically farmed and does not have water rights.**

- 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.

#### **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 non-farm partition will be just large enough to reasonably accommodate the placement of a home with landscape. Additionally, the geographical location of the proposed non-farm partition acts as a natural divider from the existing farming operation on the parent parcel. The remaining farm land on the remaining parcel 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 site of the proposed non-farm partition currently has an existing dwelling, and there is no new development proposed.**

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

**Finding: The overall land use pattern of the area will remain unchanged as there will no modifications to the existing farming operation.**

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 the proposed partition is categorized as class II. The proposed non-farm partition will be just large enough to accommodate the use and provide sufficient buffer area needed to ensure compatibility with the agricultural use on the remaining parent parcel.**

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: The proposed partition is for a single-family residence 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.**

## 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 11400, T18S, R44E, Sec. 36; Assessor's Map 18S44E; Malheur County Reference #13620.)

*“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 parcel upon which the dwelling is proposed to be located has 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. An ingress/egress easement and road maintenance agreements must be entered into the chain of title of reference number 13620 for the benefit of the newly created partition.
4. Adequate access shall be secured for the partition and shall be constructed to meet the Vale Fire and Ambulance District's requirements: the driveway shall be at least 20 feet wide, all-weather road with adequate all-weather turnaround space at the end, a grade that will not exceed 10% and at least 13'6" unobstructed vertical clearance.
5. Any new structure built must meet International/Oregon Fire Code requirements for structure design, considering the minimum fire-flow requirements for structure size and constructions. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
6. Any new structure built must meet Malheur County's floodplain development requirements: they must be designed and anchored to prevent flotation, collapse, or lateral movement of the structure, must use construction materials and utility equipment that are resistant to flood damage and use construction materials and practices that will minimize flood damage. A flood plain development permit must be obtained prior to the construction of any new structure.
7. 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 one (1) non-farm dwelling and one (1) non-farm partition in an exclusive farm use zone.

## ORDER

This application for a conditional use permit for one (1) non-farm dwelling and one (1) non-farm partition 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 5:00 pm 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.

Kathy Clarich  
Planning Commission Chair  
Kathy Clarich

11-1-2023  
Date