STAFF REPORT

Planning Department File No. 2026-08-012

CONDITIONAL USE APPLICATION
FOR
A NON-FARM DWELLING AND A NON-FARM PARTITION

Planning Commission Meeting Date: September 15, 2026

1. **APPLICANT**: Robert & Susan Milner Revocable Trust
   1195 Ruby Farm Way
   Manteca, CA 95337

2. **PROPERTY OWNER:** Robert & Susan Milner Revocable Trust
   1195 Ruby Farm Way
   Manteca, CA 95337

3. **PROPOSED ACTION:** Conditional Use approval for one (1) non-farm dwelling (existing home site) and one (1) non-farm partition.

4. **PROPERTY IDENTIFICATION**: Tax Lot 1600, T18S, R46E, Sec. 2; Assessor's Map 18S46E02; Malheur County Reference #7471. 737 Foothill Drive, Ontario OR 97914

5. **PROPERTY LOCATION AND DIRECTIONS:** From Love's Travel Stop at 1041 NW Washington Avenue in Ontario, travel south toward Ontario and continue south on Highway 201. Turn west toward Foothill Drive and continue to **737 Foothill Drive, Ontario, Oregon 97914**. The subject property will be located along Foothill Drive.

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

7. **PARCEL SIZE:** The property is 82.09 acres.

8. **PARCEL USE:** The property is currently being farmed.

9. **SURROUNDING USE:** The property is surrounded by farms and farm dwellings on the properties directly adjacent to the subject parcel.

10. **ACCESS**: The proposed non-farm partition/ dwelling will have direct access off Foothill Drive.

11. **SANITATION REQUIREMENTS**: A DEQ approved sanitation system exists at the non-farm partition and non-farm dwelling home site.

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

13. **NATURAL HAZARDS**: None.

14. **WATER RIGHTS:** The proposed partition area contains approximately 1.5 acres of water rights. The applicant has agreed to transfer the water rights to another location outside of the proposed non-farm dwelling/partition area. A water rights map is included in the application, along with a letter from the Owyhee Irrigation District confirming the proposed transfer (Exhibit #7).

15. **SOIL TYPE**: The soils on the property are predominately of class 6 (soil map attached to Application).

16. **ZONING HISTORY:** There is no known zoning history.

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 a non-farm dwelling and MCC 6-6-8-2 regulates the conditional use process for a non-farm partition.

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

Proposed Finding: Letter notice was sent to adjacent landowners on September 2, 2026 and published in the Argus Observer on September 2, 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 and partition (existing home with 1.0 acre) 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. The dwelling and proposed non-farm partition is on land that historically has not been used for farming.

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 dwelling/ non-farm partition is 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 partition and 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. The home is existing – since 1964. Setbacks, noise, odor and night lighting nuisances are not an issue.

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 partition/ dwelling has direct access off Foothill Drive. There is already an existing approach in place that has been deemed to have adequate visibility in both directions, per Ontario Rural Road District #3

   Visual screening of outdoor waste and storage areas.

   Proposed Finding: The proposed development is for a single family dwellings. Outdoor waste storage will be minimal.

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

   Proposed Finding: Control of outdoor lighting will not be necessary, as the site of the proposed non-farm dwelling is surrounded by farm ground and the nearest home site being more than 950 ft away.

5. 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 non-farm dwelling and partition will not force a significant change in accepted farm practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices. There will no net loss of farm ground. The remaining parent parcel will continue to be farmed. The site of the non-farm partition and dwelling has not been farmed before. The dwelling has a private driveway, designated to only access the proposed dwelling, so there will be no impact to the Foothill Drive traffic.

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 current farming will continue. All existing farm ground in this proposal will remain unchanged. 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 site of the proposed partition/dwelling has not historically been farmed. There is no need to impose a setback for existing agricultural practices to continue. Therefore, a single-family dwelling on a non-farm partition will not interfere with adjacent farm practices.

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 parent parcel. Within the study area, there are 6 parcels larger than the minimum parcel size that may be partitioned to create new parcels for non-farm dwellings.

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 partition/ dwelling has not been historically farmed and does not have water rights. The irrigated soils capability on the remaining farm site is categorized as class I, II and III soils. The EFU ground will remain dry farm land. From these facts, it is concluded that the proposed single family home 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.

MCC 6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:

A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue;

   Proposed Finding: The partition and use as non-farm dwelling is compatible with agriculture uses. The home site and farming have existed together since at least 1964. The home site and partition are not on irrigated soils. The property has geographical conditions support the conclusion that the farm land will not be impacted.

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

   Proposed Finding: The site of the proposed non-farm partition/ dwelling is located outside of the current farming operations.

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

   Proposed Finding: The site of the non-farm partition and dwelling is currently not suitable for farming. The land use patterns will remain the same and will not be altered – home site, farm site and dry farm land.

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:

   a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.

b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses?

Proposed Finding: The soils on the proposed non-farm partition are categorized as class 6 .As such, the soils capability for the propose use is class 6. The site of the proposed non-farm partition/ dwelling has never been farmed.

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

Proposed Finding: The natural landscaping will minimize the impact and conflict with the farm ground/ parent parcel to the south and north. The proposed development will meet environmental standards for air and water quality.

6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)?

Proposed Finding: The proposed non-farm partition is for a single-family residence that fit the criteria listed in ORS 443.400(5) through (10).

7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

Proposed Finding: There are no historical dwellings that are located on the parcel.

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 1600, T18S, R46E; Assessor's Map 18S46E02; Malheur County Reference #7471.)

"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 partition 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 partition 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. Letter from Robert Miller
3. Site Plan
4. Letter from Rural Road Assessment District #3
5. Soil Map & Classifications
6. 1 mile radius map
7. Letter from Owyhee Irrigation District
8. Letter from Ontario Rural Fire Protection District