

STAFF REPORT

Planning Department File No. 2018-10-012

**CONDITIONAL USE APPLICATION
FOR
ONE NON-FARM DWELLING**

Planning Commission Meeting Date: November 29, 2018

1. **APPLICANT:** **Scott S. & Drenda Browen
789 Mendiola Road
Nyssa, OR 97913**

OWNER OF RECORD: **Scott S. & Drenda Browen
789 Mendiola Road
Nyssa, OR 97913**
2. **PROPOSED ACTION:** Conditional Use approval for one non-farm dwelling in an Exclusive Farm Use zone.
3. **PROPERTY IDENTIFICATION:** Section 11, Tax Lot unknown, T21S, R46E, Assessors Map 21S46E11. Malheur County Reference unknown.
4. **PROPERTY LOCATION AND DIRECTIONS:** Off of Hwy 201 go west on Mendiola Road. Just past 764 Mendiola Road and past the drain ditch. Property is on the north side of the road.
5. **ZONING:** Exclusive Farm Use.
6. **PARENT PARCEL:** The total parcel size is 5.0 acres.
7. **PARCEL USE:** Approximately 80% is cultivated and irrigated. Approximately 20% ditch bank and weeds.
8. **SURROUNDING PARCEL USE:** Most surrounding land is farm cultivated with flood irrigation, wheel lines and pivot lines.
9. **ACCESS:** Off Mendiola Road (letter attached).
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.
11. **FIRE PROTECTION:** The parcel is within the boundaries of the Adrian Rural Fire

Protection District (letter attached).

12. **NATURAL HAZARDS:** None known.
13. **WATER RIGHTS:** Water rights were transferred from this property to another piece of property (3.3 acres). (letter attached)
14. **SOIL TYPE:** Soil on proposed parcel is class 3 if irrigated and class 4 if non-irrigated.
15. **ZONING HISTORY:** A series of property line adjustments created this tax lot with a final approval date of August 17, 2018.

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
- C. Existing development and viewpoints of property owners in the surrounding area.
- D. Availability of services and utilities.
- E. The effect of the proposed use on the stability of the community's social and economic characteristics.
- 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.
- G. General Criteria
 1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, 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.
 3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.
 4. Visual screening of outdoor waste and storage areas.
 5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.
 6. Special criteria listed below, as applicable:
 7. 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)

SPECIFIC CONDITIONAL USE CRITERIA

MMC 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
2. Does not interfere seriously with accepted farming practices on adjacent lands; and
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 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 308S.113.

MALHEUR COUNTY COMPREHENSIVE PLAN. GOAL 3: AGRICULTURAL LANDS (Applicable policies)

1. Public and private land classified by the Natural Resources Conservation Service (formerly US Dept. of Agriculture Soil Conservation Service) as being in Capability Classes I through VI, as well as High Value Farmland as defined by applicable Oregon Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered to be agricultural lands.
2. High Value farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.
3. In addition to county code and the State of Oregon’s land use laws and administrative rules for non-farm dwellings, it is the policy of Malheur County that there be no net loss of farmlands listed on the High Value Farmlands Soils list or soils classified as types I-III by the Natural Resources Conservation Service.
The soils in the subject area have not been mapped and/or classified. There is no active cultivation of the subject area.

OREGON REVISED STATUTE (ORS) 215.284

2. In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:
 - a. The dwelling or activities associated with the dwelling will not force a significant

- change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- b. The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;
 - c. The dwelling will be sited on a lot or parcel created before January 1, 1993;
 - d. The dwelling will not materially alter the stability of the overall land use pattern of the area; and
 - e. The dwelling complies with such other conditions as the governing body or its designee considers necessary.
5. No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

PROPOSED FINDINGS OF FACT

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

PROPOSED CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcel: (Parent parcel is tax lot #TBD, Section 16, T18S, R45E, Assessor's map 18S4516. Malheur County Reference #13746)
"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. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
3. 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.
4. 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 and the back taxes have been paid for the previous ten years.
5. The final description of the new parcel and resulting parent parcel shall be recorded with the Malheur County Clerk on a partition plat prepared by a surveyor licensed in the State

of Oregon. Creating new parcels less than 10 acres must be surveyed by a surveyor licensed in the State of Oregon.

EXIHIBITS

1. Applicant's Letter
2. Applicant's Conditional Use Application
3. Applicant's Land Use Map
4. Applicant's Map of Area
5. Applicant's Proposed Site Plan
6. Letter from Nyssa Road Assessment District #2
7. Letter from Owyhee Irrigation District
8. Letter from Adrian Rural Fire Protection District
9. Soil Map
10. NRCS Soil Classification Sheet for Umapine Silt Loam