STAFF REPORT

Planning Department File No. 2026-08-016

CONDITIONAL USE APPLICATION
FOR
TWO NON-FARM DWELLINGS AND TWO NON-FARM PARTITIONS

Planning Commission Meeting Date: September 15, 2026

1. **APPLICANT**: Russell & Lilli Cussins ETAL
   517 Ontario Heights Rd
   Ontario, OR 97914

2. **PROPERTY OWNER:** Russell & Lilli Cussins ETAL
   517 Ontario Heights Rd
   Ontario, OR 97914

3. **PROPOSED ACTION:** Conditional Use approval for two (2) non-farm dwellings and two (2) non-farm partitions

4. **PROPERTY IDENTIFICATION**: Tax Lot 100, T17S, R47E, Sec. 30; Assessor's Map 17S47E30; Malheur County Reference #7020; 517 Ontario Heights Rd, Ontario OR 97914

5. **PROPERTY LOCATION AND DIRECTIONS:** From Love's Travel Stop in Ontario, travel south toward Ontario and proceed south on Highway 201 toward Nyssa. Turn right onto Columbia Avenue and continue west. Turn onto Ontario Heights Road and continue to 517 Ontario Heights Road. The subject property will be located along Ontario Heights Road.

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

7. **PARCEL SIZE:** The parcel is 95.34 acres.

8. **PARCEL USE:** The property to the north is vacant and does not contain any irrigated farmland. The adjacent property to the west is actively farmed with irrigated agricultural ground and also contains a dwelling.

9. **SURROUNDING USE:** Surrounding properties are primarily utilized for agricultural and/or range uses, with some properties also containing single-family dwellings.

10. **ACCESS**: Access is provided from Ontario Heights Road.

11. **SANITATION REQUIREMENTS**: A DEQ-approved sanitation system will be

required for each proposed dwelling, as applicable.

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

13. **NATURAL HAZARDS**: None.

14. **WATER RIGHTS:** The property currently has one acre of water rights located on the north side of the property. According to the letter from the Owyhee Irrigation District, the property owner intends to utilize the one acre of water rights on the east side of the property.

15. **SOIL TYPE**: The soils on the property are class 6.

16. **ZONING HISTORY:** No other 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 adjoining landowners on September 2, 2026 and published in the Argus Observer on September 2, 2026. No comments were received.

D. Availability of services and utilities.

Proposed Finding: The 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 dwelling will have no negative effect on the farming/ranching practices that would interfere with 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.

Proposed Finding: The proposed dwelling is not located in an area that contains fish or wildlife deemed critical or sensitive, and will 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 to build a house on the parcels. The proposed residence will not overshadow adjoining property. This criterion is met.

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

   Proposed Finding: The proposed dwelling will not deteriorate the appearance of the neighborhood. This criterion is met.

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 subject parcel has an existing driveway off Ontario Heights Road. This criterion is met. Please see attached Letter from Rural Road Assessment District No.3 (Exhibit 4)

4. Visual screening of outdoor waste and storage areas.

   Proposed Finding: The proposed development is for two dwellings. 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: This home will not have any impact to any current use in the area. The proposed non-resource dwelling will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices.

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

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 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: The proposed non-farm dwellings will be located on land that has not historically been irrigated or utilized for crop production due to the lack of available water rights. The subject area consists predominantly of Class VI soils, which have significant limitations for agricultural crop production.

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 proposed partitions and use of the resulting parcels for non-farm dwellings are compatible with surrounding agricultural uses and will not remove actively irrigated farmland from production. The partition and use as non-farm dwelling are compatible with agriculture uses.

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 proposed non-farm partitions and dwelling sites are located outside of the areas currently utilized for active farming operations and are not expected to seriously interfere with accepted farming practices on adjacent lands.

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

   Proposed Finding: The proposed non-farm partitions and dwellings are located on portions of the property that are not currently suitable for active agricultural production. Approval of the proposed partitions will not materially alter the existing land-use pattern of the area, which consists primarily of agricultural land with scattered rural residences.

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 non-resource 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 proposed non-farm parcels are located predominantly on Class VI soils with limited agricultural productivity. The proposed parcels are intended to be only as large as necessary to accommodate the non-farm dwellings and associated improvements while maintaining compatibility with surrounding agricultural uses.

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 proposed non-farm parcels are not expected to have a significant adverse impact on farm or range land, watersheds, fish and wildlife habitat, soil or slope stability, air or water quality, or outdoor recreation areas. The proposed development will be required to comply with applicable environmental and development standards.

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: Not applicable. The proposed partitions are not being requested for an existing residential home as described under this criterion.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: Not applicable. There are no historical dwellings located on the subject parcel that would require preservation under this criterion.

OTHER PROPOSED FINDINGS OF FACT:

The applicant has submitted additional 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 100, T17S, R47E Section 30; Assessor's Map 17S47E30; Malheur County Reference #7020.)

   "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 Fire Department and Ontario Rural Road District #3. 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 Huey Reed - Owner
3. Letter from Owyhee Irrigation District
4. Letter from Ontario Rural Fire Protection District
5. Site Plan
6. 1 Mile Radius Map
7. Soil Map and Classifications