

## STAFF REPORT

File No. BRH-2025-003

### BORDER REGION HOUSING REZONING AND LAND DIVISION APPLICATION

03/10/2025 – Application Deemed Complete Date

04/02/2025 – Public Notice Publishing Date

04/24/2025 – Boarder Region Review Board Meeting Date

1. **APPLICANT:** Russell and Nancy Koehn  
5010 Hyline Rd  
Ontario, Oregon 97914
2. **OWNER OF RECORD:** Russell and Nancy Koehn  
5010 Hyline Rd  
Ontario, Oregon 97914
3. **PROPOSED ACTION:** Rezoning one (1) 2-acre parcel from EFU to the BRH zone. The applicant has applied for two (2) cumulative acres.
4. **PROPERTY IDENTIFICATION:** Tax Lot 8200, T16S, R47E, Sec. 21; Malheur County Reference #6274.
5. **CURRENT ZONING AND SIZE:** The entire subject parcel is within the Exclusive Farm Use (EFU) zone and is 76.95 acres.
6. **CURRENT USE:** The subject parcel's primary current use has two (2) single-family dwellings. One was constructed in 1950 and has been remodeled, the second dwelling was constructed in 2005 along with farm buildings. The site of the proposed BRH partition has the 1950 dwelling.
7. **SURROUNDING USE:** The subject property is surrounded entirely by farm ground and single-family dwellings in EFU and ERU.
8. **SIZE OF PROPOSED BRH REZONE AREA:** 2 (two) acres.
9. **REZONE AREA USE:** The intent is to partition off two acres with the 1950 dwelling for a family member.
10. **NUMBER HOMESITES PROPOSED:** There are two (2) existing dwellings on tax lot 8200.
11. **LAND DIVISION:** A land partition application for a land division to create two (2) new parcels has been found to be complete and submitted to the county.

- 12. ROAD ACCESS:** The parent parcel is currently accessed directly off of Hyline Road, Ontario, Oregon. The proposed BRH partition's driveway will be accessed off of Hyline Road.
- 13. SANITATION REQUIREMENTS:** A DEQ-approved sanitation system is already in place for the existing dwellings on this tax lot 8200.
- 14. FIRE PROTECTION:** The rezone area is within the Payette Fire District. The Fire Chief has signed off as the existing dwellings are within this fire district region.
- 15. NATURAL HAZARDS:** No known natural hazards exist on the property. The subject parcels are not within a designated floodplain.
- 16. WATER RIGHTS:** Owyhee Irrigation District provided information that tax lot 8200 has 60 water rights acres within their district. Owyhee Irrigation District wrote, "The water rights sitting on the project location indicated on the map have been relinquished back to Owyhee Irrigation District, and will be removed from the location in the water transfer application submitted to OWRD at the end of 2026."
- 17. SOIL TYPE:** The site of the proposed BRH partition is predominately Class VI soils when unirrigated. The Malheur County Soil Survey shows the location of the existing dwelling (1950) being a 13B and a 35A. Both of these soil numbers when not irrigated are then classified as soil class VI and IV.
- 18. ZONING HISTORY:** The existing single-family dwelling on the parent parcel was built in 1950. In 2005, there was a second dwelling built on tax lot 8200. There is no other known zoning history.

## **EXHIBITS**

1. Complete application materials submitted by applicant
2. Letter from Payette Fire District
3. Owyhee Irrigation District
4. Notarized affidavit signed by property owner stating that the land has not been farmed for the last three years prior to application submittal
5. Letter from Malheur County Assessor's Office
6. Aerial Photograph (2021, 2022, and 2023) of Proposed Rezoning Site
7. Statement from applicant regarding farming profit viability and impact on surrounding lands
8. Letter from the Planning Director regarding land partition feasibility
9. NRCS Soil Survey Study from USDA – Soil class clarification

## **BORDER REGION HOUSING (BRH) REZONING STANDARDS AND CRITERIA**

### **MCC 1-13-5(E) STATUTORY ELIGIBILITY REQUIREMENTS**

To be eligible for consideration by the Review Board, and area proposed for rezoning:

1. Shall be privately owned and zoned Exclusive Farm Use (EFU) or Exclusive Range Use (ERU) and located outside an urban growth boundary.

**Proposed Finding: The property is privately owned by Russell and Nancy Koehn and is zoned EFU and is located outside an urban growth boundary. This criterion is met.**

2. Shall be composed of at least two acres (87,120 square feet) that are not predominantly composed of prime, unique, or Class I-III agricultural soils when either irrigated or not irrigated, as classified by the USDA National Resources Conservation Service (NRCS).

**Proposed Finding: The subject parcel is 76.95 acres, the BRH partition will be 2.00 acres. The proposed BRH partition area is predominately soil class IV and VI soil and are not predominately composed of prime, unique, or Class I – III agricultural soils as shown on the NRCS soil classification documents submitted with this application. This criterion is met.**

3. Shall not be classified as high value farmland as described in ORS 195.300(10); except for subsections 10(c)(B) and 10(f)(E).

**Proposed Finding: The site of the proposed BRH partitions is not classified as high-value farmland. This criterion is met.**

4. Shall not be within a designated critical groundwater area per ORS 537.730-740 or within an area where groundwater withdrawals are restricted by the Oregon Water Resources Commission.

**Proposed Finding: There is only one area in Malheur County that is identified as a critical groundwater area (CGWA), which the Cow Valley alluvial aquifer (33 square miles), identified on 11/12/1959, located off John Day Hwy, between Brogan and Ironside, and outside of the Border Region Area. The subject parcel is not within a designated CGWA. This criterion is met.**

5. Has not been employed for farm use in the prior three years prior to application submission and does not contain five acres or more planted in wine grapes, as demonstrated by aerial photographs, tax records, affidavits from the applicant and abutting property owners, or other substantial evidence.

**Proposed Finding: The property owner has submitted a notarized statement attesting that the area proposed for rezoning has not been employed for farm use in the three**

years prior to application submission. (Exhibit 4), and the Google maps for years 2021, 2022, and 2023 shows no farming has taken place in the last three years. This criterion is met.

6. Does not have an irrigation water right (i.e., the property is not within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resource Department).

**Proposed Finding: The subject parcel has 60 acres of water rights as stated by Owyhee Irrigation District. The water rights sitting on the project location for the proposed 2 acre partition have been relinquished back to Owyhee Irrigation District, and will be removed from the location in the water transfer application submitted to OWRD at the end of 2026. This criteria has been met.**

7. Has not, in the ten years prior to application submission, been assessed for property tax purposes as:
  - a. Open space land under ORS 308A.300 to 308A.330;
  - b. Riparian habitat under ORS 308A.350 to 308A.383;
  - c. Wildlife habitat under ORS 308A.403 to 308A.430; or
  - d. Having a conservation easement under ORS 308A.450 to 308A.465.

**Proposed Finding: The property owner has submitted a letter from Malheur County Assessor's office, attesting that the subject parcel has not, in the ten years prior to the application submission, been assessed for property tax purposes as open space land, riparian habitat, wildlife habitat or having a conservation easement. This criterion is met.**

8. Shall be within a rural fire protection district established under ORS 478.010 to 478.100 and shall meet all applicable fire prevention code requirements.

**Proposed Finding: The property owner has submitted a letter from Payette Fire District attesting that the site of the proposed BRH partitions is within the District and entitled to fire prevention and suppression services. This criterion is met.**

9. Shall not be within the 100-year floodplain as defined on Federal Emergency Management Agency maps and referenced in Malheur County Title 5, Chapter 2 – Flood Control.

**Proposed Finding: The entire subject parcel is not within the 100-year floodplain as defined on FEMA maps and referenced in MCC 5-2. This criterion is met.**

10. If approved, would not exceed the 200-acre cumulative maximum based on (a) the date the application was found complete and assuming that other complete applications will be approved by the Review Board; and (b) records maintained by the Planning Department showing the number, date and acreage of rural dwellings approved under this Article.

**Proposed Finding: As of the date of this staff report, there have been sixteen (16) homes approved and thirty-two (32) acres rezoned. There is one (1) other application for additional home on two (2) acres that have been found complete. This standard is met.**

## **MCC 1-13-5(H) REZONING AND LAND DIVISION REVIEW CRITERIA**

In addition to meeting the statutory and Review Board threshold and locational standards found in Section 1-13-5(E), the applicant shall be responsible for demonstrating to the satisfaction of the Review Board that the proposed rezoning of land meets all the statutory and county criteria set forth in Subsections 1 and 2, below.

### **1. Statutory Criteria:**

- a. The area proposed for rezoning has not been actively farmed for three years prior to application submission as demonstrated by aerial photographs, tax records, affidavits from the applicant and abutting property owners, or other means acceptable to the Review Board.

**Proposed Finding: In addition to the notarized statement submitted by the property owner stating that the proposed BRH rezone area has not been farmed for the last three years, the record includes aerial photographs showing that the land is not irrigated, cultivated or used to graze farm animals.**

**Tax records indicate that the entire property is subject to farm tax deferral. The tax assessor will be advised that the rezoned BRH partition is no longer being farmed and that the farm tax deferral must be removed and will not be applied to the BRH partition. This criterion is met.**

- b. The area proposed for rezoning is not viable for reasonably obtaining a profit through farm use. Expert testimony from experienced farmers, the Farm Bureau or the Oregon State University Extension Service may be considered by the Review Board in making its determination.

**Proposed Finding: The applicant has submitted a statement indicating that the site of the proposed BRH partition is not viable for reasonably obtaining a profit due to the lack of water rights. This criterion is met.**

- c. The property owner has agreed to a condition of rezoning approval to sign and record in the county deed records an irrevocable deed restriction in the form prescribed by the county acknowledging the protected rights of farm, forest and rangeland practices in the area and prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from any farming, forest or rangeland practices if no claim or action is allowed under ORS 30.936 or 30.937 or otherwise protected by law as a farming, forest or rangeland practice.

*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 nonresource uses. Nonresource 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 nonresource 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.*

**Proposed Finding: The applicant has been made aware and agreed to this condition. The deed restriction will be included on the proposed partition plat. With this condition of approval, this standard is met.**

- d. The proposed rezoning, if approved, would not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.
  - i. To address this criterion, the applicant shall describe the accepted farming practices on abutting agricultural properties and explain why the proposed residential use will not force a significant change in such practices.
  - ii. In addition to the signed non-complaint agreement, the Review Board may consider geographic buffers between proposed dwellings and actively farmed agricultural land, such as intervening rural development, stream corridors, slope differentials, or dedicated roads as evidence towards meeting this this criterion.

**Proposed Finding: The applicant has provided a statement stating there will be no impact on the surrounding farm land since the site of the proposed BRH partition has never been farmed and the development will be consistent with the residential use in the area:**

**SURROUNDING USES:**

- a. Land directly to the north is currently has a dwelling and being farmed.
- b. Land to the east is used as farm. There is a single-family dwelling on site as well.
- c. Land to the south is used as farm with a dwelling located on the lot.
- d. Land to the west is used as a farm. There is a single-family dwelling on the site as well.

**To ensure that the proposed homes will not force a significant change on accepted farm practices on land devoted to farm use, all homes will be constructed on the approved two-acre sites at least 100 feet from the any property line, shared with an agricultural use. Based on the information provided above, this criterion is met.**

- 2. County Review Criteria: The Planning Director has certified that the proposed land division, complies (or will comply with conditions of approval) with relevant provisions of Title 7 Subdivisions and Land Partitioning of the Malheur County Code.

**Proposed Finding: Memorandum from the Planning Director stating that the land division proposed in association with the rezoning application is feasible, because it can be conditioned to ensure compliance with applicable land division requirements. In particular, the proposed BRH partition will have direct access to a public road, via**

**30'-wide private easements and can meet county on-site water and sanitation requirements. The existing approach from Hyline Road is currently in place and being utilized by the dwellings located on tax lot 8200. As a condition of land division approval, all fire apparatus access and protection standards recommended by Payette Fire District shall be met before final partition plat approval.**

## **MCC 1-13-5(I) BRH ZONE DEVELOPMENT STANDARDS**

The following dimensional standards apply to proposed single-family dwellings and accessory structures located within the BRH zone.

1. Dimensional Standards. The following dimensional standards shall apply to single-family residential dwelling in the BRH zone.
  - a. Density. The minimum and maximum density in the BRH zone shall be one unit per two (2) acres.

**Proposed Finding: Dimensional standards are met because the proposed homesites (BRH partition) includes exactly two acres and there will be one single-family dwelling on the BRH 2 acre tax lot as shown on the proposed partition. This criterion is met.**

- b. On-Site Sanitary Facilities. All septic tanks, drain fields and wells shall be located on the same parcel or lot as the residential dwelling.

**Proposed Finding: Per DEQ standards, one (1) acre is the minimum required parcel size to meet all the sanitation siting standards. The proposed BRH partition site will be one parcel at two (2) acres. The septic systems for the existing dwellings (1950 and 2005) are already in place for the dwellings. This criterion is met.**

- c. Above Ground Structure Setbacks:
      - i. No building or sight obscuring fence shall be closer than forty (40) feet from a street or road right-of-way line, fifteen (15) feet from any other property line or twenty (20) feet from any major irrigation canal right of way.
      - ii. No sight obscuring fence exceeding three (3) feet in height shall be placed within the forty (40) foot street setback, also within this setback, shrubbery other than trees shall be maintained at heights not exceeding three (3) feet.
      - iii. The minimum setback between habitable structures and actively farmed land or lands zoned EFU or ERU shall be one-hundred (100) feet to mitigate potential existing or future conflicts.

**Proposed Finding: All fence and siting standards will be reviewed to ensure compliance through the zoning permitting process. This criterion is met.**



- d. Building Height. The maximum building height shall be thirty-five (35) feet, measured from the midpoint of the roof.

**Proposed Finding: All building height requirements are met when building permits are applied for. This criterion is met.**

2. Accessory Uses. The standards of Malheur County Code 6-4-2 Accessory Uses shall be met.

**Proposed Finding: There are no accessory structures proposed at this time. This criterion is met.**

3. Access Standards. All dwellings approved in the BRH zone shall meet the emergency fire vehicle access requirements and fire prevention standards as recommended by the applicable Rural Fire Protection District.

**Proposed Finding: All emergency fire vehicle access requirements and fire standards recommended by the Payette Fire District shall be met prior to issuance of building permits. This criterion is met.**

## **CONCLUSION AND RECOMMENDED CONDITIONS OF APPROVAL**

The following standard conditions of approval are recommended to ensure that applicable approval criteria and standards are met.

1. The following non-complaint agreement must be entered into the chain of title for the new BRH partition: (Parent parcel is Tax Lot 8200, T16S, R47E, Sec. 21; Malheur County Reference #6274.)

*“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. To ensure that the approved homesite / parcel is exactly two acres, the rezoning to BRH shall become effective upon final partition plat recording.
3. The resulting BRH partition will no longer be farmed and the farm tax deferral will be not be applied to any BRH partition.



4. Adequate fire apparatus access shall be secured for the resulting BRH partition, as required by Payette Fire District.
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. This approval is valid for two (2) years from the date of this order. A one-time, one (1) year extension may be approved by the Review Board upon request. Substantial action must be taken within this time period or the approval will lapse.

---

Carol Parker, Malheur County Planning Director

---

Date

Attached:

- |            |   |
|------------|---|
| Exhibit #1 | Application with sign-offs              |
| Exhibit #2 | Google Map Year 2021                    |
| Exhibit #3 | Google Map Year 2022                    |
| Exhibit #4 | Google Map Year 2023                    |
| Exhibit #5 | Water Right, Owyhee Irrigation District |
| Exhibit #6 | NRCS Soils map and information          |