ORDER - APPROVAL

File No. BRH-2026-017

BORDER REGION HOUSING REZONING AND LAND DIVISION APPLICATION

05/26/2026 – Pre-Application Conference Review Date
07/23/2026 – Application Deemed Complete Date
08/05/2026 – Public Notice Publishing Date
08/27/2026 – Boarder Region Review Board Meeting Date

1. **APPLICANT:** Alyssa Spurgeon
879 Columbia Ave
Nyssa, OR 97913

2. **OWNER OF RECORD:** Boyd Esplin
690 Sarazin Rd
Nyssa, OR 97913

3. **PROPOSED ACTION:** Rezoning one 2-acre parcels from EFU to the BRH zone. The applicant has applied for two (2) cumulative acres to date.

4. **PROPERTY IDENTIFICATION**: Tax Lot 5100, T19S, R46E; Assessor's Map 19S46E; Malheur County Reference #9542.

5. **CURRENT ZONING AND SIZE:** The entire subject parcel is within the Exclusive Farm Use (C-A1) zone and is 81.32 ac.

6. **CURRENT USE:** The subject parcel's primary current use is farm ground. The site of the proposed BRH partitions has been vacant and non-irrigated ground.

7. **SURROUNDING USE:** The subject property is surrounded in entirety by farmland and farm dwellings

8. **SIZE OF PROPOSED BRH REZONE AREA: 2** (two) acres.

9. **REZONE AREA USE:** The intent is to build one new single-family dwellings.

10. **NUMBER HOMESITES PROPOSED:** one new homesites.

11. **LAND DIVISION:** A land partition application for land division to create two new total parcels has been found complete and submitted to the county.

12. **ROAD ACCESS:** The parent parcel is currently accessed directly off Sarazin Rd The proposed BRH partitions will be accessed off Sarazin Rd and onto a 30'-wide private driveway.

13. **SANITATION REQUIREMENTS:** A DEQ-approved sanitation system would be required for each new proposed single-family dwelling.

14. **FIRE PROTECTION:** The rezone area is within the Nyssa Fire Department Exhibit 2)

15. **NATURAL HAZARDS:** No known natural hazards exist on the property. The subject parcel is not within a designated floodplain.

16. **WATER RIGHTS:** The subject parcel is within the boundaries of Owyhee Irrigation District and 2 acres of water rights. The proposed rezone area will have the water righs transferred per Owyhee Irrigiation. (Exhibit 3)

17. **SOIL TYPE:** The subject parcel is covered in soils of class 7. The site of the proposed BRH partitions is predominately covered in soils of class 7.

18. **ZONING HISTORY:** In 2006, File #2006-02-007, a Conditional Use Permit was approved for two Non-Farm Dwellings and a Non-Farm Partition. There is no other known zoning history.

EXHIBITS

1. Complete application materials submitted by applicant
2. Letter from Nyssa Fire Department
3. Letter and water rights map from 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 (dates) of Proposed Rezoning Site
7. Letter from the Planning Director regarding land partition feasibility
8. Letter from Nyssa Rural Road Assessment District #2
9. NRCS – Soil Classification

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 (C-A1) or Exclusive Range Use (C-A2) and located outside an urban growth boundary.

   Proposed Finding: The property is privately owned by Boyd Esplin is zoned C-A1 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 National Resources Conservation Service (NRCS).

   Proposed Finding: The subject parcel is 81.32 ac and each proposed BRH partition will be 2.00 ac. The proposed BRH partitions are predominately covered by soils of class 7 and are not predominately composed of prime, unique, or Class I-III agricultural soils. 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 sq.mi.), 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). 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 is within the boundaries of Owyhee Irrigation District water rights. The site of the proposed BRH partitions does not currently, nor has historically had water rights, per letter from Owyhee Irrigation District. (Exhibit 3).

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. (Exhibit 5) 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 Nyssa Fire Department, attesting that the site of the proposed BRH partitions is within the district and entitled to fire prevention and suppression services. The letter details the required fire apparatus access and prevention standards that must be met prior to final plat approval or home construction. (Exhibit 2) 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 42 homes approved and 81 acres rezoned. There are 2 other applications for additional 4 homes on 7 acres that have been found complete. The proposed rezone application, if approved, would result in 47 homes on 88 acres, to date. 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. (Exhibit 6)

      Tax records indicate that the entire property is subject to farm tax deferral. The tax assessor will be advised that the rezoned BRH partitions are no longer being farmed and that the farm tax deferral must be removed, and will not be applied to the BRH partitions.

      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. (Exhibit 7) 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 partitions has never been farmed and the development will be consistent with the residential use in the area:

SURROUNDING USES:

1. Land directly to the north is currently being farmed.
2. Land to the east is used as farm and range land. There is a single-family dwelling on site as well.
3. Land to the south is used as farm to grow row crops.
4. 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 or forest practices on land devoted to farm or forest 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: Exhibit 8 is a 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 partitions will have direct access to a public road and can meet county on-site water and sanitation requirements. The existing approach from Sarazin Rd is deemed adequate per Nyssa Rural Road District #2 with adequate visibility in both directions. There are no additional requirements prescribed by the Road District (Exhibit 9) 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 dwellings 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 partitions) includes exactly two acres and there will be one single-family dwelling on the BRH 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 partitions site will be two (2) acres. All proposed septic tanks, drain fields and wells will be located on the same parcel as the residential dwelling. 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 Nyssa Fire Department (Exhibit 2) 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 partitions: (Parent parcel is Tax Lot 5100, T19S, R46E; Assessor's Map 19S46E; Malheur County Reference #9542.)

"*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 homesites / parcels are exactly two acres, the rezoning to BRH shall become effective upon final partition plat recording.
3. The resulting BRH partitions will no longer be farmed and the farm tax deferral will not be applied to any BRH partition.
4. The applicant shall enter into a binding agreement committing to home construction within the designated two-year period, or any extension thereof, and recognize the Review Board's right to revoke this approval, pursuant MCC 1-13-5(J) if substantial progress has not been made towards home construction. Substantial progress may be measured, but not limited to, in terms of final land division plat approval, acquisition of building permits for home construction or installation of wells and septic drain fields.

   The Binding Agreement shall be attached to the partition plat and recorded.
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. Prior to completion of the partition plat, the applicant shall transfer the two (2) acres of water rights associated with the subject property through the Owyhee Irrigation District to another property..
7. Easements for utilities and driveway access must be recorded on the final plat.
8. 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.

Bill Buhrig, Chairperson

9/17/26

Date