Before the Planning Commission

Planning Department File No. 2026-05-001

CONDITIONAL USE APPLICATION
FOR
ONE NON-FARM DWELLING

Planning Commission Meeting Date September 24, 2026

1. **APPLICANT**: Jim & Jacqueline Captein
   PO Box 386
   Herald, CA 95638

2. **PROPERTY OWNER:** Malheur Butte
   PO Box 386
   Herald, CA 95638

3. **PROPOSED ACTION:** Conditional Use approval for a non-farm dwelling.

4. **PROPERTY IDENTIFICATION**: Tax Lot 802, T18S, R46E, Sec. 01; Assessor's Map 18S46ED01; Malheur County Reference #20443

5. **PROPERTY LOCATION AND DIRECTIONS:** From Love's Travel Stop,travel toward NW 10th Street/N Park Boulevard. Turn left onto NW 10th Street/N Park Boulevard, then right onto US-30 Business West. Turn left onto OR-201 South/State Highway 201 and continue for approximately 3 miles. Turn right onto SW 18th Avenue/Butler Boulevard and continue on Butler Boulevard. The subject property will be on the right.

6. **ZONING**: Exclusive Farm Use (C-A1) – 11.45 acres

7. **PARCEL SIZE:** The property is 11.45 acres.

8. **PARCEL USE:** The subject property is currently vacant and undeveloped, with existing vegetation consisting primarily of sagebrush.

9. **SURROUNDING USE:** The subject property is located in an area characterized by agricultural uses and farm dwellings on the parcels directly adjacent to the property.

10. **ACCESS**: The proposed non-farm dwellings will have direct access off Butler Blvd.

11. **SANITATION REQUIREMENTS**: A DEQ approved sanitation system would be required.

12. **FIRE PROTECTION:** The property is within the Ontario Rural Fire Protection District

13. **NATURAL HAZARDS**: None.

14. **WATER RIGHTS:** The property has 0 acres of water rights. There are no water rights on the site of the proposed non-farm dwelling. (Letter from Warmsprings Irrigation District – Exhibit #2).

15. **SOIL TYPE**: The soils on the property are predominately of class 4 (soil map attached to Application).

16. **ZONING HISTORY:** In 2009, File #2009-06-001, two Non-Farm Dwellings and associated Non-Farm Partitions were approved for the subject property. The partitions were completed; however, no development associated with the dwelling approvals was completed within the required timeframe. Therefore, the dwelling approvals expired. There is no other known zoning history associated with the subject property.

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

Proposed Finding: MCC 6-6-8-1 regulates the conditional use process for the non-farm dwellings

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

Proposed Finding: Letter notice was sent to adjacent landowners on August 5, 2026 and published in the Argus Observer on August 5, 2026. No written public comments have been received.

D. Availability of services and utilities.

Proposed Finding: The entire parent parcel is located within the Ontario Rural Fire Protection 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.

Proposed Finding: The proposed non-farm dwelling will not have any effect on the farming/ranching practices so as would interfere with the stability of the community's social and economic characteristics. Use of the property will remain the same.

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.

Proposed Finding: The proposed non-farm dwellings are outside the sage grouse habitat. There is no identified critical fish habitat. Because of these findings, the proposed application does 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.

   Proposed Finding: The proposal is for a non-farm dwelling. The nearest home site will be more than 950 ft away and there will be no impacts on adjoining properties due to natural land barriers. Setbacks, noise, odor and night lighting nuisances with be met.

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

   Proposed Finding: No additional or new landscape is necessary for the visual improvements 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.

   Proposed Finding: The non-farm dwelling will have existing direct access off Butler Blvd per Rural Road Assessment District #3

4. Visual screening of outdoor waste and storage areas.

   Proposed Finding: The proposed development is for a dwelling. Outdoor waste storage will be minimal. This criterion is met.

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

   Proposed 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)

   Proposed Finding: The proposed Non-Farm Dwelling will not adversely impact existing uses in the surrounding area. The proposed non-farm dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor will it significantly

increase the cost of accepted farm or forest practices. Based on the surrounding development pattern and existing land uses, the proposal is compatible with the area and meets these criteria

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

   Proposed Finding: 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

   Proposed Finding: The proposal is for a non-farm dwelling. Due to the location of the proposed building site and the distance to other existing developments, this will not interfere seriously with the accepted farming practices on adjacent land.

3. Does not materially alter the stability of the overall land use pattern of the area; and

   Proposed Finding: Due to the condition of the soils and zoning history of the parcel, there is no other further significant development anticipated on the parcel

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.

Proposed Finding: The site of the proposed non-farm dwelling has not been historically farmed and does not have water rights. The EFU ground will remain dry farm land. Because there are no water rights on the proposed non-farm dwelling site, cannot be reasonably put to farm use in conjunction with other land. From these facts, it is concluded that the proposed as a non-farm dwelling is generally on unsuitable land for the production of farm crops and livestock.

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.

Proposed Finding: This statement will be placed on the deed.

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 802, T18S, R46ED, 01; Assessor's Map 18S46ED01; Malheur County Reference #20443.)

   "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. Adequate access shall be secured for the non-farm dwelling as set out by the Ontario Rural Fire Protection District The driveway shall be constructed to meet the International/Oregon Fire Code requirements.

4. Any new structures on the non-farm dwelling 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.

5. 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.

EXHIBITS

1. Conditional Use Permit application
2. NRCS – Soil Map
3. Letter from Rural Road Assessment District No3
4. Letter from Warmsprings Irrigation District
5. Email from Ontario Rural Fire Protection Distrcit
6. 1 mile radius map

Chad Gerulf, Chair

9-24-26
Date