



**Crook County Community Development**  
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**Amended Staff Report**  
**217-21-000513-PLNG, Appeal of 217-21-000431-PLNG - Farm Relative Dwelling**

**September 1, 2021**

**APPLICANT:** Patrick Lane  
231 N Main  
Prineville, Oregon 97754

**APPLICANT'S ATTORNEY:** Lisa Andrach  
Fitch & Neary PC  
210 SW 5<sup>th</sup> Steet Ste 2  
Redmond, Oregon 97756

**APPELLANT:** Central Oregon LandWatch  
Rory Isbell  
2843 NW Lolo Drive  
Bend, Oregon 97703

**BACKGROUND:** Central Oregon Land Watch (COLW) filed an appeal (Attachment A) on June 18, 2021, of an administrative decision approving a relative farm help dwelling. On August 11, 2021, the Planning Commission had a hearing and received testimony from both parties. The record was held open for seven days to submit any additional written testimony (August 18, 2021), followed by a written rebuttal period for seven days (August 25, 2021), then a seven-day final argument period (September 1, 2021). Central Oregon Land Watch submitted additional testimony (Exhibit 5) and the Applicant submitted rebuttal (Exhibit 6).

This amended staff report includes the original decision, testimony, and exhibits.

**REQUEST:** The Applicant is requesting approval to build a 1780[/] Relative Farm Help Dwelling on the subject property for the property owner's parents whose assistance is needed for the farm operations. They would also like to live temporarily in a Recreational Vehicle during the construction of the dwelling.

**THE ABOVE ENTITLED MATTER** came before the Crook County Planning Commission at its regular meeting on August 11, 2021, and September 8, 2021. Based on a review of the issues raised on appeal and considering information provided by the Applicant's Burden of Proof Statement, supplemental materials, a review of applicable criteria, the staff reports and oral and written testimony, the Planning Commissioners participating in the hearing voted to [approve/deny] the staff recommendation to approve the relative farm help dwelling.

**FINAL DECISION:** Administrative decision (as modified based on Commission directions) subject to conditions:  
Approved \_\_\_\_\_  
Denied \_\_\_\_\_

The staff recommendation to approve the proposed relative farm help dwelling is \_\_\_\_\_ subject to the following conditions of approval:

**CONDITIONS AND REQUIREMENTS:**

- (1) All requirements of the County Sanitarian and the Building Official are to be adhered to and any required building permits and septic permits are to be obtained.
- (2) The approved dwelling will be used by the property owner’s father and mother who will be involved in the day-to-day farm operations on the property. A change in use of the dwelling may trigger additional land use requirements. This approval is not transferrable to a new to a new property owner without Crook County Planning Department approval.
- (3) The property owner will sign a “non-remonstrance” agreement regarding farm use.
- (4) The use of a Recreational Vehicle is valid for one year and will expire September 18, 2022.

**APPLICABLE CRITERIA:**

**Crook County Code**

Chapter 18.16 Exclusive Farm Use Zones  
18.16.030(c) Definitions  
18.16.015(3) Relative farm help dwelling  
18.16.015(25) Single family dwelling deeds  
18.16.075 Development standards

**Chapter 18.132 Manufactured Dwellings**

18.132.080 Recreational vehicle on an individual lot.

(1) An RV may only be stored or placed on a lot or parcel, but not lived in or used as a dwelling, if there is also a permitted dwelling, as defined in Chapter 18.08 CCC, on the same parcel or lot, except:

\*\*\*\*

(b) An RV may be placed on a lot for which a valid building permit is issued for a residence. The RV may be occupied for no more than one year;

**Oregon Revised Statutes**

ORS 215.203 Definition of Farm Use  
ORS 215.283(1) Permitted uses in Exclusive Farm Zones

## Policies.

*To maintain a viable agricultural base, preserve agricultural lands for agriculture, and to protect agriculture as a commercial enterprise, It shall be the policy of Crook County, Oregon, to preserve agricultural lands, to protect agriculture as an economic enterprise, to balance economic and environmental considerations, to limit non-agricultural development, to maintain a “low” population density, and to maintain a high level of livability in the county.*

## **BASIC FINDINGS:**

- A. **Location:** The property is located at 5712 NW Ryegrass Rd, and is identified on the County Tax Assessor’s map as Township 14S, Range 15E WM, Section 03, Tax lot 201.
- B. **Zoning:** Exclusive Farm Use - 2 (Prineville Valley – Lone Pine Areas).
- C. **Background:** The subject parcel is approximately 197.46 acres and is zoned Exclusive Farm Use – 2 (Prineville Valley – Lone Pine Areas). It is designated “Agricultural” in the Crook County Comprehensive Plan. The property is currently in farm use and is receiving farm tax deferral. It is surrounded by irrigated cropland. The property has irrigation water rights through the Ochoco Irrigation District. The property is used primarily for hay production and cattle.
- D. **Ownership:** MF 2018-286111; recorded 03/26/2018.
- E. **Access:** The parcel is accessed via NW Ryegrass Road, a County road with a “grandfathered” approach (217-20-000205-PLNG).
- F. **Irrigation:** Ochoco Irrigation District (OID), the subject property has irrigation water rights. They provided a comment to work with the owner to determine a need to transfer water rights.
- G. **Septic:** The Applicant has authorization to connect to septic system (217-16-000502-SEP).
- H. **Domestic Water:** The farm relative dwelling will be served by the existing domestic well.
- I. **Property Line Setbacks:** In the County’s EFU zones, dwellings must be setback 100’ from each property line. Based on the Applicant’s plot plan, the property line setback requirements for the dwelling will be met.

## **FINDINGS:**

The applicable criteria are in standard font and original findings are in *italics*. The amended findings based on the record are in ***bold/italics***. Crook County adopted the Department of Land Conservation and Development’s “model code” for resource lands. The language in Crook County Code 18.16 (Exclusive Farm Use zones) mirrors language in Oregon Revised Statutes (ORS 215.283) and Oregon Administrative Rules (OAR 660-033).

**18.08.030 C Definitions** “Commercial agricultural enterprise” consists of farm operations which will:

- (a) Contribute in a substantial way to the area’s existing agricultural economy;
- (b) Help maintain agricultural processors and established farm markets; and
- (c) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

***Staff finds that the applicant has provided sufficient support for a finding that the property is of such scale and intensity to be a commercial farm operation. Factors contributing to this determination include the tonnage produced and markets the applicant sells to, the primary farm dwelling approval supporting the property with the primary farm operator, the quantity of time the operator spends managing and providing day-to-day operations.***

***The applicant has provided testimony and stated in Exhibit 2, that the crops produced on the site and livestock are sold to local markets and some exported through established farm markets.***

**18.08.060 F Definitions** “Farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise....”.

*The Applicant described the current employment of the land for the primary purpose of raising hay and cattle for profit. The property has irrigation water from Ochoco Irrigation district and the irrigation system includes an older pivot as well as hand lines. The existing land use meets the definition of farm use.*

***Neither Crook County Code nor the State defines what qualifies as Commercial Farm Operations. This lack of definition allows for the County to determine what the term is. Staff included the definition of Farm Use for the original approval.***

The use table in Crook County Code 18.16.010 identifies the standards that apply (CCC 18.16.015(3)) to reviewing an application for a farm relative dwelling.

**18.16.015(3) To qualify for a relative farm help dwelling:**

(a) A dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm.

*The Applicant is requesting adding a home on the subject parcel for his father and mother to live in so they can help with the management and farm use of the existing commercial operation. The property owner will continue to live in the primary farm dwelling. The Applicant states that he needs assistance changing water and irrigation multiple times per day as he is generally gone for 3 months in the summer.*

*He also needs assistance with feeding cattle and during calving season. He has on-going need for assistance with maintenance of irrigation and other equipment (pumps, pivot...).*

***Central Oregon Land Watch (COLW) assigned error to this finding stating: “The decision fails to find, supported by substantial evidence, that the subject property is an existing commercial farming operation.” (Exhibit 1). Then in Exhibit 5, COLW states, “The applicant presented significant new evidence and argument at the August 11, 2021 public hearing.” They go on to state that, “That the applicant’s oral testimony about commercial activity on the subject property alone is not sufficient.” (Exhibit 5).***

***As “commercial farming operation” is not defined by statute or rule, LUBA has articulated three “safe harbor” tests to satisfy this criterion in lieu of articulating specific thresholds to distinguish a commercial farming enterprise from those that are non-commercial. Richards v. Jefferson County, 79 Or LUBA 171 (2019).***

***Staff reviewed the “safe harbor” tests and found that the first test, which requires the minimum parcel size be consistent with continuing the “commercial agricultural enterprise” within a local area, is met. The minimum parcel size for a farm parcel in the EFU-2 zone is 80 acres and the subject parcel has more than double that acreage in crop production at 190 acres and 750 tons of hay produced (Exhibit 2). Staff has determined that this is of such scale and intensity to be considered a commercial farm operation which contributes to the local agricultural economy.***

***The Applicant provided a supplemental burden of proof that includes further description of the existing commercial farm operation. “The operation has approximately 197 acres of water rights, and 190 of the 197.46 acres are in crop production.” (Exhibit 2). “The applicant sells the Timothy Hay to both local Oregon markets, as well as to Korea.” (Exhibit 6). Further The Applicant has stated in Exhibit 6, “Applicant testified to the sale of 25 cattle (\$12,000) and over 750 tons of hay (\$100,000 gross revenue) The market price for hay is \$250/ton on average with the range usually \$250-\$330 / ton, and he sells at least 750 tons annually.”***

***COLW submitted a business registry for Lane Land and Livestock LLC, which lists Patrick Lane as the sole proprietor (Exhibit 1). The applicant acknowledges that in Exhibit 2, and states, “This cattle operation consists of at least 25 cattle, or 13 pair. The applicant sells his cattle to the local market via Tommy Norton Jr. Cattle Co., an Oregon registered domestic business corporation located in Madras, Oregon.” In Exhibit 6, the Applicant provided quantitative measure for the amount of time spent farming, “Here, applicant testified that he devotes all of his working hours to operating the farm. He has no other employment. As the owner/operator of the farm, he is engaged in operations full-time, which during irrigation season can easily be a minimum of 10-12 hour days, 7 days a week.” Also in Exhibit 6 the, “Applicant testified that he is not employed elsewhere, he works on the farm full time and has no other source of assistance on the farm...”***

***COLW testified that a critical fact for the assignment of error in the application and decision was that Mr. Lane was absent from the property and would require assistance.***

***The Applicant provided explanation of his absence from the property testifying that he vacations. “As applicant testified, even during the time he is away from the property, he is still directing the day-to-day***

*needs of the farm, marketing his crops, and as a business owner he is always conducting business.” (Exhibit 6).*

*In Exhibit 6 the Applicant further described the need for assistance. “The applicant testified that his father, James is required to assist with the day-to-day operations, and while the applicant is away from the property James is required to feed and tend cattle and horses, and move/monitor/repair the irrigation pivot, handlines, and wheel lines as needed. During calving season, he will assist with monitoring the pregnant cows, and births of calves.” Also in Exhibit 6, “His father is expected to contribute no more than 40% of the overall hours required for the commercial farm operation.”*

*Staff finds that the applicant has provided sufficient evidence to support a finding that the property is of such scale and intensity to be a commercial farm operation. Factors contributing to this determination include the tonnage produced and markets the applicant sells to, the primary farm dwelling approval which houses the primary farm operator, and the quantity of time the operator spends managing and providing day to day operations. Staff also recognizes the need as indicated by the applicant to have assistance in those daily tasks with the additional hours put in by this father in support of his son and his son’s business.*

(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.

*The dwelling is on the same parcel as the primary farm dwelling and will share an existing driveway. Both dwellings are located on real property used for farm use.*

*Staff finds that the second “safe harbor” test can also be satisfied, in that the Applicant received approval for a primary farm dwelling in conjunction with farm use 2020.*

*Mr. Lane received approval for a primary farm dwelling in 2020, which states, “The property owner will be engaged in day-to-day management of farm and land management operations on the subject property. The Applicant states that he will take care of all irrigation and upkeep of fencing and irrigation equipment (pivot, wheel lines, hand lines...). The Applicant states that he will manage the custom haying on the property.”*

*Staff finds that the time spent away from the farm as described by the applicant with support from his dad allows for smooth operation during the peak season..*

**18.16.015(25) Single-Family Dwelling Deeds.** The landowner shall sign and record in the deed records for the county a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS [30.936](#) or [30.937](#).

*The Applicant shall be required to sign a “non-remonstrance” agreement, prohibiting the owners and owners’ successors in interest from pursuing a claim for relief or cause of action alleging injury from farming practices. (There are no forest practices occurring in the area).*

**18.16.075 Development standards.**

All dwellings and structures approved pursuant to Table 1 (18.16.010) shall be sited in accordance with this section.

(1) Lot Size Standards. Lot size shall be consistent with the requirements of CCC 18.16.070.

(2) In an EFU zone, the minimum setback of a residence or habitable structure shall be 100 feet from a property line. If a parcel in the EFU zone is nonbuildable as a result of the habitable structure setback requirements, the commission may consider a conditional use application from the landowner to adjust the setback requirements to make the parcel buildable.

*The setback requirements will be met by the proposed dwelling. This is a pre-existing lot. No new parcels are being created.*

**CONCLUSIONS:**

Based on the information provided by the Applicant, other information in the record and written and oral testimony, and on a review of the applicable state and county requirements, the Planning Commission finds that the proposed Relative Farm Help Dwelling [meets/does not meet] the requirements for [approval/denial] and is consistent with the Crook County Comprehensive Plan.

This permit expires if the project is not implemented within two years from the date of the signed decision.

DATED THIS \_\_\_\_\_ DAY OF September 2021

\_\_\_\_\_  
Michael Warren, Planning Commission Chair

\_\_\_\_\_  
Katie McDonald, Planner

**NOTICE TO PERSONS PROVIDING TESTIMONY**

The above approval may be appealed in writing to the Crook County court no later than 4:00 p.m. on \_\_\_\_\_, 2021 (twelve calendar days from the effective date of this \_\_\_\_\_) on payment of an appeal fee of \$2000.00 plus 20% of the initial application fee. The appellant must also provide written transcripts of the relevant meeting tapes at the appellant's expense.

Appeals must be submitted to the Crook County planning Department, 300 NE Third Street, Prineville, Oregon, and must be received together with the appeal fee by the Planning Department no later than the above time and date.

Respectfully Submitted,



Katie McDonald, Planner

CC: Applicant  
Agent  
Central Oregon Land Watch