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## Land Partition (Type III) LP-21-01

### STAFF REPORT

**Date Submitted:** August 25, 2021

**Agenda Date Requested:** September 1, 2021

**To:** John Day Planning Commission

**From:** Nicholas Green  
Chief Planning Official

**Location:** 311 NE 7<sup>th</sup> Street, John Day, OR 97845  
Map: 13S31E Tax Lot 200

**Type of Action Requested:** Land Partition (Type III)

<input type="checkbox"/>	<b>Resolution</b>	<input type="checkbox"/>	<b>Ordinance</b>
<input checked="" type="checkbox"/>	<b>Formal Action</b>	<input type="checkbox"/>	<b>Report Only</b>

### 1. BACKGROUND

Frances Holmstrom/Lisa Mendez, the owner/agent of Holmstrom Ranch, have applied to create an extension to the Charolais Heights Subdivision with four new parcels on their property. This application also includes a land exchange and right-of-way dedication to the City of John Day of sufficient width to connect the current Charolais Heights Road south to 7th Street and eventually to Third Avenue south of the John Day River, with street and bridge improvements designed to meet current city standards. All preliminary plats shall be reviewed using approval criteria in Section 5-4.3.070 of the Code.

### 2. APPLICABLE CRITERIA

Land Divisions and Property Line Adjustments are subject to Section 5-4.3 of the City of John Day Development Code (the Code), including the approval criteria contained in Section 5-4.3.070. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in Chapter 5-4 of the Code. The procedure “type” assigned to each application governs the decision-making process for that permit or approval. Subdivisions that create four or more lots from one parent lot or a replat involving two (2) or three (3) lots exceeding one (1) acre in size are processed as Type III procedure.

Because this application includes four lots as an addition to the northeast end of the current Charolais Heights subdivision along with extensive right-of-way dedication to the City of John Day, it shall be processed as Type III procedure. A copy of the application materials and transportation impact study relied upon in this application are enclosed with this application.

Staff has reviewed the application pursuant to the Code and the requirements for a land partition. The application was deemed technically complete (ready for review) on August 11, 2021. The City must make a final decision, including a final city council decision on any appeal, within 120 days, or by December 11, 2021.

### **3. PUBLIC NOTIFICATION**

The City of John Day mailed public hearing notices to the applicant and property owners within 100-feet of the subject site on August 12, 2021. Notice of the hearing was printed in The Blue Mountain Eagle on August 18, 2021.

### **4. BURDEN OF PROOF**

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.

### **5. PLANNING COMMISSION AND CITY COUNCIL CONSIDERATIONS**

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type III procedure under section 5-4.1.040.

### **6. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission **approve the request for Land Partition LP-21-01, subject to review and consideration of applicable public comments.** It is the applicant's responsibility to demonstrate compliance with the conditions of approval.

### **7. APPROVAL CRITERIA AND FINDINGS**

John Day Development Code Section 5-4.3.020 Land Divisions and Property Line Adjustments—General Requirements, 5-4.3.050—Preliminary Plat Approval Process, and 5-4.3.070 Approval Criteria. The Planning Commission's evaluation of the project must focus on the relevant code criteria under Section 5-4.3 and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary. The plans, exhibits, and narrative submitted by the applicant and used in making the findings are attached to this report and include:

- Application (Exhibit A)

- Preliminary Plat (Exhibit B)
- Future Redevelopment Plan (Exhibit C)
- Draft Development Agreement (Exhibit D)
- Transportation Study (Exhibit E)

All of the above documents are hereby incorporated and made part of the public record.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

**5-4.3.020 Land Divisions and Property Line Adjustments—General Requirements**

- A. **Subdivision and Partition Approval Through Two-step Process.** *Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:*
1. *The preliminary plat must be approved before the final plat can be submitted for approval consideration; and*
  2. *The final plat must include all conditions of approval of the preliminary plat.*

**Findings:** Proposed preliminary plat will be approved prior to submission of final plat.

- B. **Compliance with Oregon Revised Statutes (ORS) Chapter 92.** *All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.*

**Findings:** This proposal is in compliance with ORS chapter 92.

- C. **Future Re-Division Plan.** *When subdividing or partitioning tracts into large lots (i.e., greater than two times or 200 percent the minimum lot size allowed by the underlying land use district), the City shall require that the lots be of such size, shape, and orientation as to facilitate future re-division in accordance with the requirements of the land use district and this Code. A re-division plan shall be submitted for large lots identifying:*
1. *Potential future lot division(s), consistent with the density and minimum lot size standards of Article 5-2;*
  2. *Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;*
  3. *A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.*

**Findings:** The Future re-division plan was drafted by city staff to show the potential maximum development for the portion of the Holmstrom Ranch located within the city limits. The majority of this ranch is located outside of the city limits and outside of the City’s urban growth boundary. The applicants did not participate in this process and neither they nor any future property owner

are bound to it. This plan would allow for ten single family lots with direct driveway access to the future Holmstrom Road at a minimum size of 5,000 sf per lot, with approximately 20 one-acre parcels along the Prospector Road above Charolais Heights. The more likely development plan would be a future subdivision upon annexation of additional land within the ranch, which would require amending the City's urban growth area and/or approval by Grant County.

*D. **Lot Size Averaging.** Single family residential lot size may be averaged to allow lots less than the minimum lot size in Residential districts, pursuant to Section 2.2.030, or through approval of a Master Planned Development under Chapter 5-4.5.*

**Findings:** This proposal does not include a request for a reduction in minimum lot size.

*E. **Temporary Sales Office.** A temporary sales office in conjunction with a subdivision may be approved as set forth in Section 5-4.9.010, Temporary Uses, and subject to the requirements for mobile homes and recreational vehicles in Chapter 5-2.5, as applicable.*

**Findings:** Not applicable

*F. **Minimize Flood Damage.** All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway and, where possible, allow building outside of the flood fringe. Development in a 100-year flood plain shall comply with the National Flood Insurance Program, State building code requirements, including elevating structures above the base flood elevation, and the City of John Day Flood Plain Overlay. The applicant shall be responsible for obtaining floodplain development permit from the NFIP and local jurisdiction.*

*G. **Determination of Base Flood Elevation.** Where a development site consists of five (5) or more acres or 50 or more lots, and is located in or near areas prone to inundation for which the base flood elevation has not been mapped, the applicant shall have the base flood elevation it shall be prepared by a qualified professional as part of the land division application.*

**Findings:** The portion of this property subject to future redevelopment is entirely outside of the flood plain and is not prone to inundation.

*H. **Need for Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.*

**Findings:** Adequate public utilities for the proposed lots are available adjacent to and within the site. The future re-division plan will be kept on record to ensure future development has adequate utilities. The applicant is dedicated right of way to the city of John Day for the public improvements, including a full complement of utilities (water, sewer, stormwater, power and fiber optic internet) with streets designed to city standards as outlined in the city's transportation system plan updates: (1) the 2009 Local Street Network Plan, which includes this road (Project #13 and #18) and 2019 Innovation Gateway Area Plan and Technical Appendix. Both documents

are available on the city website at: <https://www.cityofjohnday.com/planning/page/master-plans-studies-and-reports>

- I. ***Need for Adequate Drainage.*** All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required.

**Findings:** Current lot is not susceptible to accumulation of surface water. No drainage improvements are required at this time.

- J. ***Floodplain, Park, and Open Space Dedications.*** Where land filling and/or development is allowed within or adjacent to regulatory flood plain and the Comprehensive Plan designates the subject flood plain for park, open space, or trail use, the City may require the dedication of sufficient open land area for a greenway and/or trail adjoining or within the flood plain for transportation, storm drainage/water quality, or park purposes in the public interest. When practicable, this area shall include portions at a suitable elevation for the construction of a multi-use pathway in accordance with the City's adopted trails plan or pedestrian and bikeway plans, as applicable. The City shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, or as may be required for stormwater management.

**Findings:** The applicant is dedicating right-of-way for future street and utility improvements as outlined in the future redevelopment plan. No additional public space is required or requested by the City as this development is adjacent to the 7<sup>th</sup> Street Sports Complex, one of the largest parks in the city limits.

#### ***5-4.3.050 Land Divisions and Property Line Adjustments—Preliminary Plat Approval Process***

- A. ***Review of Preliminary Plat.*** Review of a preliminary plat with two (2) or three (3) lots (partition), or a replat involving two (2) or three (3) lots, and not exceeding one (1) acre shall be processed using a Type II procedure, under Section 5-4.1.030. Preliminary plats involving four (4) or more lots (subdivision), replats involving four (4) or more lots, and partitions larger than one (1) acre shall be processed using a Type III procedure under Section 5-4.1.040. All preliminary plats shall be reviewed using approval criteria in Section 5-4.3.070. An application for subdivision may be reviewed concurrently with an application for a Master Planned Development under Chapter 5-4.5.

**Findings:** The proposed Land Partition exceeds one acre and must be processed as a type III procedure.

- B. ***Review of Final Plat.*** Review of a final plat for a subdivision or partition shall be processed using a Type I procedure under Section 5-4.1.030, using the approval criteria in Section 5-4.3.090, except where the Planning Official requires that a Type II or Type III procedure is required due to changes the applicant proposes to the preliminary plat.
- C. ***Preliminary Plat Approval Period.*** Preliminary plat approval shall be effective for a period of two (2) years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the 2-year period. The Planning Commission may approve phased projects, including master planned developments, with overall time tables of more than two (2) years between preliminary and final plat approvals.

*D. **Modifications and Extensions.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 5-4.6 - Modifications. The City Planning Official may, upon written request by the applicant and payment of the required fee, grant one written extension of the approval period not to exceed one year; provided that:*

- 1. Any changes to the preliminary plat follow the procedures in Chapter 5-4.6;*
- 2. The applicant has submitted written intent to file a final plat within the one-year extension period;*
- 3. An extension of time will not prevent the lawful development of abutting properties;*
- 4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and*
- 5. The extension request is made before expiration of the original approved plan.*

*E. **Phased Development***

- 1. The City may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any partition or subdivision phase be more than 2 years without reapplying for a preliminary plat;*
- 2. The criteria for approving a phased land division proposal are:*
  - a. Public facilities shall be constructed in conjunction with or prior to each phase;*
  - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Section 5-4.3.110. A temporary public facility is any facility not constructed to the applicable City or district standard;*
  - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and*
  - d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.*

**Findings:** Staff will review the final plat as a type I procedure if submitted within 24 months of preliminary plat approval provided the proposal does not substantially change. A phased development has not been requested. The City of John Day will be performing the improvements and will prepare the final plat on behalf of the application per the development agreement, enclosed as Exhibit D.

**5-4.3.070 Land Divisions and Property Line Adjustments—Approval Criteria: Preliminary Plat**

*A. **General Approval Criteria.** The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:*

- 1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable ordinances and regulations. At a minimum, the provisions of this Article, and the applicable chapters and sections of Article 5-2 (Land Use Districts) and Article 5-3 (Design Standards) shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 5-5;*

2. *The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;*
3. *The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;*
4. *All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat; and*
5. *Evidence that any required State and federal permits have been obtained, or shall be obtained before approval of the final plat;*
6. *Evidence that improvements or conditions required by the City, road authority, Grant County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and*
7. *If any part of the site is located within an Overlay Zone, or previously approved Master Planned Development, it shall conform to the applicable regulations and/or conditions.*

**Findings:** The proposal complies with City development code requirements for land partitions in the Residential General Zone. No improvements are proposed at this time. The purpose of this proposal is to separate the portion of the property that is within the city limits for public improvements and the creation of four buildable parcels from the rest of the ranch. This process will allow for the future residential development of the portions of the ranch within the city limits and improved public access, as documented in the City's 2021 Transportation Study (Exhibit E).

## **8. PLANNING COMMISSION MOTION**

After hearing the applicant's presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate. The following motion is suggested:

"I move to approve Land Partition LP-21-01 based on the findings and subject to the conditions of approval contained in the staff report."

*The staff report may be amended during the course of the hearing.*

**Respectfully submitted this 25<sup>th</sup> Day of August, 2021**



Nicholas Green, Chief Planning Official  
City of John Day

### Attachments:

- Application (Exhibit A)
- Preliminary Plat (Exhibit B)
- Future Redevelopment Plan (Exhibit C)
- Draft Development Agreement (Exhibit D)
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