MALHEUR COUNTY PLANNING DEPARTMENT

251 B Street West, #12 Vale, Oregon 97918 Phone (541)473-5185

File Number: 2024-07-022
Application Fee: $450
Date Received: 7/29/2024
Date Deemed Complete: 9/18/2024

CONDITIONAL USE APPLICATION

LANDOWNER INFORMATION

Name: Melvon S. Davis Trust
Address: 2150 Highway 201
City/State/Zip: Nyssa, OR 97913
Phone: (208) 447-8561
Email: bakdor@fmtc.com

APPLICANT INFORMATION ☐ *Check box if same*

Name: Marchelle Burnham
Address: 759 Mendiola Road
City/State/Zip: Nyssa OR 97913
Phone: (208) 447-8561
Email: bakdor@fmtc.com

PROPERTY INFORMATION

Township: 21 S Range: 46 E Section: 14 Tax Lot: 400 Ref #: 10589 Acres: 74.24 Zoning: C-A1
Address: 2180 Highway 20, Nyssa, Oregon 97913 DWELLING AT 759 MENDIOLA ROAD, NYSSA
Current use: Farming/Residence
Use of surrounding properties: Farming/Residence
Proposed use: Residence
Permitted subject to section: N/A
Water source: Well/Irrigation
Sewage disposal method: Septic
Are the wetlands/water waterways on your property? ☐ No ☒ Yes (description): Natural Springs
Do you own neighboring property? ☐ No ☒ Yes (description): Beneficiary of the Melvon S. Davis Trust
Name of road providing access: Mendiola Road

LEGAL PARCEL STATUS

Partition: N/A Subdivision: N/A
or Most Recent Pre- 09/04/1974 Deed #: N/A Date Filed: N/A
Current Deed #: _____ Date Filed: _____

**The deed and a map showing the property described in the deed(s) must accompany this application.*

**Additional descriptive maps and pictures may be attached.*

EXHIBIT # 1

SIGNATURES:

Property Owner(s): _____ Date: _____

Property Owner(s): _____ Date: _____

Applicant(s): Marielle Burnham Date: July 24, 2026

Applicant(s): _____ Date: _____

PLEASE NOTE: Before this application will be processed, you must supply all requested information and forms, and address all listed or referenced criteria. Pursuant to ORS 215.428, this office will review the application for completeness and notify Applicant of any deficiencies within 30 days of submission. By signing this form, the property owner or property owner's agent is granting permission for Planning Staff to conduct site inspections on the property.

SHADED AREA TO BE COMPLETED BY PLANNING DEPARTMENT

Legal Parcel Deed/Land Use Action: _____ **Previous Map and Tax Lot:** _____	☐NO ☐YES
Past Land Use Actions: If yes, list file #(s) _____ _____ _____	☐NO ☐YES
Subject to previous conditions? **Assessor Property Class:** _____ **Zoning:** _____	☐NO ☐YES
Water Resources: Are there bodies of water or wetlands (seasonal or permanent) on property or adjacent properties? Describe (include setback distances): _____ ☐ Fish bearing ☐ Non fish bearing ☐ Seasonal Creek ☐ Irrigation ditch ☐ Wetland ☐ Pond/Lake ☐ Not identified *(Note: Check buffers. Different zones have different setback requirements that may require a more extensive permitting process.)*	☐NO ☐YES
Access: County or ODOT approach permit on file? ☐ NO ☐ YES, # _____	
Address: Address exists and has been verified to be correct? Address needs to be assigned after approval? **Fire District:** _____	☐NO ☐YES ☐NO ☐YES

MALHEUR COUNTY PLANNING DEPARTMENT

251 B Street West, #12 Vale, Oregon 97918 Phone (541)473-5185 Fax (541)473-5140

CONDITIONAL USE PERMIT

DETAILED SPECIFIC WRITTEN REQUEST

See additional pages attached.

(Attach additional pages if necessary)

DETAILED STRUCTURAL INFORMATION

PROPOSED IMPROVEMENTS				
Structure/Development	**Length**	**Width**	**Height**	**Square Footage**
Dwelling	N/A			
Driveway	N/A			
Accessory Structure	N/A			
Agricultural Structure	N/A			
Other	N/A			
EXISTING				
Dwelling	70 feet	24 feet	16 feet	1600 square feet
Accessory Structure	60 feet	30 feet	30 feet	1800 square feet
Agricultural Structure				
Other				

CONDITIONAL USE CRITERIA – Malheur County Code (MCC) CHAPTER 6-6-7

1. The proposal must be consistent with the goals and objectives of the Comprehensive Plan and MCC.

2. Taking into account location, size, design and operational characteristics of the proposed use, describe how your proposal is compatible with the surrounding area and development of abutting properties by outright permitted uses:
This would be the same use, as has been used in the past 40 years. This is a residence surrounded immediately by bare ground that cannot be farmed and farm ground and residences in the area. The proposal would not change the current use.

Describe the operational characteristics (hours of operation, equipment used, etc.) of the proposed use:
There are no operational characteristics. This is a residential home on approximately two acres.

Describe the number of people/employees/customers associated with the proposed use:
No employees or customers will be associated with the proposed use as the proposed use is a residential home.

3. What are the existing developments and viewpoints of property owners in the surrounding area?
This property is established as a residence with associated outbuildings. No proposed changes to the view and/or look of the property.

4. The proposed use cannot exceed or significantly burden public facilities and services available to the area. Please describe the impact the proposed use will have on the following public facilities and services and provide letters from the appropriate entities:

Roads: The property is on an existing road and is already maintained by the Nyssa Oregon Road Department

Fire & Police Protection: There would be no changes to the fire and/or police protection. Currently the Adrian Fire Department and the Malheur County Sheriff's Department services the area. This has been the same for the last 40 yeaars.

Sewer & Water: Septic and Well. Both the septic and well have been servicing the property for approximately 40 years.

Electrical & Telephone: The electrical and telephone services on the property are Idaho Power and Century Link. This has been the same for 40 years.

Solid Waste Disposal: All trash on the site is currently hauled to the dump. There will be no change in the solid waste disposal.

5. What effect will the proposed use have on the stability of the community's social and economic characteristics?
The only change to the property will be increased property taxes. The proposed change will not add or subtract from current social and/or economic characteristics.

6. Demonstrate that the proposed use will 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.
The proposed use will not interfere with traditional fish and wildlife use of habitats. There is no change to the proposed use of the property, it will be the same as it has been for at least 40 years.

7. How will the proposed use increase setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances during development and operation?
The property is currently and has been used for the same purpose for the last 40 years. The existing structures will remain as they currently are.

8. What are the proposed landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and County?
There are no proposed landscaping changes. The landscaping will stay the same way as it has for the last 40 years. It is currently landscaped as yards adjacent to the home with bare ground surrounding.

9. The location and size of driveway access points and right of way widening and improvement for present and future traffic circulation consistent with the adopted County road standards or the standards of the appropriate road district and the access management standards ofthe Malheur County Transportation System Plan.
The driveway was previously established in 1981 and is a standard driveway. There are no additional access points or rights of way being sought.

10. What is the proposed visual screening of the outdoor waste and storage areas?

The property currently has trash barrels and storage bins on the property consistent with a a residential home. There are no proposed changes to the visual screening of outdoor waste and storage area.

11. What efforts will be in place to control and focus the outdoor lighting to avoid glare being directed beyond property limits?

The only outdoor lights currently installed on the property are front porch lights, barn lights, outdoor patio lights, and motion lights. These lights do not create a glare beyond the property limits more than any other residential home lighting.

12. Demonstrate how the proposed use will not significantly increase the cost of, or force a significant change to, accepted farm or forest practices on surrounding lands devoted to or available for farm and forest use.

Describe the agricultural uses (orchards, wheat, grazing, etc.) that are within 0.25 miles of the proposed development. How will the proposed development interact with surrounding agriculture uses?

The property currently has pasture for horses and cows and a small garden is maintained. The neighboring farm properties are currently farmed, growing onions. There is also some bare ground and a grove of trees in the area surrounding the property. There are already power lines installed on the property.

The proposed changes will not require additional water nor impedes access to the neighbors, as this proposal will not change the current use of the property. Therefore this proposal will not affect the cost of, or force a significant change to, the current accepted farm practices in the surrounding areas.

NON-RESOURCE DWELLING and NON RESOURCE PARTITION –
Malheur County Code (MCC) 6-6-8-1 and (MCC) 6-6-8-2

1. Describe how the proposed dwelling and the creation of the proposed partition(s) is compatible with farm uses and is consistent with ORS 215.243: The proposed partition is compatible with both farm uses and ORS 215.243 because the property being partitioned will likely never be used as farm ground even if the current home was removed. The ground is not suitable for farming for reasons stated elsewhere in this application. No usable farm ground will be removed nor impeded by this proposal. Instead, ground better suited for farming can continue to be used for that purpose.

2. Will the proposed dwelling and creation of the proposed partition(s) interfere seriously with accepted farming practices on adjacent lands and what conditions exist to avoid this problem? No. The house is currently physically separated from the rest of the farming ground in this parcel by natural, physical barriers. The property is not used for access for either the rest of the parcel or by any neighboring parcels. There is no source of water that is shared with the larger parcel. There will be nothing added that needs to be mitigated.

3. Will the proposed dwelling/partition be 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:
   ☐ No, if yes:
   - Is the proposed parcel only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The property is too small to be productive and is physically separated from the majority of the farm ground so it is unsuitable for the production of farm crops and livestock. The proposed parcel follows a natural barrier and is sufficiently large enough to accommodate the home, barn, yard and surrounding areas.

- Is the proposed parcel located on land with predominantly low productivity V-VII soils not suited for agricultural use and is large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? How so? There is a natural buffer (trees) on the Southwest side of the property and a drain ditch road to the north of the property. There are fields currently being farmed on the other two sides of the property with no additional buffer needed.

4. In what ways will the proposed partition avoid conflict with and have no significant adverse impact on:
   - the quality of farm or range land: The proposal will have no significant adverse impact on surrounding farm land. The property has had a residence on it for the past 40 years and is physically separate from the farm land.
   - the watersheds: The proposal will have no significant adverse impact on the watersheds as a home has been located on the property for 40 years and in that time the homeowner has never had any flooding. The water should continue down the road and into the ditch as it does now.
   - fish and wildlife habitat: No significant adverse impacts are expected to fish and wildlife habitat as there is currently no major wildlife habitat. There is only small local wildlife existing on the property.
   - soil and slope stability: There will be no adverse change in the soil or slope stability as the buildings on the property have been there for at least 40 years and no changes to the buildings are proposed.
   - air and water quality: There should be no adverse change to the air quality or water as there are no proposed changes to the current structures or uses of the property.
   - outdoor recreation areas: There are currently no recreational activities on the property so there will be no adverse impact. There are limit recreational activities, if any, on the neighboring properties so this proposal will have no impact on those either.

5. Will the proposed partition be created for an existing dwelling or for preserving a historical dwelling? The proposed partition will be created for an existing dwelling. The residence on the property has been there since 1981 (updated in 1986). A barn was built in 2010.

6. Demonstrate that the dwelling will not materially alter the stability of the overall land use pattern of the area, by conducting the **"Cumulative Impacts Analysis"**.

A. What are the types of soils that have been identified within the study area? Attached as an exhibit to this application is a soils map of the study area from the US Dept of Agriculture Natural Resource Conservation Service. In addition to showing the soil types for the study area it specifically shows the soil of the proposed parcel is "Nyssa silt loam, gravel substratum, 8 to 12 percent slopes"

B. What are the types and numbers of existing dwellings that have been identified within the study area?

Primary Farm dwellings _____ Non-farm dwellings _____

Farm hand/labor dwellings _____ Hardship dwellings _____

C. What are the types of farm use occurring in the study area (row crops, pasture, range land, feed crops)? _____ The primary types of farm use in the study area include row and feed crops. There are also a few uses of pasture as well as home/hobby type agriculture and animal raising.

D. What are the number of potential "lot of record" dwellings and non-farm dwellings within the study area?

Lot of Record dwellings _____ Non-farm dwellings _____

E. What are the number of parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings? None.

F. On the parcels where you concluded no potential dwelling(s) will be sited, describe why? _____ In review of the study area, none of the lots are large enough to qualify for a split and meet the requirements of ORS 215.780 as all of the lots are less than 160 acres. If an owner wanted to build a non-farm dwelling they would need to qualify for an exception.

G. What dwelling development trends have been identified within the study area since 1993? _____ From the applicant's experience there have been little residential construction in the study area since 1993. Although the property is close to Adrian, growth in Adrian has been limited to closer to city limits and to the south of town. The applicant is also aware that other applications for building in the study area have been denied over the years.

H. What are the findings of fact that describe the existing land use pattern of what the study area looks like now?

The study area is made up of two different types of parcel: (1) larger parcels of 30-120 acres used for primarily row and feed crops; and (2) small parcels of 2-6 acres which contain homes and may include hobby level agriculture and animals. Despite the proximity to Adrian, the area remains largely agricultural with minimal residences.

I. What are the findings of fact that describe what the study area would look like if all the potential development occurs? Although it appears that no parcels would be big enough to support a split under Oregon law, it is possible that land owners could qualify for other exemptions and be allowed to construct in the study area. Based on current land usage in the study area, building would likely result in an increase in smaller residence based parcels being carved out in areas where agriculture is not productive, similar to the request made here.

J. Determine that the proposed dwelling will not materially alter the stability of the overall land use pattern of the study area. Does the cumulative impact of the existing and proposed non-farm dwelling and the potential new non-farm dwellings within the study area make it more difficult for the existing farms in the study area to continue operation due to diminished opportunities to expand, acquire water rights, purchase or lease farmland, such that the area will be destabilized, impeding normal production practices or crop and livestock due to increased population and associated activities? If additional landowners in the study area make similar proposals to this one here, as described in paragraph I, that would not materially alter the stability of the overall land use pattern. The study area currently is a combination of larger farms lots and smaller residential lots. If, as here, new residences were confined to areas that are (1) less accessible to farm equipment; (2) have poor soil; or (3) are divided from the main farm ground by the physical features of the land, the places to locate those new residences would be minimal and therefore provide minimal impact to the current stability. Here the residence has been in exsistence for 40 years, if requests were limited to homes already built, there would be even less chance of similar requests, if any.

Additional Pages
Attached to Conditional Use Permit Application – Burnham

Detailed Specific Written Request

I have put in this application for a Conditional Use Permit in order to divide off a two acre portion of property ("proposed parcel") from the larger portion of property ("existing parcel"). The existing parcel was owned by my father, Melvon Davis, for many years prior to his death. During his life he lived in the primary home in the southern portion of the existing parcel. When my parents got divorced in 1981 part of the divorce decree included that I would receive a portion of his property. Around the same time, my family and I moved on the property and established a home on the proposed parcel. We built a house and a barn and have maintained both in compliance with county regulations since the 1980s. When permits were required, my father requested them as the owner of the property.

The proposed parcel and my home are in the northeast corner of the existing parcel. It is approximately two acres. The proposed parcel is on a hill above the main farming ground and is further separated from the farm ground by an existing stand of trees. Prior to building the house the proposed parcel was not used for any farming or other agricultural purposes due to the separation and slopes.

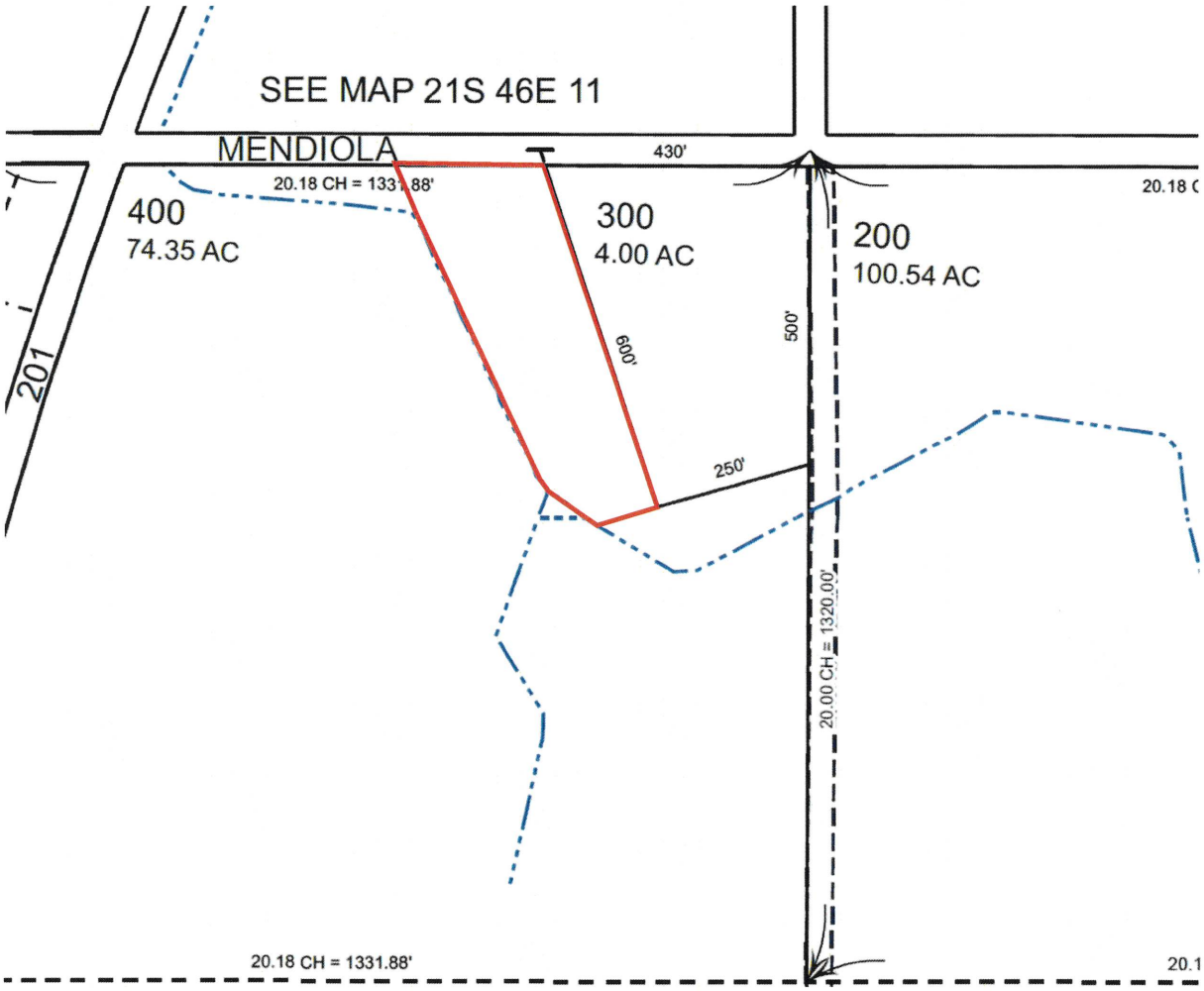
The home and outbuildings on the proposed parcel do not share any utilities or access. The two residences, as well as the proposed and existing parcels, currently act as separate entities currently.

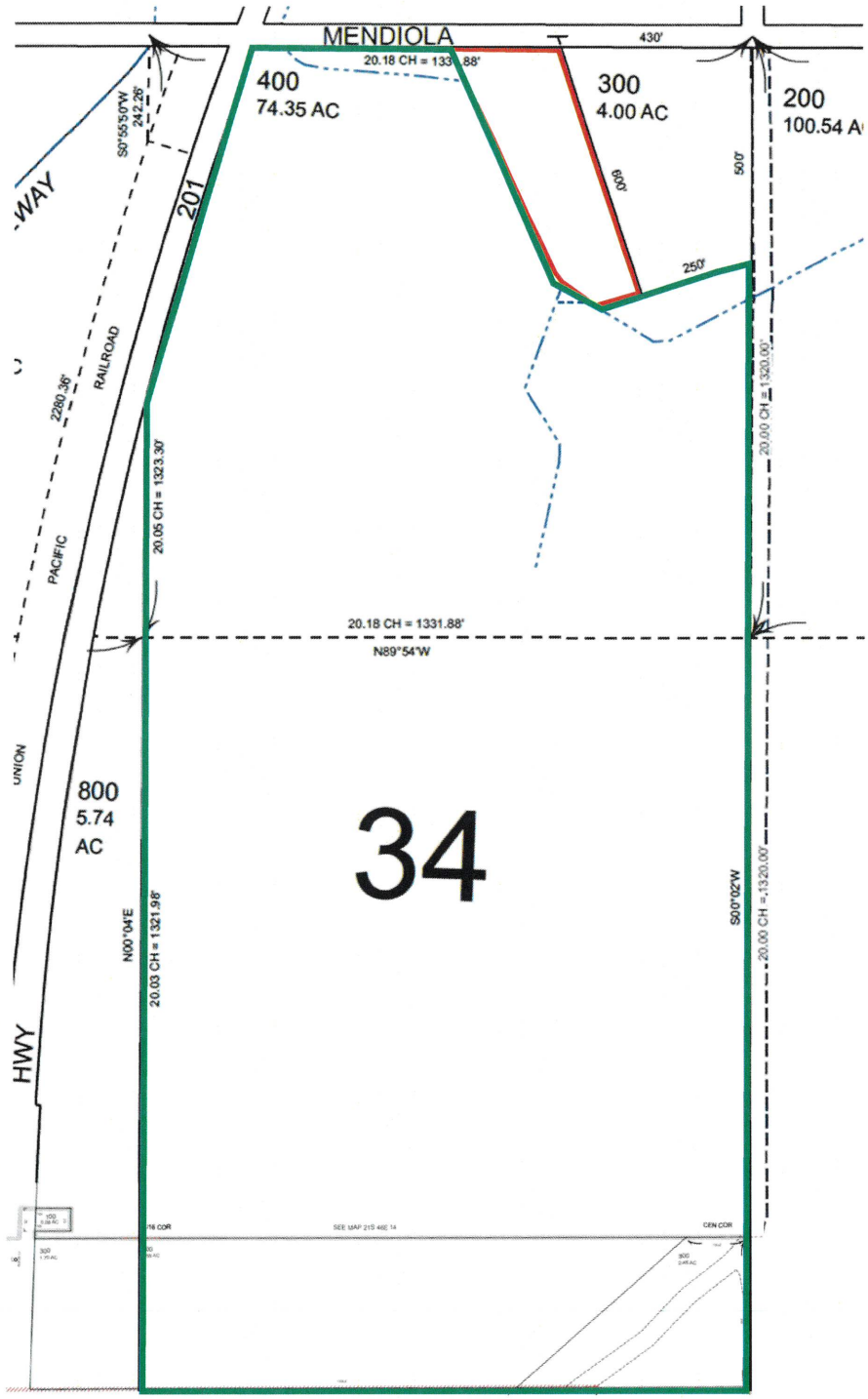
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Maps of Proposed Partition

Approximate Remaining Parcel

Approximate Proposed Parcel





Maps of Proposed Partition