

TITLE 6 ZONING

CHAPTER 1 PURPOSE AND DEFINITIONS

SECTION:

6-1-1: Title

6-1-2: Purpose

6-1-3 Definitions

6-1-1: TITLE: This title shall be known as the MALHEUR COUNTY ZONING ORDINANCE and shall be cited herein as "this title" and the maps herein referred to shall be known as the Malheur County zoning maps, and hereafter referred to as the "zoning maps". Said maps and all explanatory matter thereon are hereby adopted and made a part of this title 1. (Ord. 86, 12-7-1993)

(Notes See Section 6-3-3 of this title.)

6-1-2: PURPOSE: The purpose of this title is to establish zones that regulate the location and use of buildings, structures and land for agricultural, recreational, educational, residential, commercial and industrial purposes; to implement the policies established in the Malheur County comprehensive plan; to regulate and limit the percent of lot coverage of buildings and other structures hereafter erected or altered; to establish minimum widths and areas for the subdivision or re-subdivision of lots; to protect future primary roads and enable the widening of certain existing roads; to promote a high quality environment; and to promote public health, safety and welfare. (Ord. 86, 12-7-1993)

6-1-3: DEFINITIONS: For the purpose of this title, all words in the present tense shall include the future; all words in the singular shall include the plural; the masculine shall include the feminine and neuter; and the word "shall" is mandatory and not discretionary. The following words and terms are construed and defined as follows:

1. ACCEPTED FARMING RESOURCE PRACTICE: The A mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use. As applied to composting operations on high-value farmland, "accepted farming practice" includes composting operations that either: 1) compost only materials produced on the subject tract, or 2) compost materials brought from off-site and processed alone or in conjunction with materials generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract. in conformance with state and federal regulations, common to farms or ranches of a similar nature and necessary for the operation of such farm or ranch operation to obtain a profit in money and customarily utilized in conjunction with farm use.

2. ACCESS: The place, means or way by which pedestrians, vehicles or utilities shall have safe ingress or egress to a property, use or parking space. Access management guidelines are located in Table 7-2 of the Malheur County Transportation System Plan (TSP).
3. ACCESSORY DWELLING UNIT: A residential structure that is used in connection with or that is auxiliary to a single-family dwelling.
4. ACCESSORY USE OR STRUCTURE: A detached structure, the use of which is customarily incidental to that of the primary structure or the primary use of the land and which is located on the same lot or parcel as the primary structure or use, and for which the owner files a restrictive covenant in the deed records of the county agreeing that the accessory structure will not be used as a residence or rental unit. the use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use (e.g., a garage or storage building).
5. ACCESSWAY: A walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway and additional land on either side of the walkway, often in the form of an easement or right of way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in a manner that provides convenient access for pedestrians.
6. ADMINISTRATIVE SITE: Property owned or managed by OPRD (Oregon Parks and Recreation Department) that is solely for state park administration or maintenance facilities, or both, and which is not within a contiguous to a state park.
7. AFFECTED AREA: Property within the area of a subject property. Specifically, that area within two hundred fifty feet (250'), excluding streets and alleys.
8. AFFORDABLE HOUSING: Housing in which all units are affordable to households with incomes equal to or less than 60 percent (60%) of the area median income as defined in ORS 458.610 (Definitions for ORS 458.600 to 458.665) and whose affordability is enforceable by an affordable housing covenant, as described in ORS 456.270 (Definitions for ORS 456.270 to 456.295) to 456.295 (Action affecting covenant), for a duration of no less than 30 years. (ORS 197.754)
9. AGRICULTURAL BUILDING: Any structure that is considered to be an "agricultural building" as defined in ORS 455.315 on a lot or parcel that is enrolled in a farm or forest deferral program with the County Assessor and for which the owner 1) submits a signed floor plan showing that only farm-or forest-related uses will occupy the building space and 2) files a restrictive covenant in the deed records of

the county agreeing that the agricultural building will not be used as a residence or rental unit.

- 9a. **AGRI-TOURISM:** A common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to a working farm. Such uses may include hay rides, corn mazes and other similar uses that are directly related to on-site agriculture. Any assembly of persons shall be for the purpose of taking part in agriculturally-based activities such as animal or crop care, tasting farm products or learning about farm or ranch operations. Agri-tourism may include farm-to-plate meals. Except for small, farm-themed parties, regularly occurring celebratory gatherings, weddings, parties or similar uses are not Agri-tourism.

10. AIRPORT:

A. **AIRPORT APPROACH SAFETY ZONE:** A fan-shaped area twenty feet (20') outward for each foot upward (20:1), two hundred fifty feet (250') wide beginning two hundred feet (200') beyond the end of and at the same elevation as the runway and extending to horizontal distance of five thousand feet (5,000') along the extended runway center line to a width of one thousand two hundred fifty feet (1,250').

B. **AIRPORT HAZARD:** Any structure, tree or use of land which exceeds height limits established by the airport imaginary surfaces.

C. **AIRPORT IMAGINARY SURFACES:** Those imaginary areas in space which are defined by the airport approach safety zone, transitional zones, horizontal zone, clear zone and conical surface and in which any object extending above these imaginary surfaces is an obstruction.

D. **CLEAR ZONE:** Extended from the primary surface to a point where the approach surface is fifty feet (50') above the runway end elevation.

E. **CONICAL SURFACE:** Extends one foot (1') upward for each twenty feet (20') outward (20:1) for four thousand feet (4,000') beginning at the edge of the horizontal surface (5,000 feet from the end of the runway at 150 feet above the airport elevation) and upward extending to a height of three hundred fifty feet (350') above the airport elevation.

F. **HORIZONTAL ZONE:** A horizontal plane one hundred fifty feet (150') above the established airport elevation, the perimeter of which is constructed by swinging arcs of five thousand feet (5,000') from the center of each of the primary surfaces of each runway and connecting the adjacent arcs by lines tangent to those arcs.

G. **NOISE IMPACT:** Noise levels exceeding fifty-five (55) Ldn.

H. **TRANSITIONAL ZONES:** Extended one foot (1') upward for each seven feet (7') outward (7:1) beginning one hundred twenty-five feet (125') on each side of the runway center line (primary surface), which point is the same elevation as the

runway surface, and from the sides of the approach surfaces thus extending upward to a height of one hundred fifty feet (150') above the airport elevation (horizontal surface). (Ord. 86, 12-7-1993)

11. ANCILLARY FACILITIES: All buildings, interior and exterior enclosures, and equipment associated with a wireless telecommunication facility.
12. ANTENNA(S): An electrical conductor or group of electrical conductors that radiate or receive radio waves.
13. ARABLE LAND: Land can be plowed and used to grow crops. It can include land used for temporary crops, meadows, gardens, and land that is temporary fallow. Arable land is usually worked regularly, often using a system of crop rotation.
- 13a. ASSOCIATED TRANSMISSION LINES: Transmission lines constructed to connect an energy facility to the first point of junction with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.
- 13b. BED AND BREAKFAST FACILITY: An accessory use in a single-family dwelling in which lodging and a morning meal for guests only are offered for compensation, having no more than five (5) sleeping rooms for this purpose. A bed and breakfast facility must be within the residence of the operator and be compliant with the requirements of ORS 333-170-0000(1). A bed and breakfast facility may be reviewed as either a home occupation or as a room and board operation.
14. BICYCLE: A vehicle designed to operate on the ground on wheels, propelled solely by human power, upon which any person or persons may ride, and with two (2) tandem wheels at least fourteen inches (14") in diameter. An adult tricycle is considered a bicycle.
 - A. BICYCLE FACILITIES: A general term denoting improvements and provisions made to accommodate or encourage bicycling, including parking facilities and all bikeways.
 - B. BIKEWAY: Any road, path, or way that is some manner specifically open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are shared with other transportation modes. The five (5) types of bikeways are:
 - i. Multiuse Path: A paved ten (10) to twelve foot (12') wide way that is physically separated from motorized vehicular traffic; typically shared with pedestrians, skaters, and other nonmotorized users.
 - ii. Bike Lane: A four (4) to six foot (6') wide portion of the roadway that has been designated by permanent striping and pavement markings for the exclusive use of bicycles.

- iii. **Shoulder Bikeway:** The paved shoulder of a roadway that is four feet (4') or wider; typically shared with pedestrians in rural areas.
 - iv. **Shared Roadway:** A travel lane that is shared by bicyclists and motor vehicles.
 - v. **Multiuse Trail:** An unpaved path that accommodates all terrain bicycles; typically shared with pedestrians.
15. **BLOCK:** A contiguous series of lots bounded on all sides by streets, railroad right of way, or subdivided land.
16. **RESERVED**
17. **BRINE PONDS:** A specialized type of pond that features a variety of different uses. Primarily, they are useful as specialized storage or containment systems to either store or process brine. They are common in the energy industry for a variety of different purposes in the desalination industry, and sometimes in manufacturing, particularly as means to manufacture salt. These ponds require careful construction. It is imperative that they are lined with a reliable liner to prevent leaks that can contaminate local aquifers. Brine ponds are typically double lined systems that feature a geosynthetic drainage layer between the liner layers. This acts as a sponge to capture any leaks and makes it easier to monitor pond for leakage.
18. **BUILDING:** Any temporary or permanent structure built and maintained for the support, shelter or enclosure of people, motor vehicles, animals or personal or real property of any kind.
- 18 a. **BUILDING LINE:** A dashed line on a plat restricting the location of buildings or structures or that distance as prescribed by the zoning ordinance, when applicable.
19. **BUSINESS OFFICE:** An office that provides nonretail services such as insurance, real estate, finance or travel, or any office of similar nature and impact.
20. **CAMPER CABIN:** Is a camp structure with no permanent foundations or plumbing, located within a camping area and intended for occupancy by one to eight persons.
- 20a. **CAMPGROUND:** An area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

21. **CAMP STORE:** An enclosed building not exceeding 1500 square feet for the sale of sundries to registered campers in camping areas within the park.
22. **CELL TOWERS:** Also called cell site or telecommunication towers, is a mobile device tower where an antenna and other electronic communications equipment are placed to facilitate communication through a cellular network. It is usually an elevated structure with the antenna transmitters and receivers located at the top.
23. **CLEAR VISION AREA:** An area next to a driveway, street, road or highway where low signs, other structures and vegetation are required to be kept not greater in height than a stated maximum number of inches. The purpose of a clear vision area is to protect the view necessary to assist pedestrians, bicyclists and motor vehicle operators to see one another in time to avoid or reduce damage from an accident. Clear vision areas are most commonly triangular areas at the corner of intersecting travel ways.
24. **CO-LOCATION:** The practice of locating multiple wireless communications facilities on a single, specific purpose structure, or locating the telecommunication facilities on alternate purpose structures.
25. **COMMERCIAL RESOURCE (FARM, RANCH UNIT):** A parcel of land large enough that crops harvested from it meet mortgage costs, crop or raising and harvesting expenses and provide substantial household income. In addition, it shall contribute in a substantial way to the area's existing agricultural economy, and help maintain agricultural processors and established markets. Consideration shall be given not only to what is produced but how much is produced. Method of marketing is also a consideration.
26. **COMPREHENSIVE PLAN:** The Malheur County Comprehensive Plan.
27. **CONDOMINIUM:** Generally, a dwelling unit or other structure, the interior portion of which may be owned by an individual. The individual owning a condominium also holds ownership in common of the total development in which the subject condominium belongs. For a more precise definition refer to ORS 94.
28. **CONTIGUOUS LOTS:** Two (2) or more parcels or units of land including water under a single ownership, which are not separated by an intervening parcel of land under separate ownership.
29. **CONVERSION:** An alteration to a building that changes the number of units but does not expand the building footprint (ORS 197.754).
30. **COTTAGE CLUSTER:** Groupings of no fewer than four (4) detached housing units per acre with a footprint of less than 900 square feet each and that includes a common courtyard. (ORS 197.758)
31. **CURRENT EMPLOYMENT OF LAND FOR FARM USES:**

- A. Farmland, the operation or use of which is subject to any farm related government program;
- B. Land lying fallow for one year as a normal and regular requirement for good agricultural husbandry;
- C. Land planted in orchards or other perennials other than land specified in subsection D of this definition, prior to maturity;
- D. Land not in an exclusive farm use (EFU) zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three (3) years;
- E. Wasteland, in an exclusive farm use (EFU) zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;
- F. Land under buildings supporting accepted farm practices;
- G. Water impoundments lying in or adjacent to and in common ownership with farm use land;
- H. Any land constituting a wood lot, not to exceed twenty (20) acres, contiguous to and owned by the owner of land specially valued at true cash value for farm use even if the land constituting the wood lot is not utilized in conjunction with farm use;
- I. Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this subsection I, illness includes injury or infirmity whether or not such illness results in death;
- J. Any land described under ORS 321.267(1)(e) or 321.415(5); and
- k. Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:
- (A) only the crops of the owner are being processed;
 - (B) the biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
 - (C) the landowner is custom processing crops into biofuel from other landowners in the area for their use or sale;
 - (D) Cultured Christmas Trees means grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil; and marketable species.

- 31a. DAIRY FARM - COMMERCIAL: A commercial dairy farm is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by this Article/Chapter from the sale of fluid milk.
- 31b. DATE OF CREATION AND EXISTENCE: When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
32. DAYCARE CENTER: An establishment that is certified to care for thirteen (13) or more children, or an establishment certified to care for less than thirteen (13) children that is not located in a residential dwelling or accessory building to the residence that the provider resides in.
- 32a. DE NOVO: In a de novo review, all uses of law and fact are heard anew, and no issue of law or fact decided by the lower level review authority is binding on the parties in the de novo hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony. The record of the initial proceeding shall be a part of the record of the appeal. The record of the initial proceeding may consist of: the Comprehensive Plan, all of which is automatically incorporated into the record; the application or legislative proposal that initiated the proceeding; all testimony, argument, evidence and exhibits submitted prior to the close the record of any previous proceeding; any staff report submitted prior to the close of the record of the previous proceeding; minutes, if any, of the hearing or public meeting(s) conducted in reaching the decision that is being appealed; and the written decision.
33. DEQ: The Oregon Department of Environmental Quality
34. DEVELOPER: Any person, corporation, partnership or other legal entity who creates or proposes to create a subdivision, partition or other land development, and includes any agent of a developer.
35. DEVELOPMENT: The construction, installation or change of a building or other structure; the division of land into two (2) or more parcels; any building or mining operation; or the creation or termination of rights of access.
36. DWELLING: A detached building containing one dwelling unit.
37. DWELLING, DUPLEX OR TWO-FAMILY: A detached building containing two (2) dwelling units.
38. DWELLING, MULTI-FAMILY: A building or portion thereof, containing three (3) or more dwelling units.
39. DWELLING, SINGLE-FAMILY: A detached building containing one dwelling unit and designed for occupancy by one family only.

40. DWELLING UNIT: A structure providing complete independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit shall have a minimum habitable floor area of four hundred (400) square feet.

DWELLING UNIT: A habitable area enclosed by walls, windows and doors which provides shelter for a person, family or persons living as a family sharing kitchen and bathroom facilities.

41. EASEMENT: A grant of right to use land for specific purposes, but in which ownership of the land is not transferred.
42. EMERGENCY SHELTER: A building that provides shelter on a temporary basis for individuals and families who lack permanent housing (ORS 197.754).
43. ENDOWMENT PROPERTY: Property owned by OPRD which has no known outstanding resources or recreational values that would support the state park system mission and role, and which is intended for sale, lease, trade or donation to a different entity or for management for a purpose which does not directly support the state park system mission and role.
44. ENVIRONMENTAL HAZARD NOTICE: A document prepared by DEQ and issued by the Environmental Quality Commission containing:
- A. The legal description of the lot or parcel, or lots or parcels, where the potential hazardous site is located;
 - B. A specific description of the site, if different than the legal description of subsection "A" of this definition, for which the notice applies;
 - C. A general map of the area where the site is located;
 - D. A description of the types of waste and levels of contamination identified or known to be present at the site;
 - E. The use restrictions that apply to the site; and
 - F. Findings which support the decision to issue an environmental hazard notice for the site.
45. EXPLORATORY GEOTHERMAL WELL: Includes the right to explore for the test geothermal resource within an area designated by the Planning Commission.
46. EVALUATION REPORT: A statement in writing from the local contract agent or regional department of environmental quality representative stating that at least one septic system drainfield site with replacement area has been found on each lot or parcel that meets the criteria outlined by the Oregon Department of Environmental Quality (DEQ).

- 46a. **EVENT, TEMPORARY:** A temporary event is one that is held primarily on or is using public property that has an expected attendance of more than (50), but no more than (500) people, that will not continue for more than (72) hours in any three (3) month period, and that will be located in a rural or resource area. Temporary Events are permitted through a (ministerial/Type I) process and are not considered "outdoor mass gatherings" as defined by ORS 433.735 or Agri-tourism events as provided for by ORS 215.283(4).
47. **FAMILY:** An individual or any number of persons related by blood, marriage, adoption or legal guardianship living together in a dwelling in which meals or lodging may also be provided for not more than four (4) additional persons. Also, six (6) or less unrelated persons living as a family sharing a single kitchen and dining facility.
- 47a. **FARM OPERATOR:** A person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.
48. **FARM OR RANCH:** 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, fur bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or any animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human use and animal use. Also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and the propagation, cultivation, maintenance and harvesting of aquatic, bird, and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this section. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267(3) or 321.824(3). and disposal by marketing or otherwise. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Also, as further defined in ORS 215.203.
49. **FARMING OR RANCHING PRACTICE:** A mode of operation that is common to farms or ranches of a similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with farm use.
- 49a. **FARM STAND STRUCTURE:** A structure that is designed and used for the sale of farm crops and livestock. A food stand is considered to be a farm stand structure.

50. **FARMWORKER HOUSING:** Housing accommodations, limited to occupancy developed for, and provided to farmworkers and their immediate families, no dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing. It includes various types of living quarters, such as boarding houses, tents, barracks, mobile homes, and recreational vehicles. (ORS 197.685) See "Seasonal farmworker" definition.
51. **FEEDLOT:** An area in which livestock are confined for concentrated feeding for fattening or dairying as part of a commercial operation and in which no vegetation intended for animal food is growing. The term does not include temporary wintering operation for livestock (a "feed yard").
52. **FENCE, SIGHT OBSCURING:** A fence or evergreen planting arranged in such a way as to obstruct vision.
53. **FINANCIAL PARTITION:** An exception in exclusive agricultural zones in effect only during a foreclosure on property in accord with section 7-7-12 of this title.
54. **FIREARMS TRAINING FACILITIES:** An indoor or outdoor facility that provides training courses and issues certifications required: for law enforcement personnel; the State Department of Fish and Wildlife; or by nationally recognized programs that promote shooting matches, target shooting and safety.
55. **FLAG LOT:** A parcel of land created by a subdivision or partition which includes a narrow projection to a public road for purposes of access to the main portion of the parcel. The projection is commonly known as the "flagpole".
56. **FOREST USE:** The propagation or harvesting of a forest product.
57. **G-ZONE:** Geothermal Development Zone is a land classification zone overlay permitting additional uses within other zones including geothermal well operation (after obtaining a conditional use permit or other permit applicable to the primary zone).
58. **GARAGE OR YARD SALE:** A sale held at a residence or a combination of residences where items to be sold constitute used or handcrafted items generated from participating individual neighborhood households. Garage sales shall not be used as wholesale or retail outlets for new or manufactured goods, other than home generated, handcrafted items. Garage sales may not be conducted in any one residence more than three (3) times during any calendar year. No single garage or yard sale may last for more than three (3) consecutive days. A garage sale as hereinabove defined is an authorized accessory use to a residence in all zones.
59. **GARAGE, RESIDENTIAL:** A structure used for the parking of automobiles and recreational vehicles.
60. **GEOTHERMAL PRODUCTION PROJECT:** Includes the right to explore for, test product, process, transport and sell geothermal resources and by-products such as electrical power.

60a. GOLF COURSE: An area of land with highly maintained natural turf land out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A golf course for purposes of this ordinance, means a nine or 18 hole regulation golf course, or a combination nine and 18 hole regulation golf course consistent with the following:

(A) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(B) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(C) Non-regulation golf courses are not allowed. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this Subsection, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges.

60b. GUEST RANCH: A facility for guest lodging units, passive recreational activities and food services that are incidental and accessory to an existing and continuing livestock operation that qualifies as a farm use. A guest ranch may be established in an area that is zoned for exclusive farm use unless the proposed site of the guest ranch is within the boundaries of, or surrounded by:

(A) A federally designated wilderness area or a wilderness study area; a federally designated wildlife refuge; a federally designated area of critical environmental concern; or an area established by an Act of Congress for the protection of scenic or ecological resources.

(B) The guest ranch must be located on a lawfully established unit of land that: is at least 160 acres; contains the dwelling of the individual conducting the livestock operation; and is not high value farmland.

Except as provided in this section, the guest lodging units of the guest ranch cumulatively must: include not fewer than four (4) nor more than 10 overnight guest lodging units; and not exceed a total of 12,000 square feet in floor area, not counting the floor area of a lodge that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.

(C) For every increment of 160 acres that the lawfully established unit of land on which the guest ranch is located exceeds the minimum 160-acre requirement described in this section, up to five (5) additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be included in the guest ranch for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.

(D) A guest ranch that is authorized by Malheur County on or after January 1, 2020 shall annually report to the county. Malheur County shall make available to the public, upon request, reports collected from guest ranches. This report must contain: the size of the guest ranch's livestock operation; the income that the guest ranch obtained from livestock operations; and guest ranch activities. Other information Malheur County may require to ensure ongoing compliance with this section or any condition of approval required by the county.

(E) Malheur County may not allow a guest ranch in conjunction with: a campground; or a golf course. Malheur County may not approve a proposed division of land in an exclusive farm use zone for a guest ranch; and Malheur County may not approve a proposed division of land that separates the guest ranch from the dwelling of the individual conducting the livestock operation.

(F) FOOD SERVICES: Only for guests of the Guest Ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch. The cost of the meals, if any, may be included in the fee to visit or stay at the guest ranch. A guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.

(G) PASSIVE RECREATIONAL ACTIVITIES: Can be provided in conjunction with the livestock operation's natural setting including, but not limited to, hunting, fishing, hiking, biking, horseback riding, camping, and swimming. A guest ranch may not provide intensively developed recreational facilities, including golf courses.

61. GROUP SHELTER: An open sided or enclosed permanent building that does not include bedrooms, but may include plumbing, fireplace, barbecue, and picnic tables, for use by registered campers in a group camping area.

61a. HIGH-VALUE FARMLAND:

(A) Land in a tract composed predominantly of soils that are:

- i. Irrigated and classified prime, unique, Class I or II; or
- ii. Not irrigated and classified prime, unique, Class I or II.

(B) In addition to that land described as high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa.

61b. HISTORIC HOME: A single-family dwelling constructed between 1850 and 1945.

- 61c. **HOME OCCUPATION:** A limited business activity that is accessory to a residential use. Home occupations are conducted primarily within a residence or a building normally associated with uses permitted in the zone in which the property is located and are operated by a resident or employee of a resident of the property on which the business is located.
62. **INDUSTRIAL USE:** Industrial employment activities, including manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010(Definitions for ORS 284.101 to 284.148 and ORS chapters 285A, 285B and 285C) and (ORS 197.722).
- 62a. **IRRIGATED:** Watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is irrigated if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this ordinance, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.
63. **JUNKYARD:** Any establishment or place of business that is maintained, operated or used for storing, keeping, buying or selling old or scrap copper, brass, rope, iron, steel, rags, batteries, paper, trash, rubber, debris or other old or scrap ferrous or nonferrous materials, metal and nonmetal materials and junked, dismantled, wrecked, scrapped or ruined motor vehicles or motor vehicle parts. This term includes auto wrecking yards and scrap metal processing, sorting and storage facilities.
64. **KENNEL:** A lot or building in which four (4) or more dogs, cats or other animals at least four (4) months of age are kept commercially for board, breeding, training or sale.
65. **LANE:** A driveway or private road providing access from property to a public right of way.
66. **LAWFUL USE:** A nonconforming use as described in ORS 215.130 (Application of ordinances and comprehensive plan) (6) or any other local land use regulation allowing for the continuation of a use that was lawful when first enacted (ORS 197.754).
67. **LEGAL DESCRIPTION:** The method by which the outer boundaries of a site or premises and all appurtenant easements and applicable restrictions or covenants are described or established by reference to established points, monuments, etc.

68. **LEGISLATIVE CHANGES:** Involves broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances or the land development ordinance and changes in zoning maps not directly affecting individual property owners.
69. **LIVESTOCK:** Cattle, sheep, horses and bison. (ORS 215.461(1)(c)) Domestic animals or types customarily raised or kept on farms for profit or other purposes.
- 69a. **LIVING HISTORY MUSEUM:** A facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events.
70. **LOCAL PARK:** A public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and is designated as a public park in the applicable comprehensive plan and zoning ordinance.
71. **LOCATIONALLY DEPENDENT:** If the wireless telecommunication facility must be located on land in one or more areas zoned for exclusive farm or exclusive range use in order to achieve reasonably satisfactory results or to meet unique needs that cannot be satisfied on other lands.
72. **LOT:** A unit of land created by a subdivision or partitioning of land and is a unit for disposition, transfer of ownership or interest or for development.
- LOT AREA:** The total horizontal net area within the lot lines of a lot.
73. **LOT AREA:** The total horizontal area within the lot lines of a lot including streets and easements of access to other property, laterals and canals.
74. **LOT COVERAGE:** The percentage of lot area that may be covered by buildings or structures.
75. **LOT, CORNER:** A lot situated at the intersection of two (2) or more streets.
76. **LOT DEPTH:** The depth of a lot shall be the horizontal length of a straight line connecting the bisecting points of the front and rear lot lines.
77. **LOT LINE:** The property line bounding a lot.
78. **LOT LINE, FRONT:** In the case of an interior lot, a line separating the lot from the street. In the case of a corner lot, the line separating the street frontages of the lot from the street.
79. **LOT LINE, REAR:** A lot line which is opposite and most distant from the front lot line.
80. **LOT LINE, SIDE:** Any lot boundary line not a front line or a rear lot line.

- 80a. LOT OF RECORD: Lot of Record: A "lot of record," which in some jurisdictions is referred to as a "legal lot of record," "legal lot," or "discrete parcel," refers to a unit of land that is eligible for certain building permits or other land use entitlements.
81. LOT, THROUGH OR DOUBLE FRONTAGE: A lot having frontage on two (2) parallel or approximately parallel streets other than alleys.
82. LOT WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line. The average horizontal distance between the side lot lines, measured at right angles to the lot depth.
83. MALHEUR COUNTY TRANSPORTATION SYSTEM PLAN: The Malheur County Transportation System Plan (TSP) adopted by ordinance into the Malheur County Comprehensive Plan.
84. MANUFACTURED DWELLING: A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, and that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards (HUD standards) and regulations in effect at the time of construction. Manufactured dwelling does not include any building or structure constructed to conform to the state of Oregon structural specialty code or the one- and two-family dwelling code adopted pursuant to ORS 455.100 and 455.450 and 455.610 to 455.630 or any "recreational vehicle" defined in this section.
85. MANUFACTURED DWELLING PARK: Any place where three (3) or more manufactured dwellings are parked within five hundred feet (500') of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid, or to be paid for the rental or use of facilities, or to offer space free in connection with securing the trade or patronage of such person.
86. MAP, PARTITION MAP: The diagram, drawing and associated writing which depicts a partition.
87. MASTER PLAN: A map, sketch, or other presentation filed with the planning commission showing the ultimate development layout of a parcel of property that is to be developed in successive stages of subdivision. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable development pattern thereon. The master plan will, therefore, be used as a guide in each successive stage of the development until its completion.
- 87a. MEDICAL HARDSHIP (TEMPORARY): A temporary circumstance caused by serious illness or infirmity, authorized by a licensed medical practitioner (Medical Doctor, Physician's Assistant, or Nurse Practitioner).

88. **MIDDLE HOUSING:** Means duplexes; triplexes; quadplexes; cottage clusters; and townhouses (ORS 197.758).
89. **MINING:** Includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off site borrow pits except those constructed for use as access roads. Mining does not include excavations of sand, gravel, clay rock or other similar materials conducted by a landowner or tenant on the landowner's or tenant's property for the primary purpose of the reconstruction or maintenance of access roads and excavations or grading operations conducted in the process of farming or cemetery operations, on site road construction or non-surface impacts of underground mines.
90. **MINOR HOME OCCUPATION, HOME OCCUPATION AND HOME BUSINESS:** An occupation or business activity which results in a product or service; is conducted in whole or in part in a dwelling and/or an accessory structure to the dwelling; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the dwelling use of the subject property. Home occupations or businesses do not include garage or yard sales, holiday bazaars or home parties which are held for the purpose of the sale or distribution of goods or services if the service is provided three (3) or fewer times per calendar year.
91. **MOBILE HOME:** A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.
92. **MOTEL:** A building or group of buildings on the same lot containing guest units with separate entrances from the building exterior and consisting of individual sleeping quarters, with or without cooking facilities for rental to transients.
93. **NEIGHBORHOOD ACTIVITY CENTER:** An attractor or destination for residents of surrounding residential areas. Includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops, employment areas.
94. **NOMINAL ONE ACRE:** An approximate one-six-hundred-fortieth (1/640) of the public lands survey section in which it is located. In no case shall a nominal acre be less than thirty-five thousand (35,000) square feet.
95. **NONCONFORMING STRUCTURE OR USE:** A lawful structure or use existing at the time this title or any amendment hereto becomes effective and which does not conform to the requirements of the zone in which it is located.
96. **OFFICIAL MAP:** The comprehensive plan map as adopted by the planning commission and county court.

97. OPEN PLAY FIELD: A large, grassy area with no structural improvements intended for outdoor games and activities by park visitors. The term does not include developed ball fields, golf courses or courts for racquet sports.
98. OPEN SPACE: Those lands within a subdivision which have been dedicated, in common to the ownership within the subdivision or to the public, specifically for the purpose of providing places for recreational uses or for scenic purposes.
99. OPERATOR: Any person, firm or corporation drilling, maintaining, operating, pumping or in control of any well or related facilities for power generation, mineral extraction, desalination or any other use of geothermal resources.
100. OPRD: Means the Oregon Parks and Recreation Department
101. OTHER EMPLOYMENT USE: All non-industrial employment activities, including small scale commercial use, wholesale, service, nonprofit, business headquarters, administrative, governmental or employment activities that serve the medical, education, social service, recreational or security industries and that occupy retail, office or flexible building types of any size or multibuilding campuses.
- 101a. OUTDOOR MASS GATHERING: A gathering, that is an actual or reasonably anticipated assembly of more than 3,000 (more than 500) persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure. Any decision for a permit to hold an outdoor mass gathering as defined by statute is not a land use decision and is appealable to circuit court. Outdoor mass gatherings do not include agri-tourism events and activities as provided for by ORS 215.010(4).
102. OVERLAY ZONE: A zone that establishes special requirements and provisions in addition to those of the primary zone.
- OWNER: The party or parties having a fee interest in land except, that where land is subject to a real estate sales contract, "owner" shall mean the contract vendee.
103. OWNER: The individual, firm, association, syndicated partnership or corporation having sufficient proprietary interest in the land sought to be subdivided or partitioned to commence and maintain proceedings to subdivide or partition the same under this title.
104. PAPA: A "post acknowledgement plan amendment" conducted according to the requirements of ORS 197.610 to 197.625. The term includes amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation.
105. PARCEL: Includes a unit of land created by a partitioning of land.

106. **PARENT PARCEL:** All property that is owned by the owner of the property for which the application has been made and is contiguous to the property for which the application has been made.
107. **PARK RETREAT:** An area of a state park designated for organized gatherings. Facilities within a park retreat are for use only by registered retreat guests. A park retreat must include a meeting hall and designated parking, and may also include other park amenities and support facilities.
108. **PARK VISITOR:** Any member of the public who enters a state or local park for the primary purpose of enjoying or learning about the natural, historic or prehistoric, or scenic resources associated with the park setting.
109. **PARTITION:** The act of partitioning land or an area or tract of land partitioned.
110. **PARTITION LAND:** To divide an area or tract of land into two (2) or three (3) parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the time of the first partitioning. "Partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size unless better field management or irrigation control will result. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner. "Partition land" does not include division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots. "Partition land" does not include a sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes; provided, that such road or right of way complies with the comprehensive plan and subsections 6-3A-2A6 through A9 and subsection 6-3A-3S through U of this title. However, any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.
- A. **Major Partition:** A partition which includes the actual creation of a road or street to serve one of the parcels in the partition. Where one or more of the parcels created does not have direct frontage on an existing public road.
- B. **Minor Partition:** A partition which divides the lot into 3 or fewer and does not require the creation of a road or street. Dedication of right-of-way may be required in order to acquire or preserve access to other lands.

PARTITION LAND: To divide an area or tract of land into two (2) or three (3) parcels within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under single ownership at the time of the first partitioning. "Partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and

where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size unless better field management or irrigation control will result. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner. "Partition land" does not include the creation of cemetery lots.

111. **PARTY:** The applicant and all persons or group of persons who appeared before a hearings body set forth in this title orally or in writing.
112. **PERMIT FOR GEOTHERMAL DEVELOPMENT PROJECT:** A conditional use permit to produce geothermal well or wells in EFU, ERU, EFFU, RSC, M1 and M2 Zones.
113. **PERMIT FOR GEOTHERMAL EXPLORATORY WELL:** A permit allowable in all zones within the County.
114. **PERSON:** Includes natural person, firm, association, partnership, company, corporation, estate, branch of government or any group or combination acting as a unit.
- 114.a. **PERSONAL USE AIRPORT:** An airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations.
115. **PLACE OF PUBLIC ASSEMBLY:** A structure or place which the public may enter for such purposes as deliberation, education, worship, shopping, entertainment, amusement, awaiting transportation or similar activity.
116. **PLANNED UNIT DEVELOPMENT:** A land area designed as a unified combination of land uses; generally, with a mixture of residential, single- and multi-family types, open space or recreation areas for the direct use and benefit of all the lot owners within the development and sometimes shopping or community facilities. A planned development includes a "planned unit", a "homeowners' association" and "common property" which are defined as follows:
- A. **Common Property:** A parcel or parcels of land together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual sites in the planned unit.
- B. **Homeowner Association:** An incorporated, nonprofit corporation to operate under recorded land agreements through which: a) each lot owner in a planned unit or other described land area is automatically a member, and b) each lot is automatically subject to a charge for the expenses for the organization's activities, such as maintaining a common property.
- C. **Planned Unit:** A land area which: a) has both individual building sites and open space, known as common property such as park and b) is designed and organized as a separate entity without necessarily having participation of other building sites or other common property.

117. PLANNING COMMISSION: The Malheur County Planning Commission .

PLAT: A final map, diagram, drawing or other document containing all descriptions, locations, specifications and dedications concerning a subdivision.

118. PLAT: A final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

118a. POWER GENERATING FACILITY - COMMERCIAL: A facility for the production of energy and its related or supporting facilities that:

(1) Generates energy using means listed in ORS or are such as solar power, wind power, fuel cells, hydroelectric power, thermal power, geothermal power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones that allow "Farm Use" and 215.283(1)® and 215.283(2)(a) in the EFU zone.

(2) Is intended to provide energy for sale; and

(3) Does not include a net metering project established consistent with ORS 757.300 and OAR Chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

119. POTENTIALLY HAZARDOUS SITE: A site where an alteration could create a condition which is hazardous to the health, safety or welfare.

120. PRELIMINARY DRAFT MASTER PLAN: A proposal for a state park master plan which has been prepared for adoption as an administrative rule by OPRD under the provisions of OAR chapter 736, division 18, and which is provided to local governments and the public for review and comment.

121. PRELIMINARY PLAT OR MAP: A preliminary drawing, diagram or document illustrating the proposed layout of a proposed subdivision or partition to be submitted to the planning department or planning commission for their consideration.

122. PRIMARY ZONE: The zone that establishes the basic requirements and provisions of the use of the land in a particular area.

123. PROPERTY LINE: Synonymous with "lot line".

124. PUBLIC HEARING: A public forum of the planning commission or the county court in which, after public notification, the commission or court hear testimony from all concerned citizens regarding the action which is the cause of the hearing. Public hearings shall be conducted when prescribed by this title, and may be conducted at the request of the commission or court at other times.

125. PUBLIC NOTIFICATION: Each notice of hearing authorized by this title shall be published in newspaper of general circulation in the county at least ten (10) days prior to the date of hearing. Notice shall also be mailed to all owners of property within two hundred fifty feet (250') of the subject property. The notice of hearing shall be mailed at least ten (10) days prior to the date of hearing. Failure of a person to receive the prescribed notice shall not impair the validity of the hearing.
126. QUASI-JUDICIAL: Zone changes or plan amendments generally refer to a plan amendment or zone change directly affecting individual property owners and that involves the application of existing policy to a specific factual setting. (The distinction between legislative and quasi-judicial actions must ultimately be made on a case by case basis with reference to case law on the subject.)
127. RECREATION SHOP: An open or enclosed building not exceeding 500 square feet of floor area for the rental of horses or recreational equipment such as bicycles, boats, and for the sale of incidental related items such as bait and fishing flies.
128. RECREATIONAL VEHICLE: A mobile unit which is designed for temporary human occupancy and licensed as a motor home, recreational trailer or camper (stand-alone or when it is on the back of a pick-up or truck) by the motor vehicles division, or similar units licensed by another state or any unit identified as a recreational vehicle by the manufacturer. Recreational vehicle includes non-motorized vehicles designed for human occupancy such as vacation trailers, tents and fifth-wheel trailers. It also includes vehicles designed for off-road use, such as off-road vehicles, dune buggies and recreation boats.
129. RECREATIONAL VEHICLE PARK: For the purpose of this zoning ordinance, a "recreational vehicle park" is a plot of land that provides for two (2) or more recreational vehicle sites and such sites are established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters, i.e., overnight camping.
130. REGIONALLY SIGNIFICANT INDUSTRIAL AREA: An area planned and zoned for industrial use that: (a) contains vacant sites, including brownfields, that are suitable for the location of new industrial uses or the expansion of existing industrial uses and that collectively can provide significant additional employment in the region; (b) has site characteristics that give the area significant competitive advantages that are difficult or impossible to replicate in the region; (c) has superior access to transportation and freight infrastructure, including, but not limited to rail, port, airport, multimodal freight or transshipment facilities, and other major transportation facilities or routes; and (d) is located in close proximity to major labor markets. (ORS 197.722)
- 130a. RELATIVE: A child, parent, step-parent, grandchild, grandparent, step-grandparent, sibling, step-sibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse.

131. RESERVE STRIP: A strip of land, usually one foot (1') in width, across the end or along the edge of a street, roadway or alley, which is reserved or held by the county for the purpose of controlling access, or for future street, roadway or alley extension or widening

132. RESIDENTIAL FACILITY: A residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400 (Definitions for ORS 443.400 to 443.455), that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen (6 to 15) individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility. ZONING REQUIREMENTS: Any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [ORS 197.660 ORS 197.667(1)]

facility licensed by or under the authority of the department of human resources which provides residential care alone or in conjunction with treatment or training, or a combination thereof, for six (6) to fifteen (15) individuals who need not be related. Staff persons required to meet department of human resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other, or to any resident of the residential facility.

133. RESIDENTIAL HOME: A residential treatment or training home, as defined in ORS 443.400 (Definitions for ORS 443.400 to 443.455), a residential facility registered under ORS 443.480 (Definitions for ORS 443.480 to 443.500) to 443.500 (Investigation of registered facilities) or an adult foster home licensed under ORS 443.705 (Definitions for ORS 443.705 to 443.825) to 443.825 (Disposition of penalties recovered) that provides residential care alone or in conjunction with treatment or training or a combination thereof for five (5) or fewer individuals counted in the number of facility residents, and need not be related to each other or to any resident of the residential home. ZONING REQUIREMENTS: Any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [ORS 197.660 and ORS 197.665(1)]

134. RESIDENTIAL TRAILER: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed before January 1, 1962, with a minimum size of at least eight feet by thirty-two feet (8' x 32').

135. **RESOURCE:** A term which in appropriate context means commercial farming, ranching or forestry.
136. **RIGHT-OF-WAY:** A strip of land which has been dedicated to the public by a warranty or other suitable deed depending upon the history of the right-of-way, or by a statement of dedication upon an approved and recorded subdivision plat. Roads created by public use and recognized as a public road in the records of the county court are also rights-of-way for public use.
137. **ROAD OR STREET:** A public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.
- A. **Cul-De-Sac (Dead End Street):** A short street having one end open to traffic and being terminated by a vehicle turnaround.
- B. **Half Street:** A portion of the width of a street usually along the edge of a subdivision, where the remaining portion of the street could be provided in another subdivision.
- C. **Marginal Access Street:** A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic
- D. **Rural Arterial:** A roadway that provides linkage between population centers within the region and connection to state and national highways, serving primarily through traffic with limited access.
- E. **Rural Collector:** A roadway that provides both local access and circulation within rural areas of the county, distributing trips from the arterials through the area to their ultimate destinations, often serving abutting uses directly.
- F. **Rural Local:** A roadway having the primary function of providing access to immediately adjacent land and serving little to no through traffic.
- G. **Stubbed Street:** A street having only one outlet for vehicular traffic and which is intended to be extended or continued to serve future subdivisions or developments on adjacent lands.
- H. **Walkway:** A hard surfaced are intended and suitable for pedestrians, including sidewalks and the surfaced portions of accessways.

ROAD OR STREET: A travel way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

138. ROADWAY: That portion of a road or street designed and ordinarily used for vehicular traffic.
139. SEASONAL FARM HOUSING: Housing limited to the occupancy by seasonal farm workers and their immediate families which is occupied no more than nine (9) months a year.
140. SEASONAL FARM WORKER: Any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivation or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including, but not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.
141. SETBACK: The distance between the nearest point of the building or structure and the right of way or easement border line or property line; setbacks are measured horizontally at right angles from the right-of-way or easement border line or property line to the nearest point of the building or structure excluding roof eaves and small decorative projections such as cornices, gargoyles, etc.
142. SIGN: An identification, description, illustration or device that is affixed to or represented, directly or indirectly, upon a building, structure or land, and that directs attention to a product, place, activity, person, institution or business.
- 142a. SINGLE-FAMILY DWELLING: A residential structure designed as a residence for one family and sharing no common wall with another residence of any type.
143. SITE: A land disposal site, a hazardous waste disposal site, a disposal site containing radioactive waste, or an area where a hazardous substance has been released. (Ord. 86, 12-7-1993)
144. SITE PLAN: A drawing done to scale, illustrating the layout of a proposed land development, or changes to an existing property improvement submitted to the Malheur County Planning Department or Malheur County Planning Commission for their consideration.
145. SITE REVIEW: A procedure wherein plats of proposed uses in specific zones are reviewed by the Malheur County Planning Director or Malheur County Planning Commission to ensure compatibility with adjoining land uses and compliance with applicable ordinance provisions. The Malheur County Planning Director's action may be referred to or appealed to the Malheur County Planning Commission.
146. SMALL SCALE COMMERCIAL USE: The low-impact use of land primarily for the retail sale of products or services, including offices. Does not include use of land for factories, warehouses, freight terminals or wholesale distribution centers.

147. SOLAR POWER GENERATION FACILITY (PANELS): Cells made of material that produce excited electrons when exposed to light. The electrons flow through a circuit and produce direct current (DC) electricity which can be used to power various devices or stored in batteries. See Section 6-4-12 for standards and requirements.
148. STATE PARK: Any property owned or managed by OPRD and that OPRD has determined and possesses outstanding natural, cultural, scenic or recreational resource values that support the state park system mission and role.
149. STRUCTURAL ALTERATION: Any change to the supporting members of a structure including foundations, bearing walls or partitions, columns, beams, girders or any structural change in the roof or in the exterior walls.
150. STRUCTURE: Anything constructed, erected or air-inflated, permanent or temporary, which requires location on the ground. Among other things, structure includes buildings, walls, fences, billboards, poster panels, food stands and parking lots. Retaining walls less than four (4) feet in height are not considered structures for the sake of general property line setbacks. Any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks and overhead transmission lines.
151. SUBDIVIDE LAND: To divide an area or tract of land into four (4) or more lots within a thirty-six (36) month period when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of the first division.
152. SUBDIVIDER: A generalized term meaning any person, firm, corporation, partnership or association who causes the land to be divided into lots or parcels as defined herein. It is synonymous with "developer".
153. SUBDIVISION: An act of subdividing land, or an area, or tract of land that has been subdivided.
- 153a. TEMPORARY STRUCTURE OR USE: A non-permanent structure, or one used for a limited time, or a use or activity that is of a limited duration.
154. TENTATIVE PLAT: A clearly legible drawing of the proposed layout of streets, blocks, lots and other elements of a subdivision, which shall help furnish a basis for the Malheur County Planning Commission's approval or denial of the general layout of the subdivision or major partition.
155. TEST FACILITIES: Lines, pumps, separators, metering facilities, ponds and sumps used during the testing of an exploratory geothermal well or injection well. (Ord. 86, 12-7-1993)

156. TOWNHOUSES: A dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit (ORS 197.758).
157. TRACT: One or more contiguous lots or parcels under the same ownership as provided in ORS 215.010(2).
158. TRANSITIONAL HOUSING ACCOMMODATIONS: Inside an urban growth boundary, a local government may authorize the establishment of transitional housing accommodations used as individual living units by one or more individuals. Use of transitional housing accommodations is limited to individuals who lack permanent or safe shelter and who cannot be placed in other low income housing. A local government may limit the maximum amount of time that an individual or a family may use the accommodations.
- Transitional housing accommodations are intended to be used by individuals or families on a limited basis for seasonal, emergency or transitional housing purposes and may include yurts, huts, cabins, fabric structures, tents and similar accommodations, as well as areas in parking lots or facilities for individuals or families to reside overnight in a motor vehicle, without regard to whether the motor vehicle was designed for use as temporary living quarters. The transitional housing accommodations may provide parking facilities, walkways and access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities. The Oregon Health Authority may develop public health best practices for shared health and sanitation facilities for transitional housing accommodations. (ORS 197.746)
159. TRACT OF LAND: One or more contiguous lots or parcels under the same ownership.
- 159a. URBAN GROWTH BOUNDARY: A regional boundary, set in an attempt to control urban sprawl by, in its simplest form, mandating that the area inside the boundary be used for urban development and the area outside be preserved in its natural state or used for agriculture. Legislating for an urban growth boundary is one way, among many others, of managing the major challenges posed by unplanned urban growth and the encroachment of cities upon agricultural and rural land.
- 159b. URBAN RESERVE AREA: Land outside the Urban Growth Boundary to provide for future expansion over a long-term period and the cost-effective provision of public facilities and services within the area when the lands are included within the Urban Growth Boundary.
160. USE: The purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

USE: The purpose for which land or a structure is designed, arranged or supports an activity.

161. **UTILITY FACILITIES:** Any major structure or facility owned or operated by a public, private or cooperative electric, fuel, communication, sewage or water company for the generation, transmission, distribution or processing of its product or for the disposal of cooling water, waste or byproducts, and including power transmission lines, wireless telecommunication facilities, ancillary facilities, transmission tower, major trunk pipelines, power substations, dams, wind and water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding sewer, water, gas, local telephone and power distribution lines and similar minor facilities.
162. **VISUALLY SUBORDINATE:** The relative visibility of a transmission tower or wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape.
163. **WIRELESS TELECOMMUNICATION FACILITIES (see Cell Tower definition):** An unstaffed facility for the transmission or reception of radio frequency (RF) signals usually consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a storage structure such as a self-supporting monopole or lattice tower, transmission tower, antenna(s), microwave dishes or other transmission and reception devices. This definition includes a personal wireless service facility as defined under the telecommunications act of 1996.
164. **YARD:** An open space on a lot that is unobstructed from the ground upward except by vegetation or as otherwise provided in this title.
165. **YURT:** A round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
166. **ZONING MAPS:** The Malheur County zoning maps, incorporated herein and made a part of this title 2. (Ord. 86, 12-7-1993; amd. Ord., 11-8-1994; Ord. 125, 6-20-2000; Ord. 146, 4-14-2004; Ord. 147, 4-14-2004; Ord. 148, 4-14-2004; Ord. 184, 10-21-2009; Ord. 220, 7-3-2019)

CHAPTER 2 GENERAL PROVISIONS

SECTION:

6-2-1: Compliance Required

6-2-2: Interpretation

6-2-1: COMPLIANCE REQUIRED:

A. General:

1. A lot may be partitioned or used, and a structure or part of a structure, may be constructed, reconstructed, altered, occupied or used, only as this title permits, or as constitutional private property rights allow.
2. Reduction in the size of any lot, area, yard or other open space existing on or after the effective date of this title shall be done in compliance with this title.
3. All parcels created by the partition of any lot, area, yard or other open space shall meet the dimensional standards required by this title for the allowed use. (Ord. 86, 12-7-1993)

B. Comprehensive Plan: Zoning decisions shall be in compliance with **all** applicable local laws, as well as with the Malheur County Comprehensive Plan and various provisions and elements thereof. Such laws and plan provisions include, but are not limited to, the following:

1. **Building codes.**
1. 2. Comprehensive Plan Policies **and Map Designations.**
3. **Comprehensive plan map designations.**
2. **County Development Code Regulations**
4. 4. Urban growth area joint management agreements.
3. 5. Transportation system plan maps, policies and standards. (Ord. 125, 6-20-2000)
5. **Building codes**

C. **Land Use Decisions: Age, gender or physical disability shall not be an adverse consideration in making a land use decision. (Ord. 86, 12-7-1993)**

6-2-2: INTERPRETATION:

A. General: The interpretation and application of the provisions of this title shall be held to be minimum requirements. Where this title imposes a greater restriction than is imposed or required by other provisions of law or by other rules or regulations, provisions of this title shall control.

B. Plan/Zone Relationship: In case of conflicts or discrepancies between plan and zone provisions, the Malheur County Planning Department will administer the provisions as follows:

1. Where plan provisions are more restrictive than zoning regulations, plan provisions supersede zoning regulations.
2. Where a zoning regulation is more restrictive than a plan provision, the zoning regulation shall determine use suitability and requirements.

C. Irrigation District and Water Rights: The provisions of this title shall not be interpreted as abrogating any authority currently vested by law in locally elected boards of directors of the irrigation districts in Malheur County, including, but not limited to, such authority as administration, maintenance, supervision and control of irrigation waters where applicable. The provisions of this title shall not be interpreted to restrict other irrigation water rights such as adjudicated or state permit water rights.

D. Determination of Compatibility: Before the issuance of any land or building permits within a boundary of a state scenic waterway, the county will request a determination of compatibility with the Oregon scenic waterways system from the Oregon State Parks and Recreation Department in order to conform to the provisions of ORS 390 and OAR 736-40. (Ord. 86, 12-7-1993)

CHAPTER 3 ZONING DISTRICTS AND MAPS

SECTION:

- 6-3-1: Establishment of Zones
- 6-3-2: Zone Location
- 6-3-3: Zoning Maps
- 6-3-4: Interpretation of Zoning Boundaries

6-3-1: ESTABLISHMENT OF ZONES: In order to carry out the purpose and provisions of this title, the following land use zones are hereby established for Malheur County:

Land Use Zones Abbreviation

Land Use Zones

Abbreviation

GIS Code

Resource lands

EFU - Exclusive Farm Use

ERU - Exclusive Range Use

EFFU - Exclusive Farm-Forest Use

Residential

R-1 - Rural Residential

R-2 - Rural Recreational

Commercial

RSC - Rural Service Center

C-1 - Commercial

Industrial

M-1 - Light Industrial

M-2 - Heavy Industrial

M-3 - Agricultural Processing Plant Industrial

Overlays

PM - Park Management

LU - Limited Use Overlay

FP - Floodplain Management Overlay

AA - Airport Approach Overlay

EH - Environmental Hazards Overlay

G - Geothermal Development Overlay

Growth Areas

UGA - Urban Growth Area

URA - Urban Reserve Area Overlay

C-URAO

Urban reserve area

URA

Design review (This is a review criteria not an overlay zone) overlay D

C-D

(Ord. 183, 10-7-2009)

6-3-2: ZONE LOCATION: The location and boundaries of the land use zones listed in Section 6-3-1 of this chapter are hereby established as delineated on the Malheur County zoning maps. Such boundaries, upon adoption of this title, shall be amended only in accordance with Chapter 10 of this title. Any such amendment in boundaries shall be made upon a certified copy or copies of the zoning maps, and any such amendment in boundaries approved in accordance with Chapter 10 of this title shall be adopted and by reference incorporated herein and made a part of this title. (Ord. 86, 12-7-1993)

6-3-3: ZONING MAPS: The originals of the Malheur County zoning maps shall be dated with the effective date of this title and signed by the members of the Malheur County Court, and said originals shall be maintained in the office of the Malheur County Clerk for as long as this title remains in effect. Boundary amendments shall be made upon a certified copy or copies of the zoning maps in accordance with Section 6-3-2 of this chapter and Chapter 10 of this title and shall be dated with the date of adoption by the county court and signed by the members of the county court, and such certified maps or copies containing such boundary amendments shall be filed with the office of the county clerk, and such certified

maps or copies shall be maintained in the office of the Malheur County Clerk for as long as this title remains in effect. (Ord. 86, 12-7-1993)

6-3-4: INTERPRETATION OF ZONING BOUNDARIES: Wherever any uncertainty exists as to the boundary of a zone as shown on the zoning maps, the following regulations shall control:

- A. Where a boundary line is indicated as following a street or road, it shall be construed as following the centerline of such street or road.
- B. Where a boundary line follows or approximately coincides with a lot or property ownership line, it shall be construed as following such line.
- C. Where a boundary line is not indicated as following or approximately coinciding with a street, road, lot line or property ownership line, the boundary line shall be determined by the use of the scale designated on the zoning maps.
- D. Where the boundary line of a zone divides a lot in single ownership, the boundary line shall be considered as the lot line for purposes of computing area and setback for uses that are permitted in the less restrictive zone. For uses that are permitted in the more restrictive zone, the ownership lines may be used in applying the area and setback requirements. (Ord. 86, 12-7-1993)

ARTICLE A. RESOURCE LAND ZONES: EFU (EXCLUSIVE FARM USE) **ZONE**, ERU (EXCLUSIVE RANGE USE) **ZONE**, **and** EFFU (EXCLUSIVE FARM-FOREST USE) **ZONE**

SECTION:

- 6-3A-1: Purpose
- 6-3A-2: Permitted Uses
- 6-3A-3: Conditional Uses
- 6-3A-4: Approval of Farm or Ranch Dwellings
- 6-3A-5: Division of Land
- 6-3A-6: Dimensional Standards
- 6-3A-7: Creation of Mortgage Lots

6-3A-1: PURPOSE: Resource lands consist of the exclusive farm, ranch and farm forest use zones and appropriate overlay zones such as for destination resorts and secondary lands. The purpose of the EFU, ERU and EFFU zones is to maintain the resource based economy of Malheur County by permitting the establishment of only those uses that are compatible with agricultural activities. The intent is to ensure that areas classified EFU, ERU or EFFU are preserved and protected from conflicting non-resource uses. (Ord. 86, 12-7-1993) **(ORS 215.780) The minimum lot or parcel sizes for the resource zoned tax lots are:**

- A. Exclusive Farm Use (not designated rangeland) at least 80 acres;
- B. Exclusive Farm Use and designated rangeland, at least 160 acres; and
- C. Forest land at least 80 acres.

6-3A-2: PERMITTED USES:

A. The following uses may be permitted outright by ministerial permit in each of the three (3) resource zones except as specifically added or excluded:

1. Farm uses as defined in ORS 215.203(2), including the propagation, cultivation, maintenance and harvesting of aquatic species, excluding feedlots.
2. The propagation or harvesting of a forest product.
3. The dwellings and other buildings **(agriculture buildings)** customarily provided in conjunction with farm or ranch use, subject to Section 6-3A-4 of this article.

4. Subject to Section 6-3A-4 of this article, an additional dwelling on real property used for farm or ranch use if the dwelling is:
 - i. Located on the same lot or parcel as the dwelling of the resource operator; and is
 - ii. Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm or ranch operator or operator's spouse, whose assistance in the management of the resource use is or will be required by the operator.
5. Well drilling is a permitted activity, provided permits are obtained as required by state statute and this code. Development of the well for production usage shall be for agricultural or forest purposes only unless additional approval has been granted under Section 6-3A-3 of this article.
6. Climbing and passing lanes within the right-of-way existing as of July 1, 1987.
 - 6a. Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
 - 6b. A public right-of-way.
 - 6c. Land immediately adjacent to a public-right-of-way, provided the written consent of all adjacent property owners has been obtained; or
 - 6.d. The property is to be served by the utility.
7. Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
8. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
9. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
10. A replacement dwelling to be used in conjunction with farm use, if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
11. Deferred replacement dwelling (ORS 215.291)

i. Does not expire but, the permit becomes void unless the dwelling to be replaced is removed or demolished within three (3) months after the deferred replacement permit is issued; and

ii. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use; and

iii. Within one (1) year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055 (Uniform permit, inspection and certificate of occupancy requirements); or

iv. If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued.

v. May not be transferred by sale, or otherwise, except by the applicant to the spouse, or a child of the applicant.

12. Exploration only for geothermal, gravel and mineral deposits.

13. Breeding, boarding and training horses for profit.

14. Seasonal farm worker housing.

15. Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale (does not include telecommunication towers) or transmission towers over two hundred feet (200') in height. A utility facility necessary for public service may be established as provided in ORS 215.275 and section 6-6-8-8, "Wireless Telecommunication Facilities" of this title. (Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)

16. Allow a residential home (see definitions for "residential home") in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203 (Zoning ordinances establishing exclusive farm use zones).

17. A winery may be established as a permitted use on land zoned for exclusive farm use under [215.283 \(Uses permitted in exclusive farm use zones in nonmarginal lands counties\)](#) (1)(n) or on land zoned for mixed farm and forest use if the winery produces wine with a maximum annual production of:

i. Less than 50,000 gallons and;

ii. Owns an on-site vineyard of at least 15 acres;

iii. Owns a contiguous vineyard of at least 15 acres;

iv. Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

- v. Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or
- vi. At least 50,000 gallons and the winery;
- vii. Owns an on-site vineyard of at least 40 acres;
- viii. Owns a contiguous vineyard of at least 40 acres;
- ix. Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;
- x. Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or
- xi. Obtains grapes from any combination of subparagraph (A), (B), (C) or (D) of this paragraph.
- xii. In addition to producing and distributing wine, a winery established under this section may:
 - xiii. Market and sell wine produced in conjunction with the winery.
 - xiv. Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
 - xv. Wine tastings in a tasting room or other location on the premises occupied by the winery;
 - xvi. Wine club activities;
 - xvii. Winemaker luncheons and dinners;
 - xviii. Winery and vineyard tours;
 - xix. Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
 - xx. Winery staff activities;
 - xxi. Open house promotions of wine produced in conjunction with the winery
 - xxii. Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
 - xxiii. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages;
 - xxiv. Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act;
 - xxv. Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.

18. Churches and cemeteries in conjunction with churches

19. The temporary use of a manufactured dwelling during a family hardship condition, where such condition is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family. The zoning permit for such use shall note that it is temporary and subject to renewal annually with a letter from a physician without additional fees. In the event the hardship no longer exists, the removal of the temporary use shall be required within 3 months of hardship ending. If the temporary manufactured

dwelling is to be connected to an existing sewage system, compliance with applicable rules of the department of environmental quality will be required. Application for a temporary manufactured dwelling shall consist of a letter from a physician describing the nature of the hardship and any form required by the planning department.

20. Creation, restoration or enhancement of wetlands.

21. Farm stands if:

(A) the structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

22. Armed forces reserve center, if the center is within one-half mile of a community

college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

23. Model aircraft takeoff and landing site, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use approved under this paragraph. The site shall not include an aggregate surface of hard surface area unless the surface pre-existed the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

24. Fire service facilities providing rural fire protection services.

25. Irrigation canals, reservoirs, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

26. Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.

27. Operations for the exploration for minerals as defined by ORS 517.750.

28. Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.
- 28a. Has, or formerly had: intact exterior walls and roof structure; indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system; interior wiring for interior lights; a heating system.
- 28b. Unless the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of taxation since the later of: five (5) years before the date of the application; the date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.
- 28c. If the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of taxation prior to the destruction or demolition and since the later: five (5) years before the date of the destruction or demolition; the date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or
- 28d. if the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of taxation prior to the destruction or demolition and since the later of: Five years before the date of the destruction or demolition; or the date that the dwelling was erected upon or fixed to the land and become subject to property tax assessment.
29. A facility for the processing of farm products as described in ORS 215.255.
30. A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.
31. Dog training classes or testing trials, which may be conducted outdoors or in pre-existing farm buildings, when: the number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and the number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.
32. A cider business as described in ORS 215.451
33. A farm brewery as described in ORS 215.449
34. Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
35. Firearms training facility in existence on September 9, 1995.
36. An outdoor mass gathering of more than 3,000 persons that is expected to continue for more than 24 hours but less than 120 hours in any three-month period, as provided in ORS 433.735.

6-3A-3: **CONDITIONAL USES:** The following conditional uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this title:

- A. Public or private schools.

- B. Churches.
- C. Commercial utility facilities for the purpose of generating power for public use by sale.
- D. A site for the disposal of solid waste approved by the governing body of a city or Malheur County or both and for which a permit has been granted under ORS 459.245 by the Oregon Department of Environmental Quality (DEQ) together with equipment, facilities or buildings necessary for its operation.
- E. Operations conducted for:
 - 1. Exploration for and production of oil and gas as defined by ORS 520.005, including the placement of operation compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
 - 2. Mining and processing of geothermal resources as defined by ORS 522.005.
 - 3. Mining of aggregate and other mineral resources or other subsurface resources subject to Section 6-4-7 of this title.
 - 4. Processing, as (defined by ORS 517.750) of aggregate into asphalt or portland cement.
 - i. No application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within 2 miles of a planted vineyard.
 - 5. Processing of other mineral resources and other subsurface resources.
- F. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- G. Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.
- H. Golf courses.
- I. Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A "personal use airport" means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with resource management operations.
- J. Commercial activities that are in conjunction with farm or ranch use.
- K. The boarding of horses for profit.
- L. Home occupations or home businesses as provided in Section 6-6-8-6 of this title and ORS 215.448.

M. A facility for the primary processing of forest products; provided, that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one (1) year period, which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. "Forest products", as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

N. Residential homes as defined in (see Section 6-1-3, definitions in this code) ORS 197.660, in existing dwellings.

O. Feedlots.

P. Single-family residential dwellings not provided in conjunction with the respective resource use, except dwellings on parcels partitioned pursuant to Section 6-4-4 of this title, which shall be established as authorized in accordance with that section.

Q. Winery (Large) may be established if:

(1) the winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;

(2) the winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in paragraph (1) of this subsection; and

(3) the winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three (3) of the five (5) calendar years before the winery is established under this section. In addition to producing and distributing wine, a winery may:

(4) market and sell wine produced in conjunction with the winery;

(5) conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including: wine tastings in a tasting room or other location on the premises occupied by the winery; wine club activities; winemaker luncheons and dinners; winery and vineyard tours; meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members; winery staff activities; open house promotions of wine produced in conjunction with the winery; similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.

(6) Open house promotions of wine produced in conjunction with the winery; similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery; market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages; required to be made available in

conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; served in conjunction with an activity of this subsection; provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured;

(7) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(8) are incidental to the retail sale of wine on-site and;

(9) are limited to 25 days or fewer in a calendar year; and

(10) host charitable activities for which the winery does not charge a facility rental fee.

(11) The gross income of the winery from the sale of incidental items pursuant to this section and services of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

(12) Submitted with the land use application shall be a written statement prepared by a certified public accountant, certifying compliance with paragraph (11) of this subsection for the previous tax year.

(13) Parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(14) May operate a restaurant, in which food is prepared for consumption on the premises of the winery.

(i) shall obtain a permit from Malheur County if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for agri-tourism or other commercial events authorized under this section if occurring on more than 25 days in a calendar year.

(15) In addition to any other requirements, Malheur County may approve a permit application if found that the authorized activity:

(i) complies with the standards described in ORS 215.296;

(ii) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

(iii) Does not materially alter the stability of the land use pattern in the area.

(iv) If Malheur County issues a permit under this section for agri-tourism or other commercial events, Malheur County shall review the permit at least once every five (5) years and if appropriate, may renew the permit.

(16) A person may not have a substantial ownership interest in more than one winery operating a restaurant.

(17) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection of this section have been planted.

(18) Malheur County shall require a winery operating under this section to provide for:

(i) establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(ii) Direct road access and internal circulation.

(19) Malheur County shall apply:

- (i) Local criteria regarding floodplains, geologic hazards, and solar access;
- (ii) Regulations for the public health and safety; and
- (iii) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(20) Malheur County may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if Malheur County did not issue permits to wineries operating under this section in similar circumstances before August 2, 2011.

(21) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

- (i) the bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
- (ii) the meals may be served at the bed and breakfast facility or at the winery.

The temporary use of a manufactured dwelling during a family hardship condition, where such condition is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family. The zoning permit for such use shall note that it is temporary and subject to renewal annually. In the event the hardship no longer exists, the removal of the temporary use shall be required. If the temporary manufactured dwelling is to be connected to an existing sewage system, compliance with applicable rules of the department of environmental quality will be required. Application for a temporary manufactured dwelling shall consist of a letter describing the nature of the hardship and any form required by the planning department.

R. Non-resource land uses and land partitions are restricted and regulated by Sections 6-6-8-1 and 6-6-8-2 of this title.

S. Construction of additional passing travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels shall be determined by the Malheur County Road Department, road districts, or the Oregon Department of Transportation (ODOT).

T. Reconstruction or modification of public roads and highways shall be determined by the Malheur County Road Department, road districts, or Oregon Department of Transportation when involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

U Improvement of public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required by the Malheur County Road Department, road districts, or Oregon Department of Transportation but not resulting in the creation of new land parcels.

V. Guest Ranch Cemeteries in-conjunction with churches.

W. Commercial dog kennels or dog training classes or testing trials conducted outdoors, or in farm buildings that existed on January 1, 2013, are limited as follows:

(1) the number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and

(2) the number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four (4) per calendar year.

X. Transmission towers over 200 feet in height. (Ord. 86, 12-7-1993; amd. Ord. 101, 4-25-1996; Ord. 146, 4-14-2004; Ord. 147, 4-14-2004; Ord. 184, 10-21-2009)

Telecommunication (Cell) towers, the application shall:

1. identify all communications providers that will co-locate on the tower;

2. identify all existing telecommunications towers and all properties that have obtained approval for a telecommunications tower within two (2) miles of the proposed tower location;

3. include certification by a professional engineer that the construction will comply with structural standards for a telecommunications tower;

4. demonstrate that the applicant has legal access to any private road necessary to access the tower and that the applicant is obligated to improve and maintain the private road;

5. Include a site-specific study identifying the tower site and demonstrating how the materials, surfacing and coloration used on the tower and associated fixtures will appropriately blend into the background, match the surrounding environment and minimize glare, including by stealth construction or concealed towers.

6. The application shall include evidence that the telecommunications tower will not:

i. Have fewer than two (2) communications providers co-locate on the tower, or fewer than three (3) communications providers co-locate on the tower if the tower is more than 100 feet in height; and

ii. Be sited within two (2) miles of any other telecommunications tower upon which the mile radius of the tower will be unavailable or would not meet service coverage needs;

iii. If located within an urban growth boundary, be more than 40 feet in height;

iv. Be a monopole construction;

v. Require electronic lighting or reflective material except as required by Federal Aviation Administration regulations or other federal or state law;

vi. Include a whip antenna that will exceed the height of the tower by more than 20 feet;

vii. Include a directional or parabolic antenna that will exceed seven (7) feet in diameter or width or 14 feet in height if attached to a tower.

7. The owner of a telecommunications tower that has not operated for more than 18 months shall decommission and remove the tower.

Y. Solar Power Generation Facility (solar panels) (see Sections 6-1-3 definitions and 6-4-12)

6-3A-4: APPROVAL OF FARM OR RANCH DWELLINGS: The resource dwellings identified in Subsections 6-3A-2A of this article may be approved subject to a determination that the dwellings are in conjunction with the respective commercial farm or ranch use based on Subsection "A" of this section and Subsection 6-3A-5A of this article, and that the property and improvements constitute a commercial resource operation based on Subsection "C" of this section.

A. Primary Resource Dwelling Determination: When determining whether a proposed primary dwelling to be permanently located on the property is "customarily provided in conjunction" with the farm or ranch use, the following factors shall be considered:

1. The size of the entire resource unit including, all contiguous land in the same ownership; the types of farm crops and acreage for each type; operational requirements for the particular farm activity; the number of other permanent or temporary dwellings on or serving the entire farm or ranch unit (permanent and seasonal); and the extent and nature of the work to be performed by occupants of the proposed dwelling.

B. Farm Hand or Secondary Resource Dwelling: When determining whether a proposed farm hand or secondary dwelling may be provided, the following criteria shall apply:

1. An affidavit by the farm owner or operator making it clear the occupant will be an employee shall be signed, and submitted, and placed in the property file (Township, Range, Section, and tax lot).

C. Commercial Resource Determination: When determining whether an existing or proposed parcel is a commercial farm or ranch unit, the standards of Subsection "A" shall be met and the following factors shall be considered:

1. Soil productivity; drainage; terrain; special soil or land conditions; availability of water; type and acreage of crops grown; crop yields; number and type of livestock; processing and marketing practices; and the amount of land needed to constitute a commercial farm or ranch unit.

2. ORS 215.213(1)(g) and 215.283(1)(f) authorizes a farm dwelling in an EFU zone only where it is shown that the dwelling will be situated on a parcel currently employed for farm use as defined in ORS 215.203. Land is not in farm use unless the day-to-day activities on the subject land are principally directed to the farm use of the land. Where land would be principally used for residential purposes rather than for farm use, a proposed dwelling would not be "customarily provided in conjunction with farm use" and could only be approved according to ORS 215.213(3) or 215.283(3).

D. Notice of Proposed Ministerial Approval: Notice of the proposed ministerial approval of a dwelling in conjunction with farm use shall be mailed to adjoining property owners. Within ten (10) days following notice to adjoining property owners, the application shall be considered for approval by the Malheur County Planning Director. An objection by an adjoining property owner shall require any further action to be conducted by the Malheur County Planning Commission as a conditional use permit. (Ord. 86, 12-7-1993)

6-3A-5: **LAND DIVISION OF LAND:** Subdivisions and planned developments are not consistent with the purpose and intent of this zone and are prohibited. Proposed lot line adjustments and partitions of land in an EFU, ERU or EFFU zone are subject to the provisions of the Malheur County subdivision and partitioning ordinance 1 . In addition, proposed lot line adjustments and partitions shall meet the following requirements:

A. Resource Use: Persons proposing a **land division of land** to create parcels for farm or ranch use shall satisfactorily demonstrate to the Malheur County Planning Director in writing, photographs, maps, charts, statistics and other easily preserved means of communication that the proposal will conform to the following requirements. Facts and collaborating evidence need to be presented in as concise and accurate a manner as is practical. Failure to bring adequate and convincing facts **to bear** on this issue will result in **no** approval being **denied granted**.

1. Is the proposed land division consistent with the state legislature's agricultural land policy as established in ORS 215.243 and 215.263(2)? How? Address each issue.

2. Are the proposed parcels appropriate for the continuation of the existing commercial agricultural operations in the area based on the evaluation prescribed in Subsection 6-3A-4B? **Show substantiation**. The evaluation shall include the subject property and commercial agricultural operations located in the same zone within one mile of the subject property.

3. Are the proposed parcels equal or greater in size than the typical commercial agricultural units in the area? **Substantiate**. Are they appropriate for more intensive commercial agricultural operations such as the growing of nursery stock, greenhouse or hydroponic products, the raising of small fur-bearing animals or poultry in large quantity, dry-lot dairies or feedlots? If so, submit a management plan for five (5) years and project an outline for the second or following five (5) years. If not, it must be shown that the proposed parcels will support commercial farm practices by being used in conjunction with other farmland in the area. A management plan is also required in this situation.

4. Will the addition and/or proposed location of new structures and other improvements on the property impose serious limitations on accepted farming practices on adjacent lands? How will this problem be avoided?

5. Will the proposed land division materially alter the stability of the overall land use pattern of the area, assuming a principal dwelling may be allowed on the lot? Why not?

B. Non-resource Land Partitions: Non-resource land partitions shall be approved as provided in Sections 6-6-8-1 and 6-6-8-2 of this title.

C. Financial Partitions:

1. Partitions for financial purposes, which are eligible may proceed through foreclosure proceedings after notice to the county planning department. Lien and sales contracts eligible for financial partitioning are those established at the time of sale and purchase of the subject land. Following the 1989 date of adoption of this code, all property used as collateral in conjunction with the sale of property, shall conform to the size, access and other requirements of the county zoning and land division ordinance in effect at the time of the property transaction.

2. Those parcels created by a financial partition shall be disqualified from the farm tax deferral and appropriate back taxes paid **up** unless one or both meet the criteria of Subsection "A" of this section. (ORD.86, 12-7-1993)

6-3A-6: DIMENSIONAL STANDARDS:

A. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be located closer than forty feet (40') from a street or road right-of-way line and fifteen feet (15') from any other property line. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at heights not exceeding three feet (3'). Dwellings and inhabitable structures, including associated sewage disposal facilities and removal of vegetation, shall be prohibited within one hundred feet (100') of rivers, streams, lakes, reservoirs and other wetlands, unless topographic features make such setback unnecessary to protect riparian habitat.

B. Lot Area: The criteria in section 6-3A-5 of this article shall be used to determine the appropriate parcel size.

C. Contiguous Ownership: Contiguous lots or parcel of land under the same ownership will be considered as one lot or parcel, except that lots created by subdivisions or partitions approved in accordance with the subdivision ordinance will be considered separate lots, regardless of whether they are under one ownership. (Ord. 86, 12-7-1993)

6-3A-7: CREATION OF MORTGAGE LOTS: A partitioning of land for the purpose of obtaining financing for farm dwellings and farm support buildings is allowed subject to the provisions of this title and the Malheur County subdivision and partitioning ordinance 1 . The resulting parcel and structure may not be sold separately by the owner from the parent lot from which it was originally partitioned unless allowed by this title and state law. (Ord. 86, 12-7-1993)

ARTICLE B. RESOURCE LANDS, SECONDARY LANDS OVERLAY ZONE

(To be adopted when State Statute enables)

ARTICLE C. R-1 RURAL RESIDENTIAL ZONE

SECTION:

- 6-3C-1: Purpose
- 6-3C-2: Permitted Uses
- 6-3C-3: Conditional Uses
- 6-3C-4: Dimensional Standards

6-3C-1: PURPOSE: The purpose of the R-1 rural residential zone is to provide areas for low density residential development in a rural environment. (Ord. 86, 12-7-1993)

6-3C-2: PERMITTED USES: The Planning Director may make ministerial and administrative decisions as set forth in this Chapter. The Planning Director may refer any application for a ministerial or administrative decision to the Planning Commission for a hearing. The Planning Director's decision to approve, deny or send to a public hearing before the Planning Commission shall be made within thirty (30) days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant. The following uses may be permitted outright in an R-1 zone.

- A. Single-family residential dwellings (including manufactured dwellings).
- B. Farm uses as defined in ORS 215.203(2), excluding feedlots.
- C. Any accessory building greater than two hundred (200) square feet in lot coverage area shall have a residential appearance. This includes a wide variety of styles but excludes plain or common galvanized metal buildings which are utilitarian, lacking a combination of the following features to make them appear as residential accessory structures:
 - 1. An appearance which is consistent with or complementary to the dwelling to which it is accessory. This is determined by consideration of roof height, pitch and overhang and by building siding and window styles; or
 - 2. Roof overhangs that appear to be in residential proportions to the height and bulk of the proposed building ranging from one to three (3) or more feet; or
 - 3. Have a mansard or other special roof design with appropriate overhangs.
- D. Registered or certified family owned childcare homes operating under provisions of Oregon law. (Ord. 86, 12-7-1993; amd. Ord. 147, 4-14-2004; Ord. 184, 10-21-2009)
- E. Accessory Dwelling Unit (ADU):
 - 1. Shall be no larger than 900 square feet of useable floor area;

2. One (1) single-family dwelling exists on the lot or parcel;
3. Lot or parcel is at least two (2) acres in size;
4. Shall be located no further than 100 feet from the existing single-family dwelling;
5. The lot or parcel is not located within an area designated as an urban reserve;
6. The existing single-family dwelling on the lot or parcel is not subject to an order declaring it a nuisance or subject to any pending action under ORS 105.550 to 105.600;
7. The accessory dwelling unit will comply with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment;
8. If the water supply source for the accessory dwelling unit or associated lands or gardens will be a well using water under ORS 537.545(1)(b) or (d), no portion of the lot or parcel is within an area in which new or existing ground water uses under 537.545(1)(b) or (d) have been restricted by the Water Resources Commission;
9. No portion of the lot or parcel is within a designated area of critical state concern;
10. The lot or parcel is served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410;
11. Accessory dwelling unit has adequate setbacks from adjacent lands zoned for resource use;
12. Accessory dwelling unit has adequate access for firefighting equipment, safe evacuation and staged evacuation areas;
13. If the accessory dwelling unit is not in an area identified on the statewide map of wildfire risk described in ORS 477.490 as within the wildland urban interface, the accessory dwelling unit complies with the provisions of this section and any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392.
14. Historic home converted to accessory dwelling units:
 - i. Historic home constructed between 1850 and 1945;
 - ii. Malheur County may allow an owner of a lot or parcel within an area zoned for rural residential use to construct a new single-family dwelling on the lot or parcel, provided:
 - a. the lot or parcel is not located in an area designated as an urban reserve;

- b. The lot or parcel is at least 2 acres in size;
 - c. a historic home is sited on the lot or parcel;
 - d. The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and
 - e. The accessory dwelling unit complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.
- iii. an owner that constructs a new single-family dwelling may not:
- a. subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the accessory dwelling unit;
 - b. Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced;
 - c. Rebuild the accessory dwelling unit if the structure is lost to fire;
 - d. Construct an additional accessory dwelling unit on the same lot or parcel;
- iv. Malheur County may require that a new single-family dwelling constructed under this section be served by the same water supply source as the accessory dwelling unit.
- v. Malheur County may impose additional conditions of approval for construction of a new single-family dwelling or conversion of a historic home to an accessory dwelling unit.
15. The county may not approve the following:
- i. An accessory dwelling unit is not allowed to be used for vacation occupancy.
 - ii. A subdivision, partition or other division of the lot or parcel so that the existing single-family dwelling is situated on a different lot or parcel than the accessory dwelling unit is not allowed.
 - iii. Construction of an additional accessory dwelling unit on the same lot or parcel.
 - iv. Garages and outbuildings to support the ADU are prohibited.

16. An existing single-family dwelling and an accessory dwelling unit allowed under this section are considered a single unit for the purposes of calculating exemptions under ORS 537.545(1).

6-3C-3: CONDITIONAL USES: The following uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this title:

- A. Residential subdivisions.
- B. Manufactured dwelling parks.
- C. Duplexes and multi-family dwellings.
- D. Cemeteries.
- E. Public or private schools.
- F. Churches.
- G. Repealed.
- H. Daycare centers.
- I. Golf courses.
- J. Grange halls or community centers.
- K. Governmental structures and uses.
- L. Kennels or boarding stables.
- M. Repealed.
- N. The temporary use of a manufactured dwelling during a family hardship condition, where such condition is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family. The zoning permit for such use shall note that it is temporary and subject to renewal annually **with a letter from a physician without additional fees**. In the event the hardship no longer exists, the removal of the temporary use shall be required **within 3 months of hardship ending**. If the temporary manufactured dwelling is to be connected to an existing sewage system, compliance with applicable rules of the department of environmental quality will be required. Application for a temporary manufactured dwelling shall consist of a letter **from a physician** describing the nature of the hardship and any form required by the planning department.
- O. Operations conducted for the exploration, mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources. (Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004; Ord. 147, 4-14-2004; Ord. 184, 10-21-2009)

1. No application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within 2 miles of a planted vineyard.

P. A residential facility (see Section 6-1-3 definitions for “residential facility”) shall be a permitted use in any zone where multi-family residential uses are a conditional use. A copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.311. However, Malheur County shall not require independent proof of the same conditions that have been required by the Oregon Department of Human Services under ORS 418.205 for licensing of a residential facility.

6-3C-4: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Lot Area: The minimum lot area shall be a nominal one acre or a larger area determined to be in compliance with the applicable Oregon Department of Environmental Quality (DEQ) department of environmental quality rules and regulations regarding sewage disposal and water supplies, provided that:

1. All septic tanks, drainfields and wells shall be located on the same lot with the facility that is being served.
2. A Oregon Department of Environmental Quality department of environmental quality evaluation report from the authorized department representative shall be required.

B. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be closer than forty feet (40') from a street or road right-of-way line, fifteen feet (15') from any other property line, twenty feet (20') from any major irrigation canal right-of-way. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback, shrubbery other than trees shall be maintained at heights not exceeding three feet (3'). (Ord. 86, 12-7-1993)

C. Residential Density Limitation: The maximum development density of residential dwellings (single-family, duplex, multi-family and manufactured dwelling) permitted in any of the rural residential exception areas identified in the plan shall not exceed one dwelling unit for each one (1) acre of residentially developed/developable land within the ownership. Detached single-family dwellings shall be on individual, legally created lots or parcels or may be part of a condominium development. (Ord. 147, 4-14-2004)

Notwithstanding the average density limitation set forth above, undeveloped lots and parcels legally created prior to June 1, 1984, including lots in recorded subdivisions, shall retain the right to one residential dwelling unit, provided the lot or parcel complies with the site development standards of subsections A and B of this section. (Ord. 86, 12-7-1993)

ARTICLE D. R-2 RURAL RECREATION ZONE

SECTION:

- 6-3D-1 Purpose
- 6-3D-2 Permitted Uses
- 6-3D-3 Conditional Uses
- 6-3D-4 Dimensional Standards

6-3D-1: PURPOSE: The R-2 rural recreation zone is designed to provide areas of public recreational value that take advantage of forest, water and other leisure opportunities, and are compatible with adjoining agricultural land uses. Allowed recreational uses shall encourage the preservation of the value and natural attractiveness of such areas. This article allows the Malheur County Planning Commission to attach special conditions to certain uses, as delineated in Section 6-3C-3 of this chapter, that have a potentially detrimental effect on neighboring lands. (Ord. 86, 12-7-1993)

6-3D-2: PERMITTED USES: The following uses may be permitted outright in an R-2 zone:

- A. Any use permitted in an EFU, EFFU or ERU zone, excluding feedlots.
- B. Open land recreational facilities, both for profit and nonprofit, including, but not limited to, boating, fishing, and hunting facilities, camping, and picnicking facilities, riding stables and dude ranching.
- C. Resort type residential establishments, both for profit and nonprofit, associated with or contributing to the accessibility of open land recreational facilities. (Ord. 86, 12-7-1993)

6-3D-3: CONDITIONAL USES: The following conditional uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this title:

- A. All conditional uses permitted in an EFU, EFFU or ERU zone, and the R-1 zones.
- B. Dwellings, single-family or multi-family, designed or associated with and contributing to the accessibility of open land recreational facilities so long as such dwellings do not detract from general use or accessibility to such recreational facilities. (Ord. 86, 12-7-1993)

C. A residential facility may be allowed where single family dwelling is allowed. County may require an applicant proposing to site a residential facility within its jurisdiction to supply the county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.311. However, the county shall not require independent proof of the same conditions that have been required by the Oregon Department of Human Services under ORS 418.205 for licensing of a residential facility.

D. Solar Power Generation Facility (solar panels) (see definitions and Section 6-4-12)

6-3D-4: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Lot Area: The minimum lot area shall be a nominal one acre or a larger area determined to be in compliance with the applicable Oregon Department of Environmental Quality rules and regulations regarding sewage disposal and water supplies, provided that:

1. All septic tanks, drainfields and wells shall be located on the same lot with the facility that is being served.
2. An Oregon Department of Environmental Quality evaluation report from the authorized department representative shall be required.

B. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be closer than forty feet (40') from a street or road right-of-way line, fifteen feet (15') from any other property line, twenty feet (20') from any major irrigation canal right-of-way. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback, shrubbery other than trees shall be maintained at heights not exceeding three feet (3'). (Ord. 86, 12-7-1993)

C. Residential Density Limitation: The maximum development density of residential dwellings (single-family, duplex, multi-family and manufactured dwelling) permitted in any of the rural residential exception areas identified in the plan shall not exceed one dwelling unit for each one (1) acre of residentially developed/developable land within the ownership. Detached single-family dwellings shall be on individual, legally created lots or parcels, or may be part of a condominium development. (Ord. 147, 4-14-2004)

ARTICLE E. UGA - URBAN GROWTH AREA

SECTION:

6-3E-1: Purpose

6-3E-2: Permitted Uses

6-3E-3: Lot Area and Site Development Standards

6-3E-4: Application Filing and Review Procedures

6-3E-5: Adoption of Growth Management Agreements

6-3E-5-1: Growth Management Agreement Between the City of Ontario and Malheur County

6-3E-1: PURPOSE: The urban growth area **zone** (UGA) is designed for those lands designated as urban growth areas in the comprehensive plans for the incorporated cities in Malheur County. The UGA **zone** is intended to identify the unincorporated areas within each city's urban growth area and to provide for joint review and consideration of land use concerns by Malheur County and the city involved in order to ensure land use activities on the urban fringe conform to orderly growth and extension of city services, facilities and land use patterns. The UGA **zone** implements the provisions of the growth management agreements that **the** Malheur County has entered into with each of the cities. (Ord. 86, 12-7-1993; amd. Ord. 167, 10-24-2007)

6-3E-2: PERMITTED USES: Uses permitted outright and conditionally **permitted**, within the UGA of each city shall be those uses stipulated for the areas in question and set forth in the particular city's comprehensive plan and zoning ordinance and as provided for in the **urban** growth management agreement, adopted by county ordinance. (Ord. 86, 12-7-1993; amd. Ord. 167, 10-24-2007)

6-3E-3: LOT AREA AND SITE DEVELOPMENT STANDARDS: Lot area, dimensions, building heights, lot coverage, off street parking and loading areas, yard requirements and other site development standards shall be enforced as established in the particular city's plan and ordinances and as provided for in the **urban** growth management agreement adopted by county ordinance. (Ord. 86, 12-7-1993; amd. Ord. 167, 10-24-2007)

6-3E-4: APPLICATION FILING AND REVIEW PROCEDURES: Applications for permits within the **Urban Growth Area or Boundary (UGA or UGB)** of a particular city shall be filed and reviewed in the manner set forth in the **urban** growth management agreement established between the county and the city and as adopted by county ordinance. The

county court or its designee shall retain final authority for the approval, disapproval or conditional approval of permit requests. (Ord. 86, 12-7-1993; amd. Ord. 167, 10-24-2007)

6-3E-5: ADOPTION OF URBAN GROWTH MANAGEMENT AGREEMENTS: The Malheur County shall enter into a an urban growth management agreement with each of the incorporated cities in Malheur County and shall adopt said agreements by county ordinance. The agreements shall be adopted as part of this title by reference. (Ord. 86, 12-7-1993; amd. Ord. 167, 10-24-2007)

6-3E-5-1: URBAN GROWTH MANAGEMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND MALHEUR COUNTY:

A. Purpose of Agreement: The purpose of this agreement is to establish joint, cooperative procedures between the city and the county in the adoption of and administration of the Ontario Urban Growth Boundary (UGB) and the Ontario Urban Reserve Area (URA). For the purposes of this agreement, the "Ontario Urban Growth Area (UGA)" shall be defined as the unincorporated area within the Ontario UGB, and the "Ontario Urban Reserve Area (URA)" shall be the unincorporated area between the UGB and the URA boundary. The city's and the county's comprehensive plans for the UGA and URA are incorporated in this agreement by reference.

1. The City of Ontario's Comprehensive Plan (city plan), urban growth boundary and urban area land use designations map, and development regulations, in conjunction with this agreement, shall establish the standards and procedures for review and action on all land use decisions and other related matters which pertain to implementing the city plan within the UGA. The city shall have lead authority in amending the city plan, including UGB amendments.
2. The county shall have lead authority to implement and administer the city plan within the UGA and URA. The county adopts, and incorporates by reference, the current (current as of the date of this agreement) city plan, as it applies to the UGA, and the current urban area land use designations map and implementing development regulations.
3. The land use designations shown on the city's urban reserve area land use designations map are conceptual only and shall not apply until land is added to the city's UGB. During the interim period, county rural land use designations and zoning shall apply.
4. All actions as specified by this agreement shall be taken to assure that the city and county comprehensive plans remain consistent and coordinated with each other.
5. This agreement replaces all prior urban growth area joint management agreements between the city and the county.

B. Definitions: As used in this agreement, unless the context shall otherwise require, the singular shall include the plural and the masculine shall include the feminine and neuter. The following words and phrases shall mean:

ANNEXATION: An act commenced by a city through a public hearing, the intent of which is to incorporate additional land into the legal boundaries of the city.

CITY: The city of Ontario, Oregon.

CITY COUNCIL: The duly elected governing body for the City of Ontario, Oregon.

COUNTY: The County of Malheur, Oregon.

COUNTY COURT: The duly elected governing body for Malheur County, Oregon.

FINAL DECISION: The last scheduled decision making action of the jurisdiction with authority for the type of action.

JOINT POLICY REVIEW COMMITTEE (JPRC): An intergovernmental committee of city and county planning commissioners that reviews and advises governing bodies on the application of city policies and standards.

JOINT TECHNICAL REVIEW COMMITTEE (JTRC): An intergovernmental committee of staff members from the city and county planning and public works departments and other appropriate agencies that provides for staff level coordination on urban growth matters.

LAND USE ACTION: A decision regarding the use or development of land including, but not limited to, partitions, subdivisions, zone changes, variances, conditional uses, and zoning permits that is subject to the applicable county or city comprehensive plan and implementing ordinances.

PUBLIC FACILITIES: Projects, activities, and facilities which are determined to be necessary for the public health, safety, and welfare.

URBAN GROWTH AREA (UGA): The unincorporated land outside the city limits but enclosed by the urban growth boundary.

URBAN GROWTH BOUNDARY (UGB): The defined boundary of the city's growth and development area encompassing the land deemed needed to support that growth and development during the planning period.

URBAN RESERVE AREAS: Lands outside of the urban growth boundary identified as the highest priority for inclusion in the urban growth area when additional urbanizable land is needed.

C. UGA and URA Administration: The city shall administer all lands within its corporate limits. The county shall retain responsibility for administration of all unincorporated lands inside the UGB and URA.

D. Land Use Designations and Development Standards:

1. The land use designations as shown on the city's urban growth boundary and urban area land use designations map shall control growth and development in the UGA. The land use designations shown on the county's comprehensive plan map shall control growth and development in the URA.

2. All uses and development of land in the UGA shall comply with the appropriate substantive provisions of the city plan and development regulations including applicable standards for water and sewer facilities, streets, and other required improvements as specified by the city regulations. All uses and development of land in rural residential portions of the URA shall comply with the appropriate substantive provisions of the URA overlay zone and development regulations including the location of streets and public facilities as shown on the city "streets and public facilities master plan".

E. Roles and Responsibilities:

1. The county shall have full decision making authority to review all land use permits in the UGA and URA. The city shall have automatic standing to appeal any county decision in the UGA and URA.

2. The city shall have full decision making authority for all comprehensive plan amendments, zone changes, changes to development regulations that apply in the UGA or the designation of urban reserve areas. The county shall have automatic standing to appeal any city decision affecting the UGA.

3. The city and county shall have joint decision making authority for amendments to the UGB or URA.

4. A Joint Technical Review Committee (JTRC) shall be established by the city and the county to coordinate land use decisions in the UGA and URA.

i. At a minimum, the JTRC will consist of representatives from the planning and public works staffs of the city and the county. In addition, other representatives may participate as appropriate, including, but not limited to, the **Malheur County's Enviromental Health** **sanitarian, county** Assessor, public safety officials, economic development officials and representatives from special districts such as school districts or irrigation districts. The chair of individual meetings shall be the planning director from the jurisdiction with lead authority for the issues under review.

ii. The JTRC shall review all land use applications prior to the preparation of a staff report or administrative decision. The purpose of this review is to identify and agree on applicable policies and development standards and specific issues to be addressed by the applicant. This review may occur prior to the submission of an application, similar to a preapplication conference.

- iii. If no JTRC meetings are held during a three (3) month period, then the JTRC shall meet to discuss general urban growth issues and to maintain communications between the jurisdictions.
 - iv. The JTRC shall oversee the preparation and maintenance of a development review handbook, which will identify all of the applicable comprehensive plan policies, zoning requirements, development regulations, public facility requirements and urban service standards that are pertinent to land use decisions in the UGA.
5. A Joint Policy Review Committee (JPRC) shall serve as an advisory board to address urban growth policy matters between the city and the county.
- i. The JPRC shall be a standing committee composed of three (3) members each from the city and county planning commissions, appointed by either the mayor or county judge, respectively. Members shall serve on the JPRC for the length of their terms on their respective planning commissions. The chair of the committee shall be elected by the members of the committee.
 - ii. The JPRC shall meet on an "as needed" basis. A quorum shall consist of four (4) members, with at least two (2) members from each jurisdiction.
 - iii. The JPRC shall act in an advisory capacity only. The JPRC may review policy issues related to land use decisions of a planning commission prior to a hearing by the appropriate governing body. A JPRC review may be initiated by the mayor or the county judge. Such a review must be based on one of the following standards:
 - (A) The county planning commission's decision has improperly applied the city plan policies or development standards.
 - (B) The city planning commission's decision does not comply with the applicable statewide planning goals, administrative rules, or state law.
 - iv. A JPRC review shall be based on the record of the planning commission decision and shall focus on the application of city standards and policies and compliance with the statewide planning goals or state law. No new or additional testimony may be added as part of the JPRC review.
 - v. The JPRC shall make its own recommendations and findings, which shall be forwarded to the city and county prior to the hearing by the appropriate governing body.
 - vi. JPRC review shall not limit the right of any aggrieved party to an appeal.

F. County Administrative Decisions: In the UGA and URA, permits requiring administrative review (i.e., require no public hearing and/or notice to adjacent landowners) shall be reviewed as follows:

1. The county shall send notice of the permit application to the city within five (5) working days of the date that the application is filed with the county planning department. The county shall refer the permit application to the JTRC for review before issuing a tentative decision pursuant to county review procedures.
2. After JTRC review, the county shall issue a tentative decision pursuant to county procedures and provide the applicant and the city a copy of that tentative decision within three (3) working days of the decision. The tentative decision of the county shall not become final for ten (10) working days from the date of the tentative decision to provide the city an opportunity to informally resolve any disputes. The final decision shall reflect any changes agreed to by the city, the county and the applicant. If an informal agreement is not reached within ten (10) working days, the tentative decision shall become final.
3. The final decision of the county may be appealed pursuant to county procedures. If appealed, a review by the JPRC may be requested prior to the hearing before the planning commission and/or the county court.
4. In the event of an appeal, a JPRC review may be conducted as provided for in Subsection "E5" of this section. Notice of the county's final decision shall be sent to the city within three (3) working days of the date of the final decision. The county's final decision is appealable according to state law.

G. County Discretionary Decisions: In the UGA and URA, permits requiring discretionary review (i.e., requires a public hearing and/or notice to adjacent landowners) shall be reviewed as follows:

1. The county shall forward a copy of the application to the city within five (5) working days of the date the application is filed with the county. A JTRC meeting shall be scheduled prior to the preparation of the county staff report to the county planning commission. The city may provide additional written comments or verbal testimony prior to the closing of the public record.
2. In making its decision the county planning commission shall consider and is obligated to respond to all comments submitted by the city with regard to the application. Notice of the county planning commission's decision shall be provided to the city within three (3) working days of the date of the final decision. The decision may be appealed to the county court pursuant to county procedures.
3. In the event of an appeal, a JPRC review may be requested as provided for in Subsection "E5" of this section. Notice of the county's final decision shall be sent to the city within three (3) working days of the date of the final decision. The county's final decision is appealable according to state law.

H. City Land Use Decisions: Comprehensive plan amendments, including UGB and URA amendments and plan map changes, or changes to development regulations that affect the UGA or URA, may be initiated by the city, or by an application from the county or a property owner and shall be reviewed as follows:

1. The initial application shall be filed with the city. A copy of the application shall be forwarded to the county within five (5) working days of the date the application is filed with the city. A JTRC meeting shall be scheduled prior to the preparation of the city staff report to the city planning commission to discuss relevant issues or policies. The county may provide additional written comments or verbal testimony prior to the closing of the public record.
2. The city planning commission shall review the amendment in a public hearing. In making its decision the city planning commission shall consider, and is obligated to respond to all comments submitted by the county with regard to the application. Notice of the decision shall be provided to the county within three (3) working days of the city planning commission decision.
3. Within ten (10) working days of a decision by the city planning commission, a review by the JPRC may be requested. The JPRC shall conduct a review and submit its findings prior to a hearing before the city council.
4. In the event the city approves the requested amendment, the final decision of the city, along with a copy of the findings and record to support that decision, shall be forwarded to the county within three (3) working days of the date of the final decision for county adoption. The county review shall be based on the record of the city's decision.
5. Notice of the county planning commission decision shall be forwarded to the city within three (3) working days of the date of the final decision. Within ten (10) working days of a decision by the county planning commission, the city may request a review by the JPRC to resolve any differences between the city's final decision and the county planning commission's decision.
6. The JPRC shall conduct a review and submit its recommendations and findings prior to a hearing before the county court. Notice of the county court decision shall be forwarded to the city within three (3) working days of the date of the final decision. The final decision of the county court is appealable in the manner prescribed by state law.
7. A comprehensive plan amendment shall not be effective until such time as the county adopts the city's plan amendment as an amendment to the county comprehensive plan and plan map.

I. Annexations: The city shall have lead authority to review all annexation requests which shall be reviewed as follows:

1. All land within the UGB may be subject to future annexation; however, establishment of a UGB does not imply that all land within the boundary will be annexed.
2. Land may be annexed to the city according to methods allowed by state law. Annexation proposals must meet the following standards:
 - i. The land is within the UGB.
 - ii. The development of the property is compatible with the extension of urban services to the surrounding areas.
 - iii. The city is capable of providing and maintaining a full range of urban services to the property without negatively impacting existing systems and the city's ability to adequately serve all areas within the existing city limits.
3. The city may enter into agreements to extend urban services prior to annexation in exchange for consent to annexation at a later date, in accordance with state law.
4. Requests for annexation to the city of areas outside the UGB shall not be considered until such time as the UGB is amended to include the subject land. Once the boundary has been amended, the annexation application can be processed.
5. The annexation application shall be forwarded to the county within five (5) working days of the date the application is filed with the city. A JTRC meeting shall be scheduled prior to the preparation of the city staff report to the city planning commission to discuss relevant issues or policies. The county may provide additional written comments or verbal testimony prior to the closing of the public record.
6. In making its decision the city planning commission shall consider, and is obligated to respond to all comments submitted by the county with regard to the annexation application. Notice of the decision shall be provided to the county within three (3) working days of the date of the final decision.
7. Within ten (10) working days of a decision by the city planning commission, a review by the JPRC may be requested. The JPRC shall conduct a review and submit its recommendation and findings prior to a hearing before the city council. Notice of the city council decision shall be forwarded to the county within three (3) working days of the date of the final decision. The final decision of the city is appealable in the manner prescribed by state law.

J. Public Facilities and Services:

1. The cost of extension or improvements of public facilities and utilities required as a condition of a permit approval shall be borne by the developer, unless the city or county agrees to bear all or any portion of the costs thereof.

2. Establishment of a right-of-way, donation of easements, creation of new streets, or improvements to existing streets shall conform to the city's existing street patterns and master plan for the future street system. Until annexed into the city, road maintenance shall be the responsibility of the county or appropriate road district after the road is formally accepted into the road system pursuant to state law.

3. The JTRC shall serve as a forum to coordinate issues with respect to the following items which are within, or adjacent to, or which directly impacts the Ontario UGB and the UGA, and for which either the city or county has the ultimate decision making authority:

- i. Capital improvement programs and major public works projects for transportation, recreation, sewer, water, or drainage facilities; acquisition or development of property; or other similar activities.
- ii. Functional plans, or amendments thereto, for utilities, drainage, solid waste, transportation, recreation, or other similar activities.
- iii. Economic and industrial development plans or policies and other kinds of special plans.
- iv. Design and engineering standards for urban facilities and services.

4. The JPRC may serve as a forum to discuss policy matters that impact the city and county prior to final decision by the appropriate jurisdiction.

5. The city shall be responsible for preparation and maintenance of public facilities plans within the Ontario UGB, and "streets and public facilities master plans" within the URA.

K. Urban Services:

1. Extension of city services shall be permitted within the UGB only when consistent with the policies of the city plan and with any adopted functional plans for urban services. Extension of city services shall not be permitted within the URA.

2. City services such as water, sewer, and street extension or maintenance shall be provided only to those areas, which either annex, agree to annex to the city, or **which** enter into an agreement consenting to future annexation, as provided for in ORS 222.115.

3. All city services shall be provided and maintained to city standards, and under supervision of the city, unless some other arrangement acceptable to the city has been made for the maintenance and supervision of said services.

4. The city and county may enter into separate intergovernmental agreements for the application of system development charges or the creation of local improvement districts in the UGA, as provided for in ORS 223.

L. Special District Coordination:

1. Special districts situated wholly or partially within the UGA shall have the opportunity to participate on JTRC and to review and comment on the land use decisions inside the UGA which affect them.
2. Pursuant to ORS 195, the city and county shall negotiate and enter into urban service agreements with each special district which is situated either wholly or partially within the UGA as part of the next periodic review and update of the city plan.
3. Under such urban service agreements, the special district shall give the city and county the opportunity to review and comment on the following district activities which may apply to the lands in the UGA:
 - i. Major public works projects to be undertaken by the district.
 - ii. Plans for establishment, improvement, or extensions of facilities provided by the district.
 - iii. Capital improvement programs and design standards which are being developed by the district.

M. Urban Reserve Areas: Pursuant to ORS 183 and 197, the city and county shall cooperatively plan for areas outside the urban growth boundary to be reserved for eventual inclusion in the urban growth area and to protect those areas from patterns of development which could impede urbanization.

1. The city shall designate urban reserve areas as part of the city plan and urban area land use designation map. However, county rural plan designations shall control until land within the URA is added to the UGB. The county shall adopt land development regulations for rural residential land within the URA to ensure that interim development and land divisions will not hinder the effective transition to urban land uses and the orderly and efficient provision of urban services in the future. These designations and regulations shall be adopted pursuant to the procedures in subsection H of this section.
2. The county shall be responsible for administration of all incorporated lands, both at the time of the urban reserve area designation and upon inclusion of these areas within the UGB. Land use decisions within an urban reserve area shall be pursuant to the procedures in subsections F and G of this section.

N. Review, Amendment, and Termination of This Agreement:

1. This agreement may be reviewed and amended at any time by the mutual consent of both parties and after public hearings by the city council and county court. Either governing body may consult their respective planning commission for a recommendation.

2. Proposed amendments to this agreement may be referred to the JPRC for review. Following initial approval by the city, any amendments shall be forwarded to the county. Approval by both parties shall be in the form of an ordinance adopting the revised agreement. Any amendment to the agreement shall not be effective unless and until both the city and the county approve said amendment.

3. Any modification of this agreement shall be consistent with other provisions of this agreement, the city and county comprehensive plans, and with applicable state law.

4. This agreement may be terminated by either party under the following procedure:

i. Notice of proposed termination shall be sent to the other jurisdiction. The notice of proposed termination shall be referred to the JPRC to provide an opportunity to resolve any disputes.

ii. The terminating jurisdiction shall schedule a public hearing at least forty (40) days after the date of the notice of proposed termination. Public notice of the hearing shall be in accordance with each jurisdiction's respective ordinance requirements for notice of legislative decisions.

iii. An established date for termination of the agreement shall be at least ninety (90) days after the public hearing in order to provide additional time to resolve disputes and facilitate transition.

O. Appeals: Any person or party aggrieved by a decision or ruling pursuant to this agreement shall have the right of appeal as set forth in the appropriate ordinance or in state law.

P. Enforcement:

1. The county shall be responsible for enforcement of all land use ordinances within the UGA and URA. The county shall have the exclusive right to decide whether to proceed with any enforcement actions. All enforcement actions shall be taken in accordance with the enforcement provisions of the county ordinances.

2. The county shall indemnify and hold the city harmless from any claims for damages arising out of enforcement of the land use ordinances within the UGA or URA.

3. The county shall be responsible for all costs connected with enforcement of the land use ordinances within the UGA and URA.

Q. Fees: Application for land use actions to be filed with the county shall be accompanied by the fee set forth in appropriate county ordinance. Applications for comprehensive plan amendments or zone changes shall be filed with the city and be accompanied by the appropriate fee as specified in city ordinance.

R. Repeal: Acceptance of this agreement by the city and county shall immediately repeal all prior urban growth area joint management agreements entered into between the city and the county.

S. Severability: The provisions of this agreement are severable. If any section, sentence, clause or phrase of this agreement is adjudged by a court of competent jurisdiction to be invalid, said decision shall not impair or affect the validity of the remaining portions of this agreement.

T. Enabling Provisions: The following signatures bind all parties of interest to the terms of this agreement:

CITY OF ONTARIO

MALHEUR COUNTY

(Ord. 167, 10-24-2007)

ARTICLE F. RSC RURAL SERVICE CENTER ZONE

SECTION:

- 6-3F-1: Purpose
- 6-3F-2: Permitted Uses
- 6-3F-3: Conditional Uses
- 6-3F-4: Uses in Specific Areas
- 6-3F-5: Performance Standards
- 6-3F-6: Fencing Requirements
- 6-3F-7: Dimensional Standards

6-3F-1: PURPOSE: Seventeen (17) small communities throughout Malheur County have been designated as rural service centers. These communities are Annex, Arock, Brogan, Burns Junction, Cairo Junction, Farewell Bend, Harper, Ironside, Jamieson, Johnson Brothers, Juntura, McDermitt, Oregon Slope, Owyhee Corner, Rome, Weiser Junction and Willowcreek. Each community has developed its own zoning standards based on the desires of its citizens. (Ord. 86, 12-7-1993)

6-3F-2: PERMITTED USES:

A. The following uses are permitted in all RSC zones, except Oregon Slope, unless otherwise indicated. The permitted uses in Oregon Slope are described in section 6-3F-4 of this article.

1. Single-family dwellings, including manufactured dwellings.
2. Farm uses as defined in ORS 215.203(2), excluding feedlots.
3. Public or privately owned parks (except Willowcreek, Johnson Brothers, Cairo Junction, Harper, Owyhee Corner, Juntura, Arock, Rome and Burns Junction).
4. Residential homes for up to six (6) persons who fit within the definition of persons listed in the definitions of this zoning ordinance, and ORS 443.400(5) through (10). (Ord. 86, 12-7-1993; amd. Ord. 147, 4-14-2004)

6-3F-3: CONDITIONAL USES: Unless otherwise indicated, the following conditional uses and their accessory uses may be established in all RSC zones, except Oregon Slope, when authorized in accordance with chapter 6 of this title:

- A. Duplexes or multi-family dwellings (except Ironside, Willowcreek and Cairo Junction).
- B. Manufactured dwelling parks (except Willowcreek).
- C. Residential subdivisions.
- D. Public or private schools (except Johnson Brothers).
- E. Churches (except Johnson Brothers and Cairo Junction).
- F. Commercial activities, including, but not limited to, eating and drinking establishments, business and professional offices, and retail services including sales and display rooms and lots.
- G. Governmental structures and uses for the promotion of public health, safety or welfare (except Willowcreek, Johnson Brothers, Cairo Junction, Harper and Owyhee Corner).
- H. Industrial uses, including, but not limited to, wholesaling, manufacturing, processing, warehousing and storage (except Johnson Brothers).
- I. Recreational facilities (Jamieson, Farewell Bend and Rome only).
- J. Public and privately owned parks (Juntura, Arock, Rome and Burns Junction only).
- K. Kennels and boarding stables.
- L. Home occupations and home businesses as provided by section 6-6-8-6 of this title.
- M. The temporary use of a manufactured dwelling during a family hardship condition, where such condition is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family. The zoning permit for such use shall note that it is temporary and subject to renewal annually **with a letter from a physician without additional fees**. In the event the hardship no longer exists, the removal of the temporary use shall be required **within 3 months of hardship ending**. If the temporary manufactured dwelling is to be connected to an existing sewage system, compliance with applicable rules of the department of environmental quality will be required. Application for a temporary manufactured dwelling shall consist of a letter **from a physician** describing the nature of the hardship and any form required by the planning department.

6-3F-4: USES IN SPECIFIC AREAS:

- A. Jamieson Area:
 - 1. Junkyards and dump sites are neither permitted nor conditional uses (Jamieson only). (Ord. 86, 12-7-1993)
- B. Uses in Oregon Slope RSC Zone:

1. Permitted Uses: The following uses are permitted outright in the Oregon Slope RSC zone:

- i. Single-family dwellings, including manufactured dwellings.
- ii. Commercial activities, including, but not limited to, eating and drinking establishments, business and professional offices, and retail services including sales and display rooms and lots. (Ord. 86, 12-7-1993; amd. Ord. 147, 4-14-2004)

2. Conditional Uses: No conditional uses are specified for this RSC zone. (Ord. 86, 12-7-1993)

6-3F-5: PERFORMANCE STANDARDS: In all RSC zones the performance standards contained in Section 6-3G-4 of this chapter shall apply to all nonresidential and all nonagricultural activities. (Ord. 86, 12-7-1993)

6-3F-6: FENCING REQUIREMENTS: Fencing may be required between an RSC zone (except Jamieson) and adjoining EFU, EFFU or ERU property upon a finding by the planning commission that a problem exists that can be alleviated by adequate fencing. Upon a complaint filed by adjoining property owners, a public hearing will be held to determine if fencing will be required. (Ord. 86, 12-7-1993)

Notes See section 6-9-1 of this title.

6-3F-7: DIMENSIONAL STANDARDS: The following dimensional standards shall apply in all RSC zones:

A. Lot Area: The minimum lot area shall be one (1) acre or a larger area determined to be in compliance with the applicable Oregon Department of Environmental Quality rules and regulations regarding sewage disposal and water supplies, provided that:

1. All septic tanks, drainfields and wells shall be located on the same lot with the facility that is being served.
2. An Oregon Department of Environmental Quality evaluation report from the authorized DEQ representative shall be required.

B. Setbacks: No building or sight obscuring fence, other than a fence or facility associated with irrigation activities, shall be closer than forty feet (40') from a street or road right-of-way line, fifteen feet (15') from any other property line, twenty feet (20') from any major irrigation canal right of way. No sight obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at heights not exceeding three feet (3').

C. Average Residential Density Limitation: In lieu of establishing a minimum lot size in the RSC zone for residential use and development, the following limitations to such development are hereby imposed: (Ord. 86, 12-7-1993)

1. The maximum development of residential dwellings (single-family, duplex, multi-family and manufactured dwelling) permitted in any RSC area, as identified in the plan, shall be one (1) dwelling unit per acre of residentially developed/developable land. (Ord. 147, 4-14-2004)

2. The average residential density limitation shall be computed on all acreage developed to residential use or available to such use and shall exclude all acreage built and committed to nonresidential use.

3. Once an RSC area reaches the maximum residential density, the county shall cease to accept and review further requests to divide land or develop land for residential use except as provided in subsection D of this section.

D. Undeveloped Parcels: Notwithstanding the average density limitations set forth above, undeveloped contiguously owned lots and parcels legally created prior to June 1, 1984, shall retain the right to one (1) residential dwelling unit, provided the parcel complies with the site development standards in subsections A and B of this section. (Ord. 86, 12-7-1993)

ARTICLE G. C1 COMMERCIAL ZONE

SECTION:

- 6-3G-1: Purpose
- 6-3G-2: Permitted Uses
- 6-3G-3: Conditional Uses
- 6-3G-4: Performance Standards
- 6-3G-5: Dimensional Standards
- 6-3G-6: Site Plan Review

6-3G-1: PURPOSE: The C1 commercial zone is designed to provide areas for the broad range of commercial operations and services required for the proper and convenient functioning of commercial centers. Permitted uses are intended to include all retail and service operations that may be appropriately located within a shopping district and are normally required to sustain a community. Attractive, consolidated commercial developments, which are protected from the intrusion of noncompatible land uses and developed with adequate and safe parking, traffic circulation and highway access, are among the desired goals for this zone. This article provides not only for the planning commission to attach special conditions to certain uses as delineated in section 6-3G-3 of this article that have a potentially detrimental effect on neighboring lands, but also for the planning commission to exercise review of planned permitted uses as delineated by section 6-3G-2 of this article. (Refer to section 6-3G-5 of this article and chapter 5 of this title.) (Ord. 86, 12-7-1993)

Notes See section 6-9-1 of this title.

6-3G-2: PERMITTED USES: The following uses may be permitted outright in a C1 zone:

- A. Business and professional offices.
- B. Retail stores, including sales and display rooms or lots.
- C. Machinery sales, service and repair.
- D. Manufacturing, processing or treatment of products in conjunction with retail (but not wholesale) sales.
- E. Residential uses in conjunction with commercial uses. (The intent is to give owners, operators or security personnel of commercial enterprises the opportunity to live on or near the location of their businesses.) (Ord. 86, 12-7-1993)

6-3G-3: CONDITIONAL USES: The following uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this title:

- A. Utility facilities.
- B. Kennels and veterinary or animal hospitals.
- C. Outdoor amusement or recreational uses.
- D. Public or private schools.
- E. Churches.
- F. Residential uses not in conjunction with commercial uses.
- G. Governmental structures and land uses for promotion of the public health, safety or welfare.
- H. Clubs, lodges, eating and drinking establishments.
- I. Motels.
- J. Other uses not listed as conditional or permitted but determined to be compatible with commercial uses and in accordance with the comprehensive plan. (Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)

6-3G-4: PERFORMANCE STANDARDS: Each structure or use permitted or conditionally permitted in a commercial zone shall meet the following performance standards: (Ord. 86, 12-7-1993)

- A. Physical Appearance: With the exception of gasoline pumps, all operations other than pick ups and deliveries shall be carried on within an enclosed building; provided, that new materials or equipment in operable condition may be stored in the open, such as a sales lot. Normal daily wastes may be stored in containers outside of a building when such containers are not readily visible from beyond the property line. The provisions of this subsection shall not be construed to prohibit the display of merchandise or vehicles for sale or rental, or the storage of automobiles, farm machinery, trailers, manufactured dwellings or similar equipment in operable condition when in association with a permitted use. The required yard areas other than driveway openings shall be landscaped. (Ord. 147, 4-14-2004)
- B. Hazard: No operation shall be established which fails to meet the **State of Oregon Fire and Electrical** codes and any other applicable state or federal codes related to safety. This provision shall not be construed to prohibit the use of normal heating fuels, and other volatile materials when handled in accordance with applicable codes.

- C. Noise: No operation shall be carried on which creates noise in excess of the normal traffic noise of the adjacent street at the time of daily peak hour traffic volume. Noise volume generated by the use shall be measured at any property line. The comparable traffic noise shall be measured at the property line adjacent to the street. All noise volume shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
- D. Sewage and Liquid Waste: All operations shall comply with any applicable regulations of the county, state or federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.
- E. Smoke, Particulate Matter and Gases: No use shall be established which fails to meet the air quality regulations of the Oregon Department of Environmental Quality pertaining to emissions of smoke, particulate matter, fugitive dust, gases and other air contaminants.
- F. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of persons is prohibited. Observations shall be made at the property line of the establishment generating the odor. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious.
- G. Vibration: All machines shall be mounted so as to minimize vibration and in no case shall such vibration be perceptible, without the use of instruments, at the property line.
- H. Glare And Heat: Any glare producing operations, such as welding arcs shall be shielded so that they are not visible from the property line. Surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line.
- I. Dust: All surfaces used in the operation of the use shall be graveled or paved with a dust free surface. Gravel surfaces shall be watered down when conditions of use or weather cause dust to travel toward structures on adjacent properties.
- J. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data is supplied and proves to be convincing, the judgment of the planning director shall be the determining factor. (Ord. 86, 12-7-1993)

6-3G-5: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Minimum Lot Area: Ten thousand (10,000) square feet where facility is connected to a public sewer system. The lot or parcel shall not be less than the minimum lot width and minimum lot depth as allowed by this section. In those cases where septic tank and drainfield is the method of sanitary waste disposal, minimum lot size is one acre or larger as needed to meet the requirements of the Oregon Department of Environmental Quality.

B. Minimum Lot Width: One hundred feet (100').

C. Maximum Lot Depth: Not more than three (3) times the lot width.

D. Setbacks: No building or site-obscuring fence, shrubbery or structure shall be located closer than thirty feet (30') to a street or road right-of-way. No building (nor structure other than fence) shall be located closer to an interior property line than fifteen feet (15') or one-half (1/2) the building or structure height, whichever is greater. An exception exists when condominium structures are proposed requiring zero side yard setbacks.

E. Conditional Uses: Conditional use approvals may require greater dimensional standards than the above when the Commission determines they are needed in order for the proposed land use to meet the criteria of Chapter 6 of this Title, Conditional Uses.

F. Exceptions: Public utility substations and other facilities are excepted from the minimum lot area and lot width and maximum lot depth standards. (Ord. 86, 12-7-1993)

6-3G-6: SITE PLAN REVIEW: Site plans for all permitted and conditional uses as delineated in Sections 6-3G-2 and 6-3G-3 of this Article must be submitted to the Planning Commission for review pursuant to Chapter 5 of this Title. (Ord. 86, 12-7-1993)

ARTICLE H. M-1 LIGHT INDUSTRIAL ZONE

SECTION:

- 6-3H-1: Purpose
- 6-3H-2: Permitted Uses
- 6-3H-3: Conditional Uses
- 6-3H-4: Performance Standards
- 6-3H-5: Dimensional Standards
- 6-3H-6: Site Plan Review
- 6-3H-7: Compliance With State Regulations

6-3H-1: PURPOSE: The M-1 light industrial zone is intended to provide areas for industrial uses having minimal adverse environmental effects. Commercial activities compatible with industrial uses are allowed as conditional uses. This article provides not only for the planning commission to attach special conditions to certain uses as delineated in Section 6-3H-3 of this article that have a potentially detrimental effect on neighboring lands, but also for the planning commission to exercise review of planned permitted uses as delineated by Section 6-3H-2 of this article. (Refer to Section 6-3H-6 of this article and Chapter 5 of this title.) (Ord. 86, 12-7-1993)

Notes See section 6-9-1 of this title.

6-3H-2: PERMITTED USES: The following uses may be permitted outright in an M-1 zone:

- A. Warehousing and storage, excluding storage of hazardous products.
- B. Wholesale distribution and sales outlets.
- C. Service stations.
- D. Machinery repair facilities.
- E. Electronic assembly plants.
- F. Repealed.
- G. Radio or television towers and related facilities.
- H. Freight depots and trucking freight terminals.
- I. Contractors or building materials businesses.

J. Residential uses in conjunction with commercial and industrial uses. (The intent is to give owners, operators or security personnel of a commercial or industrial enterprise the opportunity to live on or near the location of their business.)

K. General retail sales and restaurants enclosed within a building, the floor area of which does not exceed one thousand five hundred (1,500) square feet. (Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)

6-3H-3: CONDITIONAL USES: The following uses and their accessory uses may be established in an M-1 zone when authorized in accordance with chapter 6 of this title:

A. All conditional and permitted uses allowed in a C-1 zone that are compatible with light industrial uses.

B. Food processing.

C. Manufacturing, processing, packaging, repair and storage of goods or products not in conflict with other provisions of this article.

D. Small petroleum storage or distribution facilities.

E. Governmental structures and uses for the promotion of the public health, safety or welfare.

F. Uses associated with the storage or disposal of explosives, chemical products, chemical wastes or radioactive wastes.

G. Other uses not listed as conditional or permitted but determined to be compatible with light industrial uses and in accordance with the comprehensive plan.

H. Recreational vehicle park.

I. Utility facilities. (Ord. 86, 12-7-1993; amd. Ord., 11-8-1994; Ord. 146, 4-14-2004)

6-3H-4: PERFORMANCE STANDARDS: Each structure or use permitted or conditionally permitted in the M-1 zone shall meet the following performance standards: (Ord. 86, 12-7-1993)

A. Physical Appearance: With the exception of gasoline pumps and recreational parks, all operations other than pick-up and deliveries shall be carried on within an enclosed building or behind a sight obscuring fence or hedge. New materials or equipment in operable condition may be stored outside a building in containers not readily visible from beyond the property line. The provisions of this subsection shall not be construed to prohibit the display of merchandise or vehicles for sale or rental, or the storage of automobiles, farm machinery, trailers, manufactured dwellings or similar equipment in operable condition when in association with a permitted use. The required yard areas next to a street shall be landscaped except for driveway openings. (Ord. 147, 4-14-2004)

- B. Hazard: No operation shall be established which fails to meet the state fire and electrical codes and any other applicable state or federal codes related to safety. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with applicable codes.
- C. Noise: No operation shall be carried on which creates noise in excess of the normal traffic noise of the adjacent street at the time of daily peak hour traffic volume. **Noise volume generated by the use shall be measured at any property line. The comparable traffic noise shall be measured at the property line adjacent to the street.** All **traffic** noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.
- D. Sewage And Liquid Waste: All operations shall comply with any applicable regulations of the county, state or federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.
- E. Smoke, Particulate Matter And Gases: No use shall be established which fails to meet the air quality regulations of the Oregon Department of Environmental Quality pertaining to emissions of smoke, particulate matter, fugitive dust, gases and other air contaminants.
- F. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of persons is prohibited. Observations shall be made at the property line of the establishment generating the odor. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious.
- G. Vibration: All machines shall be mounted so as to minimize vibration and in no case shall such vibration be perceptible, without the use of instruments, at the property line. The use of steam or broad hammers are not permitted in this zone.
- H. Glare and Heat: Any glare producing operations, such as welding arcs, shall be shielded so that they are not visible from the property line. Surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line. No heat from equipment or furnaces shall raise the temperature of materials or ambient air at the property line more than three degrees Fahrenheit (3°F).
- I. Dust: All surfaces used in the operation of the use shall be graveled or paved with a dust free surface. Gravel surfaces shall be watered down when conditions of use or weather cause dust to travel toward structures on adjacent properties.
- J. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data is supplied and proves to be convincing, the judgment of the planning director shall be the determining factor. (Ord. 86, 12-7-1993)

6-3H-5: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Minimum Lot Area: One (1) acre or a larger area determined to be in compliance with the applicable Oregon Department of Environmental Quality rules and regulations regarding sewage disposal and water supplies whether those are to be installed initially or not.

1. Permitted Uses Except Utilities: Twenty-two thousand five hundred (22,500) square feet.

2. Utility Facilities: Public utility facilities are exempt from the minimum lot area requirement, provided they have sufficient area which, in the opinion of the Planning Commission, will not affect adjacent land uses.

B. Minimum Lot Width: One hundred fifty feet (150').

C. Maximum Lot Depth: Not more than three (3) times the lot width.

D. Setbacks: No building or site-obscuring fence, shrubbery or structure shall be located closer than thirty feet (30') to a street or road right of way. No building (nor structure other than fence) shall be located closer to an interior property line than fifteen feet (15') or one-half (1/2) the building or structure height, whichever is greater. An exception exists when condominium structures are proposed requiring zero side yard setbacks.

E. Conditional Uses: Conditional use approvals may require greater dimensional standards than the above when the Commission determines they are needed in order for the proposed land use to meet the criteria of Chapter 6 of this Title.

F. Exceptions: Public utility substations and other facilities are excepted from the minimum lot area and lot width and maximum lot depth standards. (Ord. 86, 12-7-1993)

6-3H-6: SITE PLAN REVIEW: Site plans for all permitted and conditional uses delineated in Sections 6-3H-2 and 6-3H-3 of this Article must be submitted to the Planning Commission pursuant to Chapter 5 of this Title. (Ord. 86, 12-7-1993)

6-3H-7: COMPLIANCE WITH STATE REGULATIONS: All uses involving manufacturing, repair, storage or processing shall meet all applicable standards and regulations of the Oregon State Board of Health, Oregon Department of Environmental Quality, and any other public agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted and conditional uses, evidence shall be submitted to the Planning Department indicating the proposed activity has been approved by all appropriate regulatory agencies. (Ord. 86, 12-7-1993)

ARTICLE I. M-2 HEAVY INDUSTRIAL ZONE

SECTION:

- 6-3I-1: Purpose
- 6-3I-2: Permitted Uses
- 6-3I-3: Conditional Uses
- 6-3I-4: Performance Standards
- 6-3I-5: Dimensional Standards
- 6-3I-6: Site Plan Review
- 6-3I-7: Compliance With State Regulations
- 6-3I-8: Geothermal Areas

6-3I-1: PURPOSE: The M-2 Heavy Industrial Zone is designed to provide areas suitable for industrial activities, which are liable to produce noise, smoke, dust, fumes or other effluents that potentially have a negative effect on adjacent land uses. The M-2 Zone also protects good industrial sites, which have access to transportation facilities and power sources, as well as room for future expansion of existing industries and adequate building sites for new industries. Commercial and light industrial uses that are compatible with heavy industrial uses are allowed as conditional uses. This Article provides not only for the Planning Commission to attach special conditions to certain uses as delineated in Section 6-3I-3 that have a potentially detrimental effect on neighboring lands, but also for the exercise of review of planned permitted uses as delineated by Section 6-3I-2. (Ord. 86, 12-7-1993)

Notes See Section 6-9-1 of this Title.

6-3I-2: PERMITTED USES: The following uses may be permitted outright in an M-2 Zone:

A. Manufacturing, fabricating, processing, repairing, packaging or storage, including but not limited to the following:

1. Concrete, ready-mix or diatomite plants.
2. Seed processing or fertilizer plants.
3. Ice or cold-storage plants.
4. Agricultural products storage and processing.

B. Railroad facilities.

- C. Trucking freight terminals.
- D. Service stations.
- E. Petroleum products storage and distribution plants.
- F. Geothermal-related industrial and commercial uses, provided the land is within the designated geothermal overlay area. (Ord. 86, 12-7-1993)

6-3I-3: **CONDITIONAL USES:** The following uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this Title:

- A. All conditional and permitted uses allowed in a M-1 Zone that are compatible with a heavy industrial zone.
- B. Animal slaughterhouses.
- C. Rendering plants.
- D. Livestock sales yards.
- E. Junkyards or automobile wrecking yards.
- F. Gravel pits including crushing, screening and washing of extracted materials.
- G. Any uses that may possess characteristics injurious to health and safety due to emissions of smoke, dust, odor, fumes, refuse, noise or other effluents. (Ord. 86, 12-7-1993)

6-3I-4: **PERFORMANCE STANDARDS:** Each structure or use permitted or conditionally permitted in the M-2 Zone shall meet the following performance standards:

- A. **Conduct of Use:** No permitted or permissible use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas fumes, noise, vibration or glare.
- B. **Enclosure:** All manufacturing or processing activities shall be completely enclosed in buildings, except as provided by the conditional use section of this Article.
- C. **Outdoor Storage:** Junk, salvage, auto wrecking and similar operations shall be fenced, screened or limited in height so as to block substantially any view of such material from any point located on an abutting street or from any point less than eight feet (8') above grade within any abutting residential or commercial zone. However, this subsection C shall not be deemed to require more than an opaque fence or screen not more than ten feet (10') in height and not longer than the full perimeter of the subject zoning lot, and further provided, such screening may be reduced in height so as to avoid shading a solar collector on adjoining property when so requested by the adjoining property owner or a

government official. No outdoor storage of materials which could be blown into the air or strewn about by wind shall be permitted.

D. Loading: Truck loading and unloading operations shall take place entirely within the site and shall not be so located as to interfere with pedestrian routes.

E. Fire Hazard: No operation shall be established which constitutes a fire hazard.

F. Noise: Noise shall be muffled as available technology permits so as to not be objectionable due to intermittence, beat frequency or shrillness and shall meet any State standards.

G. Sewage and Liquid Waste: All operations shall comply with any applicable regulations of the County, State or Federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.

H. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of people shall be abated with the latest feasible technology. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious. To reduce odors, the open air cooling of products with aromatic emissions shall be avoided. Floors, machinery, storage containers and other surfaces shall be kept clean of material which is potentially odor causing.

I. Vibration: All machines shall be mounted so as to minimize vibration. Vibration shall not be so excessive as to interfere with heavy industrial operations on nearby premises.

J. Glare and Heat: Any glare producing operations, such as welding arcs, shall be shielded so that they are not visible from the property line and surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line. No heat from equipment or furnaces shall raise the temperature of materials or ambient air at the property line more than three degrees Fahrenheit (3°F).

K. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data is supplied and proves to be convincing, the judgment of the Planning Director shall be the determining factor. (Ord. 86, 12-7-1993)

6-3I-5: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Minimum Lot Area:

1. Permitted Uses: Forty thousand (40,000) square feet.
2. Conditional Uses: As determined under procedure set forth in Chapter 6 of this Title, but not less than the minimum lot width and minimum lot depth as allowed by this Section.
3. Geothermal Areas: In areas zoned M-2 and within the designated geothermal overlay area, the minimum lot size shall be twenty (20) acres unless:
 - i. A specific geothermal-related use is proposed at the time an application for land division is submitted; or
 - ii. The contiguous ownership at the time of enactment of this regulation is less than twenty (20) acres in size and the parcel meets all other requirements of this Title as applicable.

B. Minimum Lot Width: Two hundred feet (200').

C. Minimum Lot Depth: Two hundred feet (200').

D. Setbacks: No building or sight-obscuring fence, shrubbery or structure shall be located closer than thirty feet (30') from any street or road right-of-way and fifteen feet (15') from any other property line. (Ord. 86, 12-7-1993)

6-3I-6: SITE PLAN REVIEW: Site plans for all permitted and conditional uses delineated in Sections 6-3I-2 and 6-3I-3 of this Article must be submitted for review to the Planning Commission pursuant to Chapter 5 of this Title. (Ord. 86, 12-7-1993)

6-3I-7: COMPLIANCE WITH STATE REGULATIONS: All uses involving manufacturing, repair, storage or processing shall meet all applicable standards and regulations of the Oregon State Board of Health, Oregon Department of Environmental Quality, and any other public agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted and conditional uses, evidence shall be submitted to the Planning Department indicating the proposed activity has been approved by all appropriate regulatory agencies. (Ord. 86, 12-7-1993)

6-3I-8: GEOTHERMAL AREAS: Notwithstanding any other provisions of this Article, in all areas zoned M-2 and within the designated geothermal resource area, all proposed uses and developments not geothermal- related but permitted in the M-2 Zone either outright or conditionally shall be reviewed by the Commission in a duly noticed

public hearing. In addition to all other review criteria, the Commission shall review the site plan as required by Chapter 5 of this Title. In permitting any such use or development, the Commission shall, in addition to all other required findings, specifically find the proposed use or development will not seriously interfere with existing or future development and use of the geothermal resources given the current state of technology related to geothermal resource utilization. (Ord. 86, 12-7-1993)

DRAFT

ARTICLE I.1 M-3 AGRICULTURAL PROCESSING PLANT INDUSTRIAL ZONE

SECTION:

- 6-3I.1-1: Purpose
- 6-3I.1-2: Permitted Uses
- 6-3I.1-3: Conditional Uses
- 6-3I.1-4: Performance Standards
- 6-3I.1-5: Dimensional Standards
- 6-3I.1-6: Site Plan Review
- 6-3I.1-7: Compliance with State Regulations

6-3I.1-1: PURPOSE: The M-3 agricultural processing zone is designed to provide opportunities for agricultural processing activities that are large enough to become industrial in nature. The only uses allowed in this particular zone are agricultural processing plants on a large scale and farm use. This zone will allow large scale agricultural processing plants which process and add value to agricultural products grown on lands other than where the plant is sited. It is anticipated that agricultural produce to be utilized will be provided by other growers. The principal purpose of the plant siting is for the processing of agricultural products. Such plants will process agriculture produce from a variety of sources to develop secondary products for local and export markets. Placement of this zone on resource lands within the county requires an exception to statewide planning goals, agricultural goal 3. Site plan review by the county planning commission is required of all proposed plant siting after the exception has been properly taken and the zoning map has been amended and acknowledged. (Ord. 148, 1-7-2004)

6-3I.1-2: PERMITTED USES: The following uses may be permitted outright in an M-3 zone:

- A. Agricultural product processing.
- B. Farm use as defined in ORS 215.213 and shall conform to the standard in Section 6-3I.1-4 of this article. (Ord. 148, 1-7-2004)

6-3I.1-3: CONDITIONAL USES: None. (Ord. 148, 1-7-2004)

6-3I.1-4: PERFORMANCE STANDARDS: Each structure or use permitted or conditionally permitted in the M-3 zone shall meet the following performance standards:

- A. Conduct of Use: No permitted or permissible use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas fumes, noise, vibration or glare from an industrial use.
- B. Enclosure: All manufacturing or processing activities shall be completely enclosed in buildings, except as provided by the site plan review approval.
- C. Outdoor Storage: Any industrial outdoor storage shall be fenced, screened or limited in height so as to block substantially any view of such material from any point located on an abutting street or from any point less than eight feet (8') above grade within any abutting residential or commercial zone. However, this subsection shall not be deemed to require more than an opaque fence or screen not more than ten feet (10') in height and not longer than the full perimeter of the subject zoning lot, and further provided, such screening may be reduced in height so as to avoid shading a solar collector on adjoining property when so requested by the adjoining property owner or a government official. No outdoor storage of materials which could be blown into the air or strewn about by wind shall be permitted.
- D. Loading: Truck loading and unloading operations shall take place entirely within the site and shall not be so located as to interfere with pedestrian routes.
- E. Fire Hazard: No operation shall be established which constitutes a fire hazard.
- F. Noise: Noise shall be muffled as available technology permits so as to not be objectionable due to intermittence, beat frequency or shrillness and shall meet any state standards.
- G. Sewage and Liquid Waste: All operations shall comply with any applicable regulations of the county, state or federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.
- H. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of people shall be abated with the latest feasible technology. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious. To reduce odors, the open air cooling of products with aromatic emissions shall be avoided. Floors, machinery, storage containers and other surfaces shall be kept clean of material which is potentially odor causing.
- I. Vibration: All machines shall be mounted so as to minimize vibration. Vibration shall not be so excessive as to interfere with heavy industrial operations on nearby premises.

J. Glare and Heat: Any glare producing operations, such as welding arcs, shall be shielded so that they are not visible from the property line and surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line. No heat from equipment or furnaces shall raise the temperature of the materials or ambient air at the property line more than three degrees Fahrenheit (3°F).

K. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data are supplied and proves to be convincing, the judgment of the planning director shall be the determining factor. (Ord. 148, 1-7-2004)

6-3I.1-5: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Minimum Lot Area:

1. Permitted Uses: Forty (40) acres.

B. Minimum Lot Width: Two hundred feet (200').

C. Minimum Lot Depth: Two hundred feet (200').

D. Setbacks: No building or sight obscuring fence, shrubbery or structure shall be located closer than thirty feet (30') from any street or road right-of-way and fifteen feet (15') from any other property line. (Ord. 148, 1-7-2004)

6-3I.1-6: SITE PLAN REVIEW: Site plans for all permitted uses delineated in Subsection 6-3I.1-2A of this article must be submitted for review to the Malheur County Planning Commission pursuant to Chapter 5 of this title. (Ord. 148, 1-7-2004)

6-3I.1-7: COMPLIANCE WITH STATE REGULATIONS: All uses involving manufacturing, repair, storage or processing shall meet all applicable standards and regulations of the state board of health, department of environmental quality, and any other public agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted and conditional uses, evidence shall be submitted to the planning department indicating the proposed activity has been approved by all appropriate regulatory agencies. (Ord. 148, 1-7-2004)

ARTICLE J. PM PARK MANAGEMENT ZONE

SECTION:

- 6-3J-1: Purpose
- 6-3J-2: Permitted Uses
- 6-3J-3: Conditional Uses
- 6-3J-4: Special Provisions

6-3J-1: PURPOSE: The PM Park Management Zone is designed for publicly owned parks and recreation areas. (Ord. 86, 12-7-1993)

6-3J-2: PERMITTED USES: The following uses may be permitted outright in a PM Zone:

- A. General maintenance and daily operation of public park or recreation facilities.
- B. Replacement or repair of existing facilities that have deteriorated or become nonfunctional through general use, fire, acts of God, vandalism or technological obsolescence. This includes roads, picnic tables, bath and toilet houses and similar structures for visitor service. Such replacement or repair shall be limited to that which is necessary to provide services to the same numbers and densities of visitors that were served by the existing facility.

C. Minor improvements that enhance function ability or are necessary to accommodate existing levels of public uses. (Ord. 86, 12-7-1993)

6-3J-3: CONDITIONAL USES: The following conditional uses and their accessory uses may be established when authorized in accordance with Chapter 6 of this Title:

- A. New construction or upgrading of existing facilities that could be expected to result in an increased overall visitor capacity or that would have significant land-use impact. (Ord. 86, 12-7-1993)

6-3J-4: SPECIAL PROVISIONS: New public parks or recreation areas may be established by designation of additional PM Zones in accordance with Chapter 10 of this Title. A description of the initial development proposed for the park shall accompany the zone map amendment request. Development authorized on the proposal shall be allowed outright. After initial development is completed, further park maintenance and improvement shall comply with Sections 6-3J-2 and 6-3J-3 of this Article. (Ord. 86, 12-7-1993)

ARTICLE J.1. LU LIMITED USE OVERLAY ZONE

SECTION:

- 6-3J.1-1: Purpose
- 6-3J.1-2: Permitted and Conditional Uses
- 6-3J.1-3: Site Plan Approval
- 6-3J.1-4: Compliance with State and Federal Regulations

6-3J.1-1: PURPOSE: The purpose of the LU overlay zone is to limit the list of permitted or conditional uses in an underlying zone through the taking of an exception to a statewide land use planning goal under ORS 197.732. This zone will only be applied when no other existing zone adequately addresses a new use and general activities of these uses. The zone will apply to specific properties as comprehensive plan zone changes affected by an exception under ORS 197.732. A comprehensive plan amendment may or may not include a map amendment to designate the property LU at the county's discretion. (Ord. 169, 6-20-2007)

6-3J.1-2: PERMITTED AND CONDITIONAL USES: It is intended that the uses and activities in LU district will be limited to those uses and activities specified in the ordinance goal exception adopting the LU designation for the property. The descriptions of the permitted and conditional uses may be qualified as necessary to achieve the purpose of the LU overlay zone. The LU overlay zone, when adopted, shall carry out the requirement of OAR 660-004-018 and ORS 197.732 that where a goal's exception is taken, permitted and conditional uses shall be limited to those uses justified by the exception statement. (Ord. 169, 6-20-2007)

6-3J.1-3: SITE PLAN APPROVAL: The Malheur County may require site plan approval by the Malheur County Planning Department of the location of buildings, access, parking, screening and other site plan considerations to assure the compatibility of the permitted and conditional uses within the area. Site plan requirements may be added by specific reference in the LU adopting ordinance. (Ord. 169, 6-20-2007)

6-3J.1-4: COMPLIANCE WITH STATE AND FEDERAL REGULATIONS: All uses allowed in the LU district shall meet all applicable standards and regulations of any state or federal agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted uses, evidence shall be submitted indicating the proposed activity has been approved by all appropriate agencies. (Ord. 169, 6-20-2007)

ARTICLE K. FP FLOODPLAIN MANAGEMENT OVERLAY ZONE

SECTION:

6-3K-1: Purpose

6-3K-2: Application to Lands with Floodplain Areas

6-3K-3: Standards

6-3K-1: PURPOSE: The FP Floodplain Management Zone is an overlay zone intended to minimize loss of life, or health, and damage to public and private property due to recurring floods. (Ord. 86, 12-7-1993)

6-3K-2: APPLICATION TO LANDS: The FP Zone applies to those lands lying in the 100-year flood plain as determined by:

- A. Federal Emergency Management Agency Flood Hazard Boundary Maps.
- B. Floodplain information prepared by the U.S. Corps of Army Engineers. (Ord. 86, 12-7-1993)

6-3K-3: STANDARDS: The following standards shall be applicable to any area designated as being within the 100-year floodplain:

- A. Any development shall comply with Title 5, Chapter 2 of this Code and the Federal Insurance Administration requirements for minimizing flood hazards.
- B. Any development shall also comply with the standards of the underlying primary zone.
- C. If a conflict in regulations or procedures occurs, the more restrictive provisions shall govern. (Ord. 86, 12-7-1993)

ARTICLE L. AA AIRPORT APPROACH OVERLAY ZONE

SECTION:

6-3L-1: Purpose

6-3L-2: Compliance

6-3L-3: **Special Definitions** (Place holder – moved to Section 6-1-3 definitions)

6-3L-4: Permitted Uses

6-3L-5: Conditional Uses

6-3L-6: Procedures

6-3L-7: Limitations

6-3L-1: **PURPOSE:** In order to carry out the provisions of this overlay zone, there are hereby created and established certain zones which include all the land lying beneath the airport imaginary surfaces as they apply to all currently existing or future public use airports in Malheur County.

Further, this overlay zone is intended to prevent the establishment of air space obstructions in air approaches through height restrictions and other land use controls as deemed essential to protect the health, safety and welfare of the people of Malheur County. (Ord. 86, 12-7-1993)

6-3L-2: **COMPLIANCE:** In addition to complying with the provisions of the primary zoning district, uses and activities shall comply with the provisions of this overlay zone. In the event of any conflict between any provisions of this overlay zone and the primary zoning district, the more restrictive provision shall apply. (Ord. 86, 12-7-1993)

6-3L-3: Place holder **SPECIAL DEFINITIONS** (moved to Section 6-1-3 definitions):

AIRPORT APPROACH SAFETY ZONE: A fan-shaped area twenty feet (20') outward for each foot upward (20:1), two hundred fifty feet (250') wide beginning two hundred feet (200') beyond the end of and at the same elevation as the runway and extending to horizontal distance of five thousand feet (5,000') along the extended runway center line to a width of one thousand two hundred fifty feet (1,250').

AIRPORT HAZARD: Any structure, tree or use of land which exceeds height limits established by the airport imaginary surfaces.

AIRPORT IMAGINARY SURFACES: Those imaginary areas in space which are defined by the airport approach safety zone, transitional zones, horizontal zone, clear zone and

conical surface and in which any object extending above these imaginary surfaces is an obstruction.

CLEAR ZONE: Extended from the primary surface to a point where the approach surface is fifty feet (50') above the runway end elevation.

CONICAL SURFACE: Extends one foot (1') upward for each twenty feet (20') outward (20:1) for four thousand feet (4,000') beginning at the edge of the horizontal surface (5,000 feet from the end of the runway at 150 feet above the airport elevation) and upward extending to a height of three hundred fifty feet (350') above the airport elevation.

HORIZONTAL ZONE: A horizontal plane one hundred fifty feet (150') above the established airport elevation, the perimeter of which is constructed by swinging arcs of five thousand feet (5,000') from the center of each of the primary surfaces of each runway and connecting the adjacent arcs by lines tangent to those arcs.

NOISE IMPACT: Noise levels exceeding fifty five (55) Ldn.

TRANSITIONAL ZONES: Extended one foot (1') upward for each seven feet (7') outward (7:1) beginning one hundred twenty five feet (125') on each side of the runway center line (primary surface), which point is the same elevation as the runway surface, and from the sides of the approach surfaces thus extending upward to a height of one hundred fifty feet (150') above the airport elevation (horizontal surface). (Ord. 86, 12-7-1993)

6-3L-4: PERMITTED USES:

- A. Farm use, excluding the raising and feeding of animals, which would be adversely affected by aircraft passing overhead.
- B. Landscape nursery, cemetery or recreation areas which do not include buildings or structures.
- C. Roadways, parking areas and storage yards located in such a manner that vehicle lights will not make it difficult for pilots to distinguish between landing lights and vehicle lights or result in glare, or in any way impair visibility in the vicinity of the landing approach. Approach surfaces must clear these areas by a minimum of fifteen feet (15').
- D. Pipeline.
- E. Underground utility wire. (Ord. 86, 12-7-1993)

6-3L-5: CONDITIONAL USES:

- A. A structure or building accessory to a permitted use.

B. A single-family dwelling, when authorized in the primary zoning district, provided the landowner signs and records in the deed and mortgage records of Malheur County a hold harmless agreement, and an aviation and hazard easement, and submits them to the airport sponsor and County Planning Department after recording the documents.

C. Commercial and industrial uses, when authorized in the primary zoning district, provided the use does not result in the following:

1. Creating electrical interference with navigational signals or radio communication between the airport and aircraft.
2. Making it difficult for pilots to distinguish between airport lights or others.
3. Impairing visibility.
4. Creating bird strike hazards.
5. Endangering or interfering with the landing, taking off, or maneuvering of aircraft intending to use the airport.
6. Attracting a large number of people. (Ord. 86, 12-7-1993)

6-3L-6: PROCEDURES: An applicant seeking a conditional use under Section 6-3L-5 of this Chapter shall follow procedures set forth in the urban growth management plan/agreement between the respective city and Malheur County. Information accompanying the application shall also include the following:

- A. Property boundary lines as they relate to the airport imaginary surfaces;
- B. Location and height of all existing and proposed buildings, structures, utility lines and roads; and a
- C. Statement from the Oregon Aeronautics Division indicating that the proposed use will not interfere with operation of the landing facility. (Ord. 86, 12-7-1993)

6-3L-7: LIMITATIONS:

- A. To meet the standards and reporting requirements established in FAA Regulations, part 77, no structure shall penetrate into the airport imaginary surfaces as defined above under Section 6-3L-3 of this Article.
- B. No place of public assembly shall be permitted in the airport approach safety zone.
- C. No structure or building shall be allowed within the clear zone.

D. Whenever there is a conflict in height limitations prescribed by this overlay zone and the primary zoning district, the lowest height limitation fixed shall govern; provided, however, that the height limitations here imposed shall not apply to such structures customarily employed for aeronautical purposes.

E. No glare producing materials shall be used on the exterior of any structure located within the airport approach safety zone. (Ord. 86, 12-7-1993)

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ARTICLE M. EH ENVIRONMENTAL HAZARDS OVERLAY DISTRICT

SECTION:

- 6-3M-1: Purpose
- 6-3M-2: **Definitions** (Place holder – moved to Section 6-1-3 definitions)
- 6-3M-3: Application of Overlay District
- 6-3M-4: Expedited Overlay Zoning Amendment Procedure
- 6-3M-5: Permit Requirements and Procedures
- 6-3M-6: Relationship to Underlying District
- 6-3M-7: Permit Review Criteria
- 6-3M-8: Conditions
- 6-3M-9: Disclaimer of Liability

6-3M-1: **PURPOSE:** The purpose of the EH Overlay District is to protect the public health, safety and environment by regulating future land development and uses of land on or adjacent to potentially hazardous disposal sites. (Ord. 86, 12-7-1993)

6-3M-2: **Moved to Section 6-1-3 Definitions of this document** **DEFINITIONS:**

When used in this Article, the following words and terms shall have the meanings ascribed to them in this Section:

DEQ: The Oregon Department of Environmental Quality.

ENVIRONMENTAL HAZARD NOTICE: A document prepared by DEQ and issued by the Environmental Quality Commission containing:

- A. The legal description of the lot or parcel, or lots or parcels, where the potential hazardous site is located;
- B. A specific description of the site, if different than the legal description of subsection A of this definition, for which the notice applies;
- C. A general map of the area where the site is located;
- D. A description of the types of waste and levels of contamination identified or known to be present at the site;
- E. The use restrictions that apply to the site; and

F. Findings which support the decision to issue an environmental hazard notice for the site.

POTENTIALLY HAZARDOUS SITE: A site where an alteration could create a condition which is hazardous to the health, safety or welfare.

SITE: A land disposal site, a hazardous waste disposal site, a disposal site containing radioactive waste, or an area where a hazardous substance has been released. (Ord. 86, 12-7-1993)

6-3M-3: APPLICATION OF OVERLAY DISTRICT: The EH Overlay District shall be applied, or amended to increase or decrease the area of the District, in accordance with the expedited procedures provided in this Article. The criteria for applying or amending the EH Overlay District shall be as follows:

- A. The County has received a new or modified environmental hazard notice from Oregon Department Environmental Quality, or absent this notice, the County finds that there is a potentially hazardous disposal site; and
- B. The area of the proposed EH Overlay District is the minimum necessary to protect the public health, safety and environment but is not smaller than the site identified in the environmental hazard notice; and
- C. The District will minimize development activities and regulate existing or proposed uses, which could otherwise increase public or environmental exposure to the potential environmental hazard. (Ord. 86, 12-7-1993)

6-3M-4: EXPEDITED OVERLAY ZONING AMENDMENT PROCEDURE:

- A. Purpose: The County Court finds that an expedited overlay zoning amendment procedure is necessary in order to protect the health of present and future generations of Malheur County residents.
- B. Emergency Declaration:
 - 1. Declaration: Upon a tentative finding consistent with the criteria in Section 6-3M-3 the County Court may declare an emergency and stay any development or construction permits and activities in the area under consideration for designation with an EH Overlay District.
 - 2. Hearing Date: The County Court shall set a hearing date for the potential adoption of the EH Overlay District within a period of time not greater than twenty-one (21) days from the declaration of emergency. Notice of the emergency declaration and the date for considering adoption of the EH Overlay District shall be posted in the Courthouse.

3. Failure To Take Action: If the County Court fails to take some type of specific action on the potential EH Overlay District within twenty-one (21) days following the declaration of emergency that declaration of emergency is automatically rescinded.

C. No Emergency Declaration: If no emergency declaration is made by the County Court, the Court shall set a public hearing date and publish that date, time and place in the newspaper at least ten (10) days prior to the hearing and adoption of the EH Overlay District.

D. Effect Of District: Upon passage of the motion to adopt an EH Overlay District, that District shall be immediately in full force and effect.

E. Removal Of District: In order to remove an EH Overlay District, the notice procedure in subsection "C" hereof shall be used.

F. Notice To DEQ: Notification shall be provided to the Director of DEQ not less than twenty-one (21) days before the final date for submission of information to the County regarding the proposed adoption, amendment or removal of the EH Overlay District. If no DEQ comments are received before the final action is taken, DEQ shall be deemed to have no comment on the action.

G. Ordinance Contents: The ordinance applying the EH overlay District to a site shall include conditions or limitations necessary to ensure that existing uses are consistent with the review criteria in Section 6-3M-7 of this Article. (Ord. 86, 12-7-1993)

6-3M-5: PERMIT REQUIREMENTS AND PROCEDURES:

A. Permit Required: Any new use, development or activity or modifications of an existing use, development or activity in the EH Overlay District shall require a permit, unless the Planning Director determines in writing that the use is consistent with the use restrictions in the environmental hazard notice and any other conditions or limitations imposed by the County in applying the EH Overlay District under Section 6-3M-3.

A permit may be issued to cover more than one use or activity and may stipulate conditions which must be met in order for the permit to remain valid and in effect.

B. Application For Permit: A completed permit application, accompanied by any special studies needed to address the applicable review criteria, shall be submitted to the Planning Department.

C. DEQ Notified Of Appointment: In those cases where the proposed use appears to be inconsistent with the use restrictions in the environmental hazard notice for the specific EH District the County shall notify the Director of DEQ by certified mail of the receipt of a permit application in the EH Overlay District at least twenty-one (21) days before granting a permit. This notification to DEQ shall include a description of the proposed use, development or activity or modification to an existing use, development, or

activity, its location and the name of the local government contact person. If no DEQ comments are received within twenty-five (25) days of mailing the notice, DEQ shall be deemed to have no comment on the application.

D. **Approval Without Permit:** When written approval is issued under subsection 6-3M-4A, without issuance of a permit, a copy of the written approval shall be sent to DEQ within ten (10) days of issuance.

E. **Notice To Property Owners:** When notice is required by subsection "C" above, the Planning Department shall also provide written notification to all owners of property within two hundred fifty feet (250') of the identified site referenced in the application and to all other persons requesting such notice in writing.

F. **Processing Applications:** In addition to the above procedures, all applications except those given written approval under subsection "A" hereof, shall be processed in accordance with the site plan review procedures, Section 6-3M-7 of this Article.

G. **Validity And Expiration Of Permit:** The permit shall be valid for twelve (12) months from the date of issuance. If no activity occurs in reliance on the permit within twelve (12) months, it will be deemed null and void. (Ord. 86, 12-7-1993)

6-3M-6: **RELATIONSHIP TO UNDERLYING DISTRICT:** All uses and activities allowed in the EH Overlay District shall be the same as those allowed in the underlying zoning districts except as otherwise limited or prohibited by this Title. Where the regulations of uses and activities in an underlying district conflict with that of the EH Overlay District, the more restrictive provisions shall apply. (Ord. 86, 12-7-1993)

6-3M-7: **PERMIT REVIEW CRITERIA:** All of the following criteria shall be satisfied before approving any permit in the EH Overlay District. Approval of the proposed permit:

A. Will not cause or create any conditions which, if not controlled, would likely result in the failure of the final cover, liners or any of the other components of the site's containment and monitoring system; and

B. Will not increase the potential hazard to human health, safety or the environment, or is necessary to reduce the overall threat to human health or the environment; and

C. Has been modified to the extent necessary to address any concerns raised by DEQ pursuant to notice provided by DEQ under Section 6-3M-5 of this Article; and

D. Is consistent with the use restrictions in the DEQ environmental hazard notice, if one was issued. (Ord. 86, 12-7-1993)

6-3M-8: CONDITIONS: In applying the EH Overlay District or approving a permit in the EH Overlay District, the County shall impose conditions requiring compliance with the use restrictions in the DEQ environmental hazard notice, if one was issued.

In applying the EH Overlay District or approving a permit for a use in the EH Overlay District, the County may impose additional conditions deemed reasonable and appropriate for protecting public health, safety and the environment. These conditions may be based upon, but are not limited to:

- A. The findings or recommendations of any special studies pertaining to the property required by the County;
- B. Comments or recommendations provided by DEQ under Section 6-3M-5 of this Article;
- C. Comments or recommendations submitted by the public or other governmental agencies; or
- D. The review criteria contained in Section 6-3M-7 of this Article. (Ord. 86, 12-7-1993)

6-3M-9: DISCLAIMER OF LIABILITY:

- A. The degree of protection required by this Chapter is considered reasonable for regulatory purposes. Risks to public health, safety and the environment may result due to unanticipated human caused or natural events which may disturb or affect the integrity of the site.
- B. This Article does not imply that uses or activities allowed under the EH Overlay District will be free from risk or hazard from identified sites. Similarly, this Article does not imply that there are no other potentially hazardous sites outside of the area covered by the EH Overlay District.
- C. This Article shall not create liability on the part of the County or its employees for any hazard or damage which may result from reliance on the EH Overlay District or any other decision lawfully made thereunder. (Ord. 86, 12-7-1993)

ARTICLE N. G - GEOTHERMAL DEVELOPMENT OVERLAY ZONE

SECTION:

- 6-3N-1: Purpose and Intent
- 6-3N-2: **Definitions** (Place holder – moved to Section 6-1-3 definitions)
- 6-3N-3: Scope of Terms And Conditions
- 6-3N-4: Compliance Required
- 6-3N-5: Procedures and Permits
- 6-3N-5-1: Proposal
- 6-3N-5-2: Geothermal Production Project
- 6-3N-5-3: Public Hearing
- 6-3N-5-4: Conditions of Permits; Expiration
- 6-3N-6: Bond and Insurance Requirements
- 6-3N-7: remises Conditions and Standards
- 6-3N-8: Public Access Facilities
- 6-3N-9: Operation Personnel
- 6-3N-10: Standards
- 6-3N-10-1: Planning Standards
- 6-3N-10-2: Drilling Standards
- 6-3N-10-3: Production Standards
- 6-3N-11: Participation in Subsidence Prevention and Detection Program
- 6-3N-12: Inspections; Entry Powers

6-3N-1: PURPOSE AND INTENT:

A. The County Court and the Planning Commission have adopted a resolution stating general public policy surrounding the initiation of geothermal development within this County. This policy is interim in nature in that it calls for the development of a general plan for the total development of the geothermal resource within the County. In addition, this policy provides for the initiation of geothermal development by allowing various agencies, both public and private, to commence their own initial development projects.

B. It is the intent of this policy to encourage exploration and development projects and to increase the store of knowledge surrounding this resource. It is also the intent of this policy that there be coordination of existing and anticipated data so that the end result may be general planning that will provide for the optimum development of the available resource.

C. The Geothermal Overlay Zone covers all land within Malheur County. It does not allow commercial or industrial development of the resource which is not consistent with the primary zone classification.

D. In many areas of the State, the geothermal resources are under study and in one area are already producing energy for heating. Current explorations in most areas are pointed chiefly at the energy field and property so as there is much need for a clean source of energy for the development of electrical power. However, it must not be overlooked that there is a possibility for a new source of potable water and mineral recovery. Additional research is needed in all fields if this geothermal resource is to be developed to its ultimate.

E. The early studies show that much of the geothermal resource in this area lies below the floor of the Malheur and Willow Creek Valley. This Valley is a major agricultural area and its preservation is necessary for the continued economy of the County and to provide food and fiber for the populace.

F. The University of Oregon and other State agencies, several Federal agencies, most prominently the Department of the Interior, and industry are all involved in research and study programs surrounding the development of this geothermal resource. Many industries have stated their desire to continue to explore and begin production of the resource.

G. It is recognized that a general plan providing for total development of the resource is needed but that it cannot be a comprehensive general plan without the input of additional research and data.

It is, therefore, the intent of this policy to allow for the complete development of a series of initial projects in addition to exploratory well drilling and testing. To accomplish this, the following are terms and conditions designed: a) to allow these initial developments; b) to provide for the optimum use of the land; c) to protect the environment; and d) to provide for cooperation in the development of a comprehensive general plan for geothermal development through application of this Overlay Zoning district. (Ord. 86, 12-7-1993)

6-3N-2: DEFINITIONS (all definitions have been moved to Section 6-1-3 Definition section of this zoning code): Hold this section for later use

When used in this Article, the following words and terms shall have the meanings ascribed to them in this Section:

EXPLORATORY GEOTHERMAL WELL: Includes the right to explore for the test geothermal resource within an area designated by the Planning Commission.

G-ZONE: Geothermal Development Zone is a land classification zone overlay permitting additional uses within other zones including geothermal well operation (after obtaining a conditional use permit or other permit applicable to the primary zone).

GEOTHERMAL PRODUCTION PROJECT: Includes the right to explore for, test product, process, transport and sell geothermal resources and by-products such as electrical power.

OPERATOR: Any person, firm or corporation drilling, maintaining, operating, pumping or in control of any well or related facilities for power generation, mineral extraction, desalination or any other use of geothermal resources.

PERMIT FOR GEOTHERMAL DEVELOPMENT PROJECT: A conditional use permit to produce geothermal well or wells in EFU, ERU, EFFU, RSC, M-1 and M-2 Zones.

PERMIT FOR GEOTHERMAL EXPLORATORY WELL: A permit allowable in all zones within the County.

TEST FACILITIES: Lines, pumps, separators, metering facilities, ponds and sumps used during the testing of an exploratory geothermal well or injection well. (Ord. 86, 12-7-1993)

6-3N-3: **SCOPE OF TERMS AND CONDITIONS:** The terms and conditions prescribed shall be for a particular project and will pertain to that project only. Future projects may receive additional and/or different terms and conditions. (Ord. 86, 12-7-1993)

6-3N-4: **COMPLIANCE REQUIRED:**

A. **Procedures and Standards:** All applicants will be required to comply with governmental procedures and standards applicable to the particular phase of work.

B. **Law:** The operator engaged in the drilling, production, maintenance and abandonment of geothermal wells and related facilities including the disposal of waste products shall comply with all applicable local, State and Federal laws and ordinances in effect or subsequently duly enacted.

C. **General Compliance:** All well drilling, plant construction, testing and operations shall be conducted so as to be in harmony with the area and not conflict with the public health, safety, comfort, convenience and general welfare.

D. **Commencement of Work:** Prior to commencing any operation, all governmental conditions and standards applicable to the particular phase of work contemplated shall be complied with.

E. Application Reservation: The Planning Commission reserves the right following rezoning to deny an application for development if it will not be compatible with the area or that, in its findings, some of the terms and conditions are not met satisfactorily. (Ord. 86, 12-7-1993)

6-3N-5: PROCEDURES AND PERMITS:

6-3N-5-1: PROPOSAL: A definite detailed proposal for a geothermal development project shall be submitted in accordance with the procedures and standards. This proposal shall include geologic and engineering evidence that gives reasonable assurance of success. This information may then serve as the basis for attaching this Geothermal Overlay Zone to the property or portion thereof where development of the resource is proposed. (Ord. 86, 12-7-1993)

6-3N-5-2: GEOTHERMAL PRODUCTION PROJECT:

A. To obtain a geothermal production project permit, an operator must submit the following to the Planning Department for placement upon the Planning Commission agenda:

1. A rezoning application for the Geothermal "G" Development Overlay Zone if necessary.
2. A permit application for a geothermal exploratory well or copy of existing permit.
3. A conditional use permit application for a geothermal production project.

B. As a part of the application, the operator must submit to the Planning Commission for its approval a definite proposal for total development, which includes the following data but is not limited to:

1. Name, location, elevation of well or wells to be drilled.
2. Name, address and telephone number of the operator's designated agent.
3. A surface plat of the property to be developed including:
 - i. Surface location sites of the proposed well, including the size and shape of location and access roads;
 - ii. North arrow, scale, date and contours of land where the grade exceeds two percent (2%);

- iii. The locations of existing roads, waterways, and cultural features including the present use of the property to be developed, and use of the surrounding property;
 - iv. The boundary of the parcel to be explored;
 - v. The location of test facilities including complete engineering data concerning any holding pond or reservoir proposed in conjunction with testing and waste discharge requirements; and
 - vi. A tentative plan showing the size and location of power generation, mineral extraction, desalination and other surface facilities including their relationship to known active faults.
- 4. A general geologic and engineering presentation showing enough data to demonstrate that the area contains geothermal resources.
 - 5. A timetable showing a schedule of projected development.
 - 6. Proof that the program for well or wells has been approved by the State Division of Oil and Gas and that all test and waste discharge operations have been filed with the Oregon Department of Environmental Quality.
 - 7. Submit for approval any additional anticipated land use needs such as extra facilities and proposed sites for new industry. (Ord. 86, 12-7-1993)

6-3N-5-3: PUBLIC HEARING: Upon receipt of applications and the required secondary information, the County Planning Department will set a public hearing for the Planning Commission, notify appropriate property owners, agencies and individuals of said hearing. Planning Commission will consider testimony of all interested parties and then take appropriate action on the various applications. (Ord. 86, 12-7-1993)

6-3N-5-4: CONDITIONS OF PERMITS; EXPIRATION: All permits shall contain terms and conditions. Abandonment of a project for six (6) months shall cause the permit then in effect to expire and to become null and void. (Ord. 86, 12-7-1993)

6-3N-6: BOND AND INSURANCE REQUIREMENTS:

A. Bond: Each operator of a geothermal production project and/or exploratory geothermal well shall file and furnish with the County an indemnity bond in the sum of fifty thousand dollars (\$50,000.00) for each well drilled or abandoned well re-entered or a blanket bond in the sum of one hundred fifty thousand dollars (\$150,000.00) for any number of wells drilled or re-entered. The bond will indemnify the County for any costs incurred by the County in repairing any drill, test or production facility site, as near as

possible to its original state and in abating any public nuisance caused by the principal's exploratory, testing or producing operations. This bond shall be submitted for approval of the Malheur County's County Counsel.

B. Insurance: Before commencing or continuing any geothermal operations, the owner or operator shall show the Malheur County's County Counsel continuing evidence of insurance against liability in tort in a minimum amount of one million dollars (\$1,000,000.00) arising from the production activities or operations incidental thereto conducted or carried on under, or by virtue of any law or ordinance. Such insurance shall be kept in full force and effect during the period of such operations. (Ord. 86, 12-7-1993)

6-3N-7: PREMISES CONDITIONS AND STANDARDS:

A. Cleanup: Upon completion of any phase of the project, the site shall be cleaned up in accordance with the standards, and insofar as practical, the land returned to its original condition.

B. Waste Disposal: All waste, whether liquid or solid, must be disposed of in compliance with the existing County, State and Federal rules and regulations.

C. Noise and Vibration Suppression: The operation of temporary or permanent equipment and all other operation performed on the premises shall be done in a manner so as to suppress all noise and vibration to an acceptable level.

D. Electronic Interference: No operator shall operate electrical equipment or transmission facilities that will have a detrimental effect on the transmission of radio or television signals.

E. Air Pollution: All operations shall be conducted in compliance with the requirements of the Oregon Department of Environmental Quality.

F. Aesthetic Requirements: All permanent installation and premises including power, steam and/or fluid transmission lines, shall be harmonious in appearance with the area and not of obnoxious, undesirable or unsightly appearance as determined by the Planning Director.

G. Land Use: Site development plan and land use shall provide for maximum surface land usage including preservation of productive farm land and shall be in accordance with the standards as determined by the Planning Director.

H. Odor and Gas Control: All operators shall take steps to insure that no harmful or obnoxious gases be released as a result of their operations. (Ord. 86, 12-7-1993)

6-3N-8: PUBLIC ACCESS FACILITIES: If location or site of the proposed project is such as to require additional public access facilities, the operator shall be required to provide where necessary, rights-of-way on property he controls and to provide the necessary road work. (Ord. 86, 12-7-1993)

6-3N-9: OPERATION PERSONNEL: All development operations shall be conducted under the direction of a responsible engineer or agent. The operator shall insure that a maintenance crew is immediately available to insure compliance with the conditions and standards required. (Ord. 86, 12-7-1993)

6-3N-10: STANDARDS:

6-3N-10-1: PLANNING STANDARDS:

A. Size: All geothermal drilling sites including test facilities and ponds shall be as small as possible and in no case larger than five (5) acres on arable land. Exceptions will be allowed if two (2) or more wells are drilled on the same site.

B. Agricultural Preservation; Well Density: Every site shall be designed to retain the maximum amount of usable agricultural land and the site shall not interfere with the irrigation and drainage pattern. Drill sites shall be constructed adjacent to existing roads insofar as possible. Well density shall be justified and in accordance with good reservoir engineering practices.

C. Location of Wells And Appurtenances:

1. Unless specifically waived by the Planning Commission where legally permissible, the following minimum distances shall be observed in siting a well:

	Feet
	Feet
Outer Boundary of Parcel	100
Permanent Public Waterway	50
Public Roads	100
Residence	300
School	1,320
Hospital	5,280
Any other development	500

2. Production facilities shall, where possible, be located in centralized areas to serve the maximum number of wells. These shall include but are not limited to power plants, extraction plants and separators.

3. All electrical transmission lines shall be constructed on existing right-of-way whenever possible.

D. Ponds: The plans for all permanent sumps, brine ponds, waste holding ponds and any other ponds, shall include a soils investigation and shall be designed and constructed under the supervision of a registered civil engineer. The following are considered minimum criteria:

1. Pond bottoms and dikes shall be either impervious or shall be lined to prevent seepage;
2. Earthen dikes shall be three to one (3:1) slopes;
3. Dikes shall be designed to provide three feet (3') freeboard when at design capacity;
4. Plan should minimize wave and wind erosion; and
5. Protect from any flood hazard.

The plans shall be submitted to the County for approval.

E. Plot Plan: A reproducible copy of the plot plan shall be submitted on suitable material. It shall be eighteen inches by twenty-six inches (18" x 26") with an appropriate scale and shall be prepared in accordance with good engineering and drafting techniques. It shall show all existing topography and facilities and shall clearly show proposed development. (Ord. 86, 12-7-1993)

6-3N-10-2: DRILLING STANDARDS:

A. General Drilling Standards:

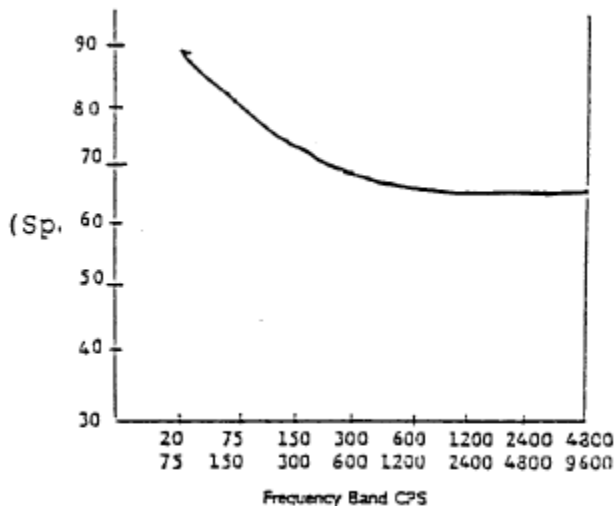
1. Sign: All geothermal well sites shall have a sign **with having** a surface of not less than two (2) square feet and not more than six (6) square feet bearing the current name and number of the well; emergency telephone number of agent; name and/or insignia of the operator and the owner. **and** This sign shall be displayed at all times from the commencement of drilling operations until the well has been abandoned.

2. Noise:

- i. Each operator shall limit the continuous generation of wide band noise to that shown on the charge. The level shown may be exceeded by ten percent (10%) if the noise is intermittent and during daylight hours. The noise levels shall be measured at the parcel boundary.

ii. Sound pressure levels shall be measured at the points specified and shall be measured with a sound level meter and associated octave band analyzer conforming to standards prescribed by the United States of America Standards Institute.

iii. The following graph shall conform to standard units of measurement in accordance with United States of America Standards Institute Code, S-1.11-1966, Appendix A.



3. Drilling Wastes: Within sixty (60) days after the completion of the drilling of a well, all drilling wastes must be removed from the drilling site and disposed of, in accordance with County and State regulations.

4. Sanitary Facilities: Suitable and adequate sanitary facilities as approved by the Malheur County Department of Environmental Health shall be installed and maintained in a clean and sanitary condition at all times.

5. Drilling To Continue; Completion: Drilling operations shall be diligently pursued until each well is completed or abandoned. All drilling equipment including derrick shall be removed from the premises within sixty (60) days after completion of any well.

6. Abandonment Of Drilling Site: Prior to abandonment, it shall be the responsibility of the operator to comply with all regulations of the geothermal resources law of the State of Oregon in regards to subsurface sections. In addition, the following surface requirements are imposed. These surface requirements shall also apply when the well or wells go on production and auxiliary facilities are no longer necessary:

i. The derrick and all appurtenant equipment thereto shall be removed;

- ii. All tanks, towers, other surface installations shall be removed;
- iii. All concrete, pipe, wood or other foreign materials shall be removed from the drill site to a depth of six feet (6') below grade;
- iv. All holes and depressions shall be filled and packed with native earth. All waste material shall be removed from the drill site;
- v. In agriculture or potential agriculture areas, any brine holding ponds shall be purged of brine, the salts shall be removed from the dikes and bottom, and the berms leveled to the satisfaction of the County.

B. Additional Drilling Standards Applicable To Sites Within One-Half Mile Of A Residence:

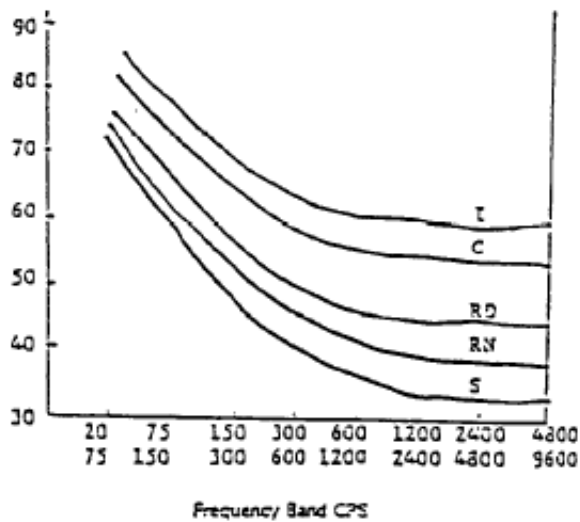
1. Hours Of Operation:

- i. All work in preparation of the site for drilling shall be done between the hours of seven o'clock (7:00) A.M. and seven o'clock (7:00) P.M.
- ii. The delivery or removal of equipment or material shall be limited to the hours from seven o'clock (7:00) A.M. to seven o'clock (7:00) P.M., except in the case of emergencies.
- iii. No drill pipe shall be racked or made up except between the hours of seven o'clock (7:00) A.M. to seven o'clock (7:00) P.M. Exception to this is allowed where soundproofing is provided or in case of emergency.

2. Fences: All unattended well sites shall be enclosed by a steel chain link type fence, six feet (6') high. There shall be no opening below such fence greater than four inches (4"). The gate shall be placed at a nonhazardous location and shall be locked at all times.

3. Noise Control:

- i. The Oregon Department of Environmental Quality shall direct which noise level curve as shown on the chart shall apply. Each operator shall limit the continuous generation of wide band noise to that which is required by the Oregon Department of Environmental Quality. The level may be exceeded to ten percent (10%) for any one occurrence if the noise is intermittent and during daylight hours.
- ii. Sound pressure levels shall be measured at the points specified and shall be measured with a sound level meter and associated octave band analyzer conforming to standards prescribed by the United States of America Standards Institute.
- iii. The following graph shall conform to standard units of measurement in accordance with United States of America Standards Institute Code, S-1.11-1966, Appendix A.



4. Off-Street Parking: Off-street parking shall be provided with not less than five (5) spaces for each well site.
5. Lighting: All lights shall be directed or shielded so as to confine the direct rays to the site.
6. Dust and Mud: The drilling site shall be treated to eliminate dust and mud.
7. Twenty-four (24) Hour Drilling: Drilling may be on a twenty-four (24) hour basis providing the above requirements are met. (Ord. 86, 12-7-1993)

6-3N-10-3: PRODUCTION STANDARDS:

A. General Production Standards:

1. Compliance with Drilling Standards: All requirements imposed by the drilling standards of Section 6-3N-10-2 of this Article shall remain in effect.
2. Building Permit: All construction work will require a building permit. The fees and procedures will be based on the current Building Code adopted by the State of Oregon.
3. Construction Plans: All construction plans shall be prepared in accordance with the architectural design requirements of Malheur County and State of Oregon Building Codes.
4. Noise Control: Continuous and intermittent sound shall be controlled to the levels listed under subsection 6-3N-10-2B3a of this Article, Drilling Noise Standards for Class 1.

5. Benchmark: The operator shall install a minimum of one (1) permanent benchmark per well as directed by the County Surveyor in order to participate in the subsidence detection program. The benchmark shall be constructed of concrete and firmly set. A brass cap as furnished by the County Surveyor shall be placed in the monument. The operator shall tie this benchmark into the nearest point of the USGS level net by first order leveling techniques.

6. Power Lines: Power lines shall be constructed on existing power rights-of-way where possible. Efforts shall be made to share existing facilities. Any new power line installations shall conform with County optimum land use and aesthetic requirements.

7. Paved Roads and Parking Areas: All on-site roads and parking areas shall be paved. On-site parking shall be provided for all employees, customers or clients.

8. Landscaping Shrubs: Shrubs, trees and ground cover shall be planted and maintained to complement the appearance of the project where soil conditions permit.

B. Additional Production Standards Applicable To Sites Within One-Half (1/2) Mile Of A Residence:

1. Compliance With Drilling Standards: All applicable requirements imposed by the drilling standards of Section 6-3N-10-2 of this Article shall remain in effect.

2. Collection Pipelines: All off-site collection pipe lines shall be buried and shall utilize and share existing dedicated rights-of-way. On-site collection pipe lines shall be painted and/or landscaped to blend with the environment. (Ord. 86, 12-7-1993)

6-3N-11: PARTICIPATION IN SUBSIDENCE PREVENTION AND DETECTION PROGRAM:
Any operator of a geothermal production project shall participate in a geothermal subsidence prevention and detection program developed by the County, State or Federal government. (Ord. 86, 12-7-1993)

6-3N-12: INSPECTIONS; ENTRY POWERS: The County reserves the right to enter the premises under the control of the operator of any geothermal operation to make appropriate inspections to determine if the conditions of this policy are being fulfilled. (Ord. 86, 12-7-1993)

ARTICLE O. URBAN RESERVE AREA OVERLAY ZONE

SECTION:

- 6-30-1: Purpose
- 6-30-2: Definitions
- 6-30-3: Permitted and Conditional Uses
- 6-30-4: City Streets and Public Facilities Master Plan
- 6-30-5: Interim Development Standards

6-30-1: **PURPOSE:** To provide interim rural residential land use and development standards within the City of Ontario's urban reserve area until such time as the land is included within Ontario urban growth boundary. These regulations are intended to apply to lands within the county zoned rural residential and within Ontario's urban reserve area. They are intended to facilitate urban level development and the efficient provision of urban services in the future. Rural residential land uses allowed by the underlying county rural residential zone shall continue to be permitted, subject to additional development standards set forth in this article. (Ord. 167, 10-24-2007)

6-30-2: **DEFINITIONS:** In addition to the definitions found in Chapter 1 of this title, the definitions contained in Subsection 6-3E-5-1B of this chapter apply to the urban reserve area overlay zone. (Ord. 167, 10-24-2007)

6-30-3: **PERMITTED AND CONDITIONAL USES:** Permitted and conditional uses and their accessory uses in the underlying county rural residential zone shall be allowed, subject to additional interim development standards set forth in section 6-30-5 of this article. (Ord. 167, 10-24-2007)

6-30-4: **CITY STREETS AND PUBLIC FACILITIES MASTER PLAN:** The city's "streets and public facilities master plan" shall be used by the county in reviewing land use applications within the Urban Reserve Area (URA) overlay zone. To be deemed complete, the application must show the location of planned facilities on the subject property and on adjacent properties. (Ord. 167, 10-24-2007)

6-30-5: INTERIM DEVELOPMENT STANDARDS: In addition to the applicable lot size and siting standards of the underlying county rural residential zone, the following siting standards shall apply to all uses and developments in the URA overlay zone. These standards shall control if there is a conflict between these standards and the standards in the underlying rural residential zone.

A. The minimum lot size standard for development shall be five (5) acres. However, lots and parcels, or a combination of the same under one ownership, legally existing as of the effective date of this provision that are less than five (5) acres in size may be utilized for any use allowed in the URA overlay zone, subject to the provisions of the underlying rural residential zone.

B. Any proposal for land division or the siting of a new residence must meet the following requirements:

1. Parcel size and configuration must allow future urban development of the subject property and adjacent properties assuming a minimum lot size of eight thousand (8,000) square feet and eighty foot (80') lot frontages, and must not impede future development or division of any new parcels or of adjacent properties.
2. The proposed development shall be compatible with the city's "streets and public facilities master plan". Improvements shall not be placed in the path of planned streets or utility rights-of-way and shall be set back a minimum of twenty feet (20') from planned right-of-way locations.
3. The applicant shall enter into an agreement with the city to dedicate all needed right-of-way for streets or any other easements such as utilities, etc., prior to annexation to the city in the future.
4. Provision of city water or sewer service shall not be permitted until the property is within the city's urban growth boundary. (Ord. 167, 10-24-2007)

ARTICLE P. URA URBAN RESERVE AREA ZONE

SECTION:

- 6-3P-1: Purpose
- 6-3P-2: Permitted Uses
- 6-3P-3: Conditional Uses
- 6-3P-4: Limitations for Future Urban Development
- 6-3P-5: Farmland

6-3P-1: PURPOSE: The URA urban reserve area zone implements the Malheur County Comprehensive Plan for those areas designated as urban reserve. The URA maintains lands for rural uses in accordance with state law, but in a manner that ensures a range of opportunities for the orderly, economic, and efficient provision of urban services when these lands are included in the Ontario Urban Growth Boundary. The urban reserve area applies to all lands within the Ontario Urban Reserve Area except those with an underlying county zone of rural residential. (Ord. 167, 10-24-2007)

6-3P-2: PERMITTED USES: Uses permitted outright in the URA shall be those identified in the underlying zoning district. (Ord. 167, 10-24-2007)

6-3P-3: CONDITIONAL USES: Uses permitted conditionally in the URA shall be those identified as conditional uses in the underlying zoning districts. Conditional uses shall be subject to all conditions of those zones. (Ord. 167, 10-24-2007)

6-3P-4: LIMITATIONS FOR FUTURE URBAN DEVELOPMENT: The following limitations apply to uses allowed by sections 6-3P-2 and 6-3P-3 of this article when the land is within an exception area:

- A. Zone changes and plan amendments that propose more intensive uses, including higher residential density, than currently allowed are prohibited.
- B. The creation of new parcels shall not be less than five (5) acres.
- C. City water and sewer services shall not be permitted until the property is within the city's urban growth boundary. (Ord. 167, 10-24-2007)

6-3P-5: FARMLAND: Land that is zoned EFU and included in the URA shall continue to be planned and zoned for permitted and conditional uses consistent with Statewide Planning Goal 3, Agriculture Lands. (Ord. 167, 10-24-2007)

CHAPTER 4 SUPPLEMENTAL PROVISIONS

SECTION:

- 6-4-1: Authorization of Similar Uses
- 6-4-2: Accessory Uses
- 6-4-3: Temporary Uses
- 6-4-4: Farmstead Lots
- 6-4-5: Clear Vision Areas
- 6-4-6: Residential Homes and Residential Facilities
- 6-4-7: Mining in Exclusive Farm Use Zone
- 6-4-8: Transportation Improvements
- 6-4-9: Lot or Parcel of Record Dwellings
- 6-4-10: Residential Trailer, Mobile Home and Manufactured Dwellings
- 6-4-11: Recreational Vehicles
- 6-4-12: Solar Power Generation Facility

6-4-1: AUTHORIZATION OF SIMILAR USES: A use not listed in this title may be permitted, provided the use is of the same general type as the uses expressly permitted in the zone in which the use is to be established. (Ord. 86, 12-7-1993)

6-4-2: ACCESSORY USES:

A. An accessory use shall comply with all requirements for a principal use, except as this title specifically allows to the contrary.

B. Boats and trailers, travel trailers, pickup campers or coaches, motorized dwellings, similar recreation vehicles, tents and other structures may be stored but not occupied on a lot as an accessory use to a single-family dwelling in any zone. However, recreational vehicles may be temporarily occupied for hunting, fishing or other recreational purposes and may be used as a temporary guest cottage for which no monetary compensation is received by the owner for fourteen (14) days in a thirty (30) day period. This time period is

to be intermittent, and not a regular, routine, constant or continuous basis. (Ord. 86, 12-7-1993; amd. Ord. 220, 7-3-2019)

6-4-3 TEMPORARY USES:

A. Purpose: A temporary use permit is to allow, on a temporary basis, structures, activities or uses that are temporary or seasonal in nature. No temporary use permit shall be issued that would have the effect of permanently rezoning or granting a special privilege not shared by other properties in the same zone. Temporary contractor yards and temporary gravel pit, crushing and asphalt mixing sites are examples of uses that may be approved by the planning director or may be referred by the director to the planning commission.

B. Criteria For Temporary Permit: A temporary permit shall be approved, denied or conditionally approved upon a finding that the proposed structure, activity or use:

1. Will not be contrary to the public interest or the intent and purpose of this section and the particular zone involved;
2. Will not cause a substantial adverse effect upon property values or environmental conditions in the immediate vicinity or in the zone in which the property of the applicant is located;
3. Is requested under such circumstances or conditions that are not the result of any act of the applicant subsequent to the adoption of the particular zoning regulations from which relief is sought; and
4. Will relate only to property that is under control of the applicant.

C. Conditions for Temporary Permit: Reasonable conditions may be imposed by the planning director or commission in connection with the temporary permit as necessary to meet the purposes of the applicable zone. Guarantees and evidence may be required that such conditions will be or are being complied with. Any temporary permit shall clearly indicate the time period for which the permit is issued, not to exceed two (2) years. No temporary permit shall be transferable to any other owner or occupant, but may be renewable upon the approval of the planning commission.

D. Application Procedure: An application for a temporary permit shall be made to the planning department on a form prescribed by this title, together with a letter of intent. The application will be processed according to chapter 9 of this title. (Ord. 86, 12-7-1993)

Notes See section 6-9-1 of this title.

6-4-4: FARMSTEAD LOTS:

A. Criteria for Farmstead Lots: A parcel with a principal dwelling may be partitioned to create a farmstead lot on which the principal dwelling remains, provided that:

1. The farmstead lot created to accommodate the principal dwelling may include up to two (2) acres. Depending on soil conditions, topography, or other unique circumstances, a larger area may be partitioned.
2. No new dwelling shall be placed on the remaining parcel unless it complies with the dimensional standards set forth in subsection 6-3A-4A of this Title.
3. If the remaining parcel is provided with a dwelling in compliance with this Title, it will not be eligible for further partitioning under these farmstead lot provisions for a period of ten (10) years.
4. The following criteria are met and no objector convincingly establishes that the creation of a farmstead lot does not meet the following criteria:

The use is compatible with farm uses; it does not interfere with accepted farming practices on adjacent lands; it does not materially alter the stability of the overall land use pattern of the area; and it 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.

5. The creation of the farmstead lot will be subject to the provisions of ORS 308.370, which may require removal from farm use assessment to a nonfarm use assessment.

B. Procedure for Authorization: The procedure for authorization of a farmstead partition shall be as follows:

1. The property owner shall file a notice of intent to create a farmstead lot, using forms provided by the Planning Department.
2. The applicant shall pay a filing fee as prescribed pursuant to subsection 6-9-5B of this Title.
3. Within ten (10) working days of filing, the Planning Director shall circulate notice of the pending application in the following manner:
 - i. By publication in at least one newspaper of general circulation published in the County; and
 - ii. By individual notice mailed to all record owners of real property within two hundred fifty feet (250') of the parent parcel for which the application has been made.

4. The notice shall contain a brief description of the application and the period, not less than ten (10) or more than thirty (30) days, within which written objections and/or requests for a hearing are required to be submitted to the Planning Department.

5. Within ten (10) working days of receipt of written objections and/or requests for a hearing, the Planning Director shall schedule a hearing before the County Court, prepare a staff report and provide notice pursuant to Section 6-10-3. The County Court shall hold the public hearing and make findings as provided in Section 6-10-8.

6. If no written objections and/or requests for a hearing are received within the time prescribed, the Planning Director shall provide the applicant with written notice of the decision. That decision may be appealed as provided in Chapter 13 of this Title. (Ord. 86, 12-7-1993)

6-4-5: CLEAR VISION AREAS:

A Definition: A clear vision triangle means a triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. triangle at the intersection of two (2) vehicular travelways shall be that area formed when a specified distance is measured along each property line or property line and edge of driveway beginning at the corner of the intersection, and then sighting a line between the ends of these measured distances thus forming a triangle.

Specified dimensions of clear vision triangles are the following:

1. Intersection of driveway and street, road or highway: thirty feet (30') along street, road or highway and ten feet (10') along driveway.
2. Intersecting streets or roads: thirty feet (30') and thirty feet (30').
3. Intersecting street, or County road, and U.S. highway, or State highway: forty feet (40') along highway and thirty feet (30') along street or road.

B. Protection of Vision Areas: It is the intent of this provision to protect the vision areas at intersecting travel-ways and driveways without requiring a topographic survey of the clear vision triangle. To effect this intent, the judgment of the planning director or his designate shall prevail unless the owner of the property can demonstrate with a string line or a written statement from a licensed land surveyor an error in the estimated height of the topography where the sign or vegetation is proposed.

C. Vegetation: Within a clear vision triangle, vegetation, other than trees and signs, shall not exceed two and one-half feet (2 1/2') in height where topography is approximately flat. If topography rises, allowable sign and vegetation height reduces accordingly.

D. Trees: Trees are permitted within the clear vision triangle, provided they are pruned in such a way that the mass of sight obscuring foliage or needles are ten feet (10') or higher above the clear vision triangle. (Ord. 86, 12-7-1993)

6-4-6: RESIDENTIAL HOMES AND RESIDENTIAL FACILITIES (see Section 6-1-3 definitions for residential homes and residential facilities):

A. Residential homes shall be permitted in the same manner that single-family dwellings are permitted under this title. For the purposes of this title the term "dwelling" or "single-family dwellings" shall be synonymous with term "residential home".

B. Residential facilities shall be permitted in the same manner that multi-family dwellings are permitted under this title. For the purpose of this title the term "multi-family dwellings" shall be synonymous with term "residential facility".

C. In any application for a residential home or residential facility, the applicant shall not be required to supply any information concerning the existence of or the nature or severity of any handicap (as the term is defined under the fair housing act) of the prospective residents. (Ord. 86, 12-7-1993)

6-4-7: MINING IN EXCLUSIVE FARM USE ZONE:

A. A land use permit is required for mining more than one thousand (1,000) cubic yards of material or excavation preparatory to mining of a surface area of more than one (1) acre.

B. A permit for mining of aggregate shall be issued only for a site included on an inventory in the Malheur County Comprehensive Plan. (Ord. 86, 12-7-1993)

6-4-8: TRANSPORTATION IMPROVEMENTS:

A. Permitted Improvements: The following transportation improvements shall be permitted outright in all zoning districts other than EFU (exclusive farm use zone), ERU (exclusive range use zone), and EFFU (exclusive farm-forest use zone):

1. Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.
2. Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.
3. Projects specifically identified in the transportation system plan as not requiring further land use regulation.
4. Landscaping as part of a transportation facility.

5. Emergency measures necessary for the safety and protection of property.
6. Acquisition of right-of-way for public roads, highway, and other transportation improvements designated in the transportation system plan except for those that are located in exclusive farm use or forest zones.
7. Construction of a street or road as part of an approved subdivision or land partition approved consistent with the applicable land division ordinance.

B. Conditional Improvements: The following transportation improvements may be established as a conditional use in all zoning districts other than EFU (exclusive farm use zone), ERU (exclusive range use zone), EFFU (exclusive farm-forest use zone) when authorized in accordance with chapter 7 of this title:

1. Construction, reconstruction or widening of highways, roads, bridges or other transportation projects that are: a) designated in the transportation system plan but for which no site specific decisions have been made, or b) not designed and constructed as part of a subdivision or planned development subject to the site plan and/or conditional use review. These projects shall comply with the transportation system plan and applicable standards, and shall address the following criteria. For state projects that require an Environmental Impact Statement (EIS) or **Environmental Assessment** (EA environmental assessment), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:

- i. The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
- ii. The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
- iii. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
- iv. Project includes provision for bicycle and pedestrian circulation as consistent with the comprehensive plan and other requirements of this title.

2. Construction of rest areas, weigh stations, temporary storage, and other transportation related sites.

3. Other transportation improvements deemed by an **independent engineer of Malheur County's selection** **the county engineer as to be** appropriate and consistent with the adopted Malheur County Transportation System Plan and Malheur County Comprehensive Plan.

4. If review under this section indicates that the use or activity is inconsistent with the Malheur County's Transportation System Plan, the procedure for a plan amendment shall be undertaken prior to or in conjunction with the a conditional use permit review.

C. Time Limitation on Transportation Related Conditional Use Permits: Authorization of a conditional use for a transportation project permitted pursuant to subsection "B" of this section shall be void after a period specified by the Malheur County appointed independent engineer applicant as reasonable and necessary based on season, right-of-way acquisition, and other pertinent factors. This period shall not exceed three (3) years. (Ord. 125, 6-20-2000)

6-4-9: LOT OR PARCEL OF RECORD DWELLINGS:

A. The Malheur County planning director may allow the establishment of a single-family dwelling on a lot or parcel located within an exclusive farm use zone, exclusive range use zone or exclusive farm-forest use zone as set forth in this section and ORS 215.710(1), (5) and (6), after the director has notified the county assessor that the dwelling will be allowed. A dwelling under this section may be allowed if:

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:
 - i. Prior to January 1, 1985; or
 - ii. By devise or by interstate intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.
2. The tract on which the dwelling will be sited does not include a dwelling.
3. The proposed dwelling is not prohibited by, and will comply with, the requirements of the Malheur County Comprehensive Plan, this code and other provisions of law.
4. The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high value farmland as described in ORS 215.710 except as provided in subsections "B" and "C" of this section.
5. When the lot or parcel on which the dwelling will be sited, lies within an area designated in Malheur County's Comprehensive Plan as big game habitat of big game, the siting of the dwelling shall be is consistent with the limitations on density, upon which the Malheur County Comprehensive Plan and land use regulations is intended to protect the big game habitat are based.
6. When the lot or parcel on which the dwelling will be sited is part of the tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

B. Notwithstanding the requirements of subsection A4 of this section, a single-family dwelling not in conjunction with farm use may be sited on high value farmland if:

1. It meets the other requirements of ORS 215.705 to 215.750 that apply to Malheur County;
2. The lot or parcel is protected as high value farmland as described under ORS 215.710(1); and
3. Malheur County Planning Commission determines that:
 - i. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent **in to** the land, or its physical setting that **does do** not apply generally to other land in the vicinity.
 - ii. The dwelling will comply with the provisions of ORS 215.296(1).
 - iii. The dwelling will not materially alter the stability of the overall land use pattern in the area.
4. The Malheur County Planning Department shall provide notice of all applications for dwellings allowed under this subsection to the **Oregon** State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least twenty (20) calendar days prior to the public hearing before the planning commission.

C. For the purposes of subsection "A1" of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

D. When an application for a single-family dwelling under the provisions of this section are approved, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision. (Ord. 145, 4-14-2004)

6-4-10: RESIDENTIAL TRAILER, MOBILE HOME and MANUFACTURED DWELLINGS:

A. Installation of a "residential trailer", as defined in section 6-1-3 of this title, which was not previously placed in the county and not on the county assessment rolls since 2003 shall not be installed in the county.

B. Installation of a "mobile home", as defined in section 6-1-3 of this title, which was not previously placed in the county and not on the county assessment rolls since 2003 shall not be installed in the county.

C. Residential trailers and mobile homes, as defined in section 6-1-3 of this title, currently placed in the county and on the county assessment rolls since 2003 may continue to be used as residential structures. **and can be moved within the county and receive building permits.**

D. Manufactured dwellings, as defined in 6-1-3 of this title, which are currently placed or new to the county and in compliance with federal manufactured dwelling construction and safety standards (24 CFR section 3280) can be issued building permits.

E. Except **for on** lands zoned industrial, residential trailers, mobile homes and manufactured dwellings shall not be stored in the county. (Ord. 147, 4-14-2004)

6-4-11: RECREATION VEHICLES:

A. Recreation vehicles may not be occupied as a permanent dwelling in any zone within Malheur County. Nothing herein, however, shall be construed to violate ORS 197.493.

B. A recreational vehicle may be occupied temporarily, without a permit or fee, on a vacant lot, parcel or tract for a period not to exceed thirty (30) days in any twelve (12)-month period in the rural residential, rural service center and exclusive farm or ranch zones.

C. When building a permanent home, a recreational vehicle may be occupied, without a permit or fee, as a temporary residence during construction of the permanent residence as long as the building permit for the permanent residence is active and occupancy in the recreational vehicle does not exceed six (6) months may be permitted if due diligence and progress on the permanent home is demonstrated for a period not to exceed six (6) months. The occupancy of the recreational vehicle as a temporary residence shall cease within two (2) weeks of issuance of an occupancy permit for the permanent dwelling.

D. In certain circumstances, subject to special provisions, permits and fees as set out in the Malheur County Code and state law (i.e. connect to an existing sewage disposal system; conditional use permit, MCC 6-6-8-7) recreational vehicles may be occupied in a manufactured dwelling park, mobile home park or recreational vehicle park or as a medical hardship dwelling.

E. Recreational vehicles may not be occupied as a residence for security personnel or seasonal farm housing.

F. Tents Or Recreational Vehicles As An Accessory Use/Second Dwelling: Occupying a tent or a recreational vehicle for additional living space is not allowed. Temporary guests, when no monetary compensation is received by the landowner, may occupy a recreational vehicle for up to fourteen (14) days in a thirty (30) day period. This time period is to be intermittent, and not a regular, routine, constant or continuous basis.

G. Occupation of recreational vehicles within the UGB is also subject to the joint management agreement between City of Ontario and Malheur County codified at Malheur County Code 6-3E; as well as the joint management agreement between Malheur County and City of Nyssa and Malheur County and City of Vale.

H. Notwithstanding the limitations set out herein, temporary permits, under MCC 6-4-3, may be issued to allow the occupancy of an RV for the following: in an emergency, to seasonal fire fighters, construction workers, and volunteers.

I. The civil infraction for violation of this section can be found at 1-9A-3C of this code. (Ord. 220, 7-3-2019)

Section 6-4-12 Solar Power Generation Facility (see Section 6-1-3 Definitions)

Section 6-4-12A Purpose

Section 6-4-12B Applicability

Section 6-4-12C Uses

Section 6-4-12D Application Requirements

Section 6-4-12E Review Standards

Section 6-4-12F Amendments

Section 6-4-12G Abandonment

Section 6-4-12H Signs

Section 6-4-12A Purpose: The purpose for this section is to promote the safe, effective and efficient installation of solar power generation facilities within Malheur County for the production and consumption of electricity.

Section 6-4-12B Applicability: Applies to solar power generation facilities installed and/or constructed. Solar power generation facilities constructed prior to the date of this section's adoption, shall not be required to meet the requirements of this ordinance. Any upgrades, modifications, or changes that materially alter the size or placement of an existing solar power generation facilities shall comply with the provisions of this ordinance. A renewable energy facility that meets the definition of ORS 215.446(1) shall meet the criteria listed in ORS 215.446 and all associated standards.

Section 6-4-12C Uses: There are four (4) categories of solar power generation facilities and accessory uses, permitted as described below:

A. Accessory Uses: The installation and use of a solar power generation facility is an outright permitted use in any zone when located:

1. On a residential structure in a zone which residential structures are permitted;

2. On a commercial structure in any zone in which commercial structures are an allowed use;

3. If the residential or commercial structure is designated as any of the following, the provisions of this section do not apply:

i. A federally or locally designated historic building or landmark, or is located in a federally or locally designated historic district;

ii. A conservation landmark designated by the county because of the historic, cultural, archaeological, architectural or similar merit of the landmark.

iii. Located in an area designated as a significant scenic resource unless the material used must be designated as anti-reflective or eleven percent (11%) or less reflective.

B. Small scale Solar Power generation Facilities: Produces power to be used for non-commercial purposes and is not located within resource zones.

C. Commercial Solar Power Generation Facilities: Produces power to be used to power commercial developments, uses, structures or businesses located on the same parcel or tract as the solar facility and is not located within a resource zone.

D. Utility Scale Solar Power Generation Facilities: Produces power to be sold and used for public consumption.

E. Small-scale or commercial Solar Power Generation Facility measuring less than 3 acres, accessory to and providing power to a primary use on property within the same ownership. This type of facility may be located in any zone subject to the following siting requirements and standards:

1. On or accessory to a residential structure which has been permitted or has been identified as a pre-existing, non-conforming structure; or

2. On or accessory to a commercial structure which has been permitted or has been identified as a pre-existing non-conforming structure; and

3. Sited in rear or side yards and measuring no more than 15 feet in height; and

4. Sited in a location which meets all applicable setback requirements for all zones.

5. Where feasible, electrical cables and transmission lines shall be placed underground.

F. Small-scale or commercial solar power measuring more than 3 acres, may be permitted with a conditional use approval.

G. Utility-scale Solar Power may be permitted when authorized through a conditional use permit. May be located in any zone subject to the following siting requirements and standards:

1. No portion of a Utility-scale Solar Power shall be within 1,320 feet of:

i. properties designated on the zoning maps as residential or

ii. city limits of an incorporated city, unless a resolution specifically supporting placement of a solar power facility within 1,320 feet of the city limits has been passed by the city council of that city.

2. No portion of a Utility-scale Solar power shall be located within 1,320 feet of an existing dwelling unless an Affidavit of Consent has been signed by all property owners with an existing dwelling within 1,320 feet from the facility. This Affidavit of Consent shall be recorded by deed in the Malheur County Clerk's office.

3. All Utility-scale Solar Power shall meet setback requirements in all zones.

4. No portion of a Utility-scale Solar Power shall be located within 1 mile of an existing airport or airstrip.

5. Where feasible, electrical cables and transmission lines shall be placed underground.

Section 6-4-12D Application Requirements

A. The following requirements shall be addressed when applying for a conditional use:

1. Narrative: Written narrative for the proposed solar power; including but not limited to a description of:

i. demonstration of compliance with all criteria that applies to the proposal, including those listed in the Conditional Use Section of this code;

ii. The proposed facility and generation capacity, including expected average annual net-metering output, and anticipated timeline for permitting, construction and energy production, operation, and utilization;

iii. Site preparation, surveying and staking, including:

(A) a description of how the proposed solar power facility equipment, buildings, panels, power lines, related facilities and roads shall be designed and constructed in order to:

(B) limit ground leveling for the proposed facility to those areas needed for effective solar energy collection and so that the natural ground contour is preserved to the greatest extent practical; and

(C) remove and stockpile top soil for later resspreading over disturbed areas

(D) Minimal vegetation is removed from the site; vegetation beyond the site perimeter is not disturbed;

(E) Erosion control is in place when crossing riparian areas with transmission lines.

B. Re-vegetation and erosion control plan

C. Weed control plan

D. Number and type of workers to be employed at the facility during installation, construction, and operation.

E. Water usage (amount and source)

F. Identify potential conflicts (wetland, floodplains, adjacent farms)

G. Site plan showing, number and size of solar panels, transmission lines, easements, substations, maintenance buildings, string converters, and fences.

H. Soil types where development will be located

I. Setback from property lines of all structures (panels and buildings)

J. Identify the appropriate fire district which the facility is located

Section 6-4-12E Abandonment: The Malheur County Planning Director in consultation with the Oregon Department of Energy and Industry may deem a property abandoned if no power has been generated for a period of two (2) years, or according to industry standards. A notice of abandonment of a solar power generation facility shall be sent in the form of a certified, return-receipt letter from Malheur County, or hand delivered by the Malheur County Sheriff's office. Such a letter shall identify the property upon which the abandoned solar power generation facility is located and shall include an explanation of the action necessary to gain compliance with this code. The letter shall be delivered to the last known owner of record of the subject parcel according to the tax account information of the Malheur County Assessor, as well as to the original applicant for the solar power generation facility.

A. Upon determination of abandonment: The facility owner shall have one (1) year to:

1. reuse the facility or transfer the facility to another owner who will reuse it within one (1) year of the determination of abandonment; or

2. remove the facility

B. If the facility is not reused or restored within one (1) year of the determination of abandonment, the County authorization for the use shall expire. Once authorization for the use has expired, the facility is to be removed within one (1) year, the County may remove the facility at the expense of the property owner. The county retains the right to file a lien for the value of the removal of the facility, plus interest, at the property owner's expense. The determination of abandonment is not a land use decision and cannot be appealed to LUBA.

Section 6-4-12F Signs

A. All solar sites shall have a sign area of not less than three (3), not more than six (6) square feet in surface area prominently erected, which displays the site's name or identification number; the name, address and phone number of the operator; and the name and phone number of the operator's representative to be contacted in the event of an emergency.

B. Outdoor displays, signs, or billboards within the solar power facility project boundary shall not be erected except:

1. signs required for public or employee safety or otherwise required by law; and

2. All signs must receive approval based on the standards of the Malheur County Zoning Code Section 6-7-2 governing signs.

CHAPTER 5 D SITE DESIGN REVIEW OVERLAY ZONE

SECTION:

- 6-5-1: Application
- 6-5-2: Site Plan Requirements
- 6-5-3: Traffic Impact Analysis
- 6-5-4: Building Plan Requirements
- 6-5-5: Conditions of Approval
- 6-5-6: Procedures for Approval

6-5-1: APPLICATION: Site and building plans must be reviewed for all developments in all zones. **which have this overlay zone attached.** In most cases, **this there** will be **in the** commercial and industrial zones. **The D overlay zone may be attached to partitions, residential and** **The site design review may be required in the** resource zones because of their historic, scenic, cultural or other resource values, or as may be required to comply with provisions of this title **and/or** the comprehensive plan.

The criteria in this chapter, shall be applicable to all conditional use applications in all zones. **and by specific reference in a zone without first being applied as an overlay zone.** Final action on applications, which are filed in complete form shall be taken within one hundred twenty (120) days in accord with the provisions and exceptions of ORS 215.428. (Ord. 86, 12-7-1993)

6-5-2: SITE PLAN REQUIREMENTS: A site plan, drawn to scale, and accompanying specifications shall include the following information, as appropriate. Transportation related requirements such as bicycle parking, pedestrian access and circulation are required only on developments in commercial, light industrial zones and within rural service centers. (Ord. 125, 6-20-2000)

- A. Lots: Lot dimensions and setbacks **for the applicable zone.**
- B. Structures: Sizes and locations of all existing and proposed structures **on the parcel(s).**
- C. Use: Intended use of each structure.
- D. Relationship: Relationship of the property to the surrounding area.
- E. Designation: Designation of the property in the comprehensive plan.
- F. Traffic Patterns: Proposed traffic patterns indicating access, type of streets or roads and status of road ownership.
- G. Parking: Proposed parking areas.
- H. Landscaping: Landscaping and watering system using common names for **proposed** trees and plants **proposed.**
- I. Water: Proposed method of water supply, sewage disposal, drainage and fire protection. (Ord. 86, 12-7-1993)
- J. Bicycle Parking: For multi-family developments and new development in rural service center, commercial and light industrial zoning districts, the site plan shall include the number and type of bicycle parking facilities required in the bicycle parking standards, subsection 6-5-5I of this chapter. The location, **and** design, **and number** of bicycle parking facilities shall be indicated on the site plan.

K. Additional Requirements: For new development in the rural service center, commercial and light industrial zoning districts the following additional requirements shall apply:

1. Pedestrian Access and Circulation: Internal pedestrian circulation shall be provided in new commercial, office, and multi-family residential developments through the clustering of buildings, construction of hard surface walkways, landscaping, accessways, or similar techniques.
2. Commercial Development Standards: Where appropriate, new commercial retail shopping and office buildings shall be oriented to the street, near or at the setback line. A main entrance shall be oriented to the street. For lots with more than two (2) front yards, the building(s) shall be oriented to the two (2) busiest streets. Off street parking (industrial and commercial) shall be located at the side or behind the building(s).
3. Internal And External Connections: All site plans (industrial and commercial) shall clearly show how the site's internal pedestrian and bicycle facilities connect with external or planned facilities or systems.

L. Other: Other information that may be relevant for review to assure compliance with the purpose of this chapter. (Ord. 125, 6-20-2000)

6-5-3: TRAFFIC IMPACT ANALYSIS: For proposed developments that are likely to generate more than four hundred (400) average daily motor vehicle trips (ADTs), the applicant may be requested to provide adequate information, such as a traffic impact study or traffic counts, to demonstrate the level of impact to the surrounding street system. The county may require the developer to mitigate impacts attributable to the project. The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility. (Ord. 125, 6-20-2000)

6-5-4: BUILDING PLAN REQUIREMENTS: Plans drawn to scale, which show the floor plan and building elevations shall include the following information:

- A. Building dimensions in the plan and height shown on the site design plan.
- B. Exterior building materials.
- C. Exterior colors.
- D. Proposed signs shall show the location, size, and design, and the names of the business(es) of proposed signs. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-5-5: CONDITIONS OF APPROVAL: Both permitted and conditional uses shall be subject to the provisions of this section. Before a use may be substantially changed, a new use added, an existing building substantially enlarged or altered, or a new building constructed, or a new sign design mounted, a site and structure development plan shall be submitted to the planning department for approval in accordance with the provisions of this chapter. Construction and development of the site shall be in substantial conformance to the approved plans. In approving a site development plan for a proposed use, consideration shall be given to: minimizing the impact of the proposed use on nearby property; the capacity of the streets and roads to carry the volume of traffic so that such capacity is not exceeded; and, the appearance of the use so that it is compatible with surrounding uses to the maximum extent practicable. Any of the following may be required as conditions of site plan approval: (Ord. 125, 6-20-2000)

A. **An Increase In The Required** Setbacks: **The required** setbacks shall be adequate to the use proposed, but the requirements imposed by the planning director or commission shall not be greater than double that required as minimum in the respective **underlying** zone except when abutting upon a resource or residential zone.

B. **Additional Off Street Parking:** Off street parking shall be adequate for the use provided, but requirements imposed by the planning director or commission **2** shall not exceed or go below the following:

- | | |
|-------------------|---|
| R-2 zone | Not less than 1 space, nor more than 3 spaces for each dwelling unit. |
| C1 zone | 1 space for each 200 square feet of gross floor area. |
| M-1 and M-2 zones | Not less than 1 space for each 2 employees on the largest shift, or more than 1 space for each employee on the largest shift. |

C. **Landscaping and Watering Systems:** Increased landscaping with attendant watering system.

D. **Screening:** Screening of the proposed use by a fence or landscaping. **If a fencing requirement is imposed, the** fencing shall be site obscuring and shall not be required to be more than eight feet (8') in height. It need not enclose any buffer or setback area.

E. **Architectural and/or Color Coordination:** Exterior building appearance, architectural and/or color coordination. The avoidance of large flat exterior walls and roofs with little or no overlay may be required. Variation in wall texture and exterior color is desirable and may be required. Because of the normal long life of a building, its appearance needs to be carefully considered so that it will be a long term contributor to the appearance and value of the community.

F. **Limitations on Signs or Lighting:** Artificial lighting shall be shielded, deflected or reduced in intensity to avoid shining into adjoining dwellings, and shall not create a hazard to the traveling public on any road or street.

G. Curb Cuts: Malheur County Road Department or Oregon Department of Transportation shall determine the limitations on the number and location of curb cuts for a potential development. The number and location of curb cuts, if provided, shall minimize traffic disruption, but in any case shall not exceed one curb cut per two hundred feet (200') of road or street frontage.

H. Fencing: Fencing to block the view to storage items or to provide privacy for neighboring property owners may be required. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

I. Bicycle Parking; General Provisions:

1. Bicycle parking and storage provisions are intended to provide bicycle parking facilities to accommodate bicycle travel and encourage additional bicycle trips. Bicycle parking facilities shall be either lockable enclosures in which the bicycle is stored or stationary racks which accommodate bicyclist's locks securing the frame and both wheels. Bicycle racks or lockers shall be securely anchored to the surface or to a structure.
2. Bicycle parking shall be separated from motor vehicle parking and maneuvering areas by a barrier or sufficient distance to prevent damage to parked bicycles.
3. New multi-family, commercial or public facility construction that requires county review should bring the property into conformance with the bicycle parking standards. For building expansions, the additional required bicycle parking improvements shall be related to the expansion only.
4. Fractional numbers of spaces shall be rounded up to the next whole space. For facilities with multiple uses (such as commercial center), the bicycle parking requirements shall be calculated by using the total number of motor vehicle parking spaces for the entire development and may be clustered in one or several locations.
5. Bicycle parking shall have direct access to both the public right-of-way and to a main entrance of the principal use. Bicycle parking may also be provided inside a building in suitable, secure and accessible locations.

J. Bicycle Parking Standards:

1. A minimum of two (2) bicycle parking spaces per use (1 sheltered and 1 unsheltered) shall be required.
2. The following special minimum standards shall be considered as supplemental requirements for the number of required bicycle parking spaces:
 - i. Multi-Family Residences: Every residential use of four (4) or more dwelling units shall provide at least one sheltered bicycle parking space for each unit. Sheltered bicycle parking spaces may be located within a garage, storage shed, basement, utility room or similar area. In those instances, in

which the residential complex has no garage or other easily accessible storage unit, the required bicycle parking spaces shall be sheltered under an eave, overhang, an independent structure, or similar cover.

ii. Parking Lots: All new public and commercial parking lots shall provide a minimum of one bicycle parking space for every ten (10) motor vehicle parking spaces.

iii. Rural Schools, Service Centers, and Industrial Parks: Rural schools, service centers, and industrial parks shall provide a minimum of one bicycle parking space for every ten (10) motor vehicle parking spaces. A minimum of two (2) bicycle parking spaces per use shall be required.

K. Pedestrian Walkway Connections In Multi-Family Developments: If applicable, a safe, convenient and direct pedestrian walkway shall connect all building entrances with pedestrian access to walkways, sidewalks, multiuse paths, alleyways, or any other pedestrian connection in order to accommodate access to neighborhood activity centers (schools, parks, shopping areas, etc.). Safe and convenient routes are those that are:

1. Reasonably free from hazards, and
2. Provide a reasonably direct route of travel between destination, considering that the optimum travel distance is one-half (1/2) mile for pedestrians and three (3) miles for bicyclists.

L. Pedestrian Walkway Design Standards: Pedestrian walkways shall be at least five feet (5') of impervious surface in width, except walkways bordering parking spaces, which shall be at least seven feet (7') wide unless concrete bumpers, bollards or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway.

M. Exceptions To Pedestrian Walkway Standards: A required walkway or walkway connection need not be provided where an alternate route of travel is reasonably direct. A reasonably direct route is one that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out of direction travel for likely users. (Ord. 125, 6-20-2000)

Notes: See section 6-9-1 of this title.

6-5-6: PROCEDURES FOR APPROVAL:

A. Approval by Planning Director: The planning director or his designate is authorized to approve minor site improvements and small scale alterations and structures that have an approximate construction cost of less than fifty thousand dollars (\$50,000.00). Except as above provided, all site development plans must be approved by the planning commission.

B. Approval by Planning Commission: The applicant may propose more restrictive standards than those set forth herein, and these shall become part of the approved site **design development** plan. At a minimum, in approving the site **design development** plan, the planning commission shall apply the standards of section 6-5-4 of this chapter. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

CHAPTER 6 CONDITIONAL USES

SECTION:

- 6-6-1: Purpose
- 6-6-2: Ex Parte Contact
- 6-6-3: Notice to Airport Owner
- 6-6-4: Authorization to Grant Or Deny Conditional Uses
- 6-6-5: Application Procedures
- 6-6-6: Summary of Application Procedure
- 6-6-7: General Criteria to Evaluate Suitability
- 6-6-8: Specific Criteria to Evaluate Suitability
 - 6-6-8-1: Non-resource Dwellings in an EFU, ERU Or EFFU Zones
 - 6-6-8-2: Non-resource Partition In An EFU, ERU Or EFFU Zones
 - 6-6-8-3: Temporary Use Of A Manufactured Dwelling Or Recreational Vehicle During Family Hardship
 - 6-6-8-4: Mineral, Aggregate Or Geothermal Resource Exploration, Mining And Processing
 - 6-6-8-5: Junkyards And Auto Wrecking Yards
 - 6-6-8-6: Minor Home Occupations, Home Occupations, And Home Businesses
 - 6-6-8-7: Recreational Vehicle Parks
 - 6-6-8-8: Wireless Telecommunication Facilities
- 6-6-9: Nonconforming Uses
 - 6-6-9-1: Continuation Of Nonconformance
 - 6-6-9-2: Alteration
 - 6-6-9-3: Restoration, Replacement Or Change

- 6-6-9-4: Discontinuance
- 6-6-9-5: Completion Of Nonconforming Structures
- 6-6-10: Additional Conditions
- 6-6-11: Assurance Requirements
- 6-6-12: Time Limit On Authorization

6-6-1: PURPOSE: A conditional use is a use of land expressly authorized if the general and specific criteria set forth in this chapter are met. The applicant for the conditional use must show that the use will not create problems that call for denial or special conditions. The use should be in character with existing development in the zone and approval may be conditioned with requirements which are intended to make the use and the facilities it requires an asset to the area. Public notice and hearings procedure is contained in Chapter 10 of this title. (Ord. 86, 12-7-1993)

6-6-2: EX PARTE CONTACT: Ex parte contact is discouraged because of the severe consequences it can have for all persons involved. However, no decision or action **by** **of** the Malheur County Planning Commission or the Malheur County Court shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body. **if** **The** member of that body receiving the contact **shall**:

A. **Places** on the record the substance of any written or oral ex parte communication **(s)** concerning the decision or action; and

B. **Have** **Has** a public announcement of the content of the communication **(s)**, and **of** the party's right to rebut the substance of the communication **(s)** **made** at the first hearing following the communication **(s)** where action will be considered, or taken on the subject **to** which the communication **(s)** is related. (Ord. 86, 12-7-1993)

6-6-3: NOTICE to AIRPORT OWNER: Pursuant to ORS 215.416 and 215.223, a notice shall be given to the owner of an airport when a proposed development will have structure **(s)** in excess of thirty-five feet (35') in height located within five thousand feet (5,000') of the side or end of a "visual airport" or ten thousand feet (10,000') of the side or end of an "instrument airport". (Ord. 86, 12-7-1993)

6-6-4: AUTHORIZATION TO GRANT OR DENY CONDITIONAL USES Conditional uses listed in this title may be permitted, enlarged or altered upon authorization by the Malheur County Planning Commission in accordance with the criteria and procedures set forth in this chapter and in the article for the specific zone in which the conditional use is to be established. (Ord. 86, 12-7-1993)

6-6-5: APPLICATION PROCEDURES: The application forms shall contain instructions, which are substantially the same as the following:

A. Conference: A preapplication conference with the Malheur County Planning Director is required necessary. This is an usually a very informal meeting or discussion during which the applicant explains the his proposal in detail. The planning director can then assist the applicant by explaining the difficulties between this title and the proposal. In some cases the planning director may have ideas on what should be emphasized for the best advantage.

B. Application Form: The application form shall be completed and submitted to the Malheur County Planning Department. filled out as completely as possible. A letter which describes the proposal the way from the applicant shall be submitted with the application and shall remain as part of the record of application. believes it should be understood by persons who will be reading and hearing about it for the first time and must then make a decision to approve it, approve it with conditions or deny it, shall always be attached.

C. Tax Assessment Map: A current tax assessment map showing the parcel for which the application is proposed and all parcels within two hundred fifty feet (250') of the subject parcel with the names and mailing addresses of the owners shall be obtained and attached to the application. The parcel for which the application is proposed must be shaded or colored on the tax map.

D. Plot Map: A plot map of the parcel, showing with accurate dimensions, and indicating the following information, shall be included in the application:

1. The location of all structures on the parcel.
2. The location of all wells on the parcel.
3. The location of all septic tanks and drainfields on the property.
4. The location of all road rights-of-way and access easements on or adjacent to the parcel.
5. Accurate dimensions of the property lines.
6. Accurate dimensions of the property lines that would be created by the proposed partition.
7. The location and setbacks (distance from property lines) of any proposed structures.

8. The location of any irrigation or drainage ditches or canals including any underground irrigation or drainage structures.

E. Other Agencies: Other agencies have responsibilities, which proposed changes on the applicant's property may affect. Proposed changes on the applicant's property may affect the responsibilities of other agencies.

A letter shall must be received by the Malheur County Planning Department stating indicating that the specific proposal will not adversely affect those the agencies responsibilities, or that with certain improvements, easements, or rights-of-way provided by the applicant, the proper end result will be achieved.

Very Important: With rare exception, the application will not be considered complete until the planning office receives a recommendation from the following agencies as may be applicable in the applicant's case:

1. The appropriate irrigation district.
2. The appropriate road district.
3. The appropriate drainage district.
4. The nearby city if the property is within or near that city's urban growth boundary.
5. The affected fire protection district or agency that will need to fight fires that may spread from the applicant's land.
6. The appropriate state and/or federal agency.

The agency shall should mail its comments directly to the Malheur County Planning Department office. That agency shall receive must have a copy of the applicant's proposal the applicant intends to which will be submitted to the planning commission; if not submitted or received prior to the planning commission hearing or the applicant may will otherwise experience unnecessary delay or a negative recommendation. (Ord. 86, 12-7-1993)

F. Notice: In addition to any notice required by this title, the county shall provide notice to the Oregon Department of Transportation (ODOT) as required by OAR 660-12-045(2)(f) for of the following land use actions:

1. Land use applications that require public hearings;
2. Subdivision and partition applications;
3. Other applications which affect private access to state roads;
4. Other applications within airport overlay zones.

G. Fee: Payment of the required application fee shall must accompany the application when submitted to the Malheur County Planning Department. (Ord. 125, 6-20-2000)

H. Scheduling: Applications shall must be submitted at least one (1) month prior to the planning commission meeting date. The planning commission meets once a month on the fourth Thursday, except when that date falls near a holiday, in which case, the third Thursday is often used. Meetings are generally not held when no applications are received prior to the agenda closing date (1 month previous).

I. Meetings:

1. Location of Meetings: Shall be determined and placed in the public notice and notified the applicant(s) and adjacent property owners. The council chambers of Ontario city hall, at the intersection of SW 4th Avenue and SW 4th Street Ontario, Oregon, is the customary location for planning commission meetings.

2. Time of Meetings: Meetings are routinely held in the evenings starting at 7:30 p.m.. Beginning time is generally seven o'clock (7:00) P.M. during the winter (short daylight period) and eight o'clock (8:00) P.M. during the summer (long daylight period). Check with the planning office for specific time of any particular meeting. (Ord. 86, 12-7-1993; and Ord. 125, 6-20-2000)

6-6-6: SUMMARY OF APPLICATION PROCEDURE: The procedure for applying for authorization of a conditional use shall be as follows:

A. The property owner shall file an application with the Malheur County Planning Department, using forms prescribed pursuant to section 6-10-5 of this title.

B. The applicant shall submit make payment of a filing fee as prescribed pursuant to subsection 6-9-5B of this title.

C. The application shall be filed no less than thirty (30) days prior to the next regularly scheduled planning commission meeting.

D. Before the planning commission may act on a conditional use application, it shall hold a public hearing thereon.

E. Generally, a the decision is rendered during the first meeting at which time the application is considered.

F. A decision may be deferred to a specific date, but not longer than one hundred twenty (120) days from submittal of the application submittal without applicant's written agreement.

G. An aggrieved party has ten (10) days to appeal the planning commission decision.

H. Generally, within ten (10) working days after a decision has been rendered, the Malheur County Planning Department provides the applicant with written notice of the planning commission's decision. (Ord. 86, 12-7-1993)

6-6-7: GENERAL CRITERIA TO EVALUATE SUITABILITY: When In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:

- A. Comprehensive Plan Goals: Comprehensive plan goals and policies, as applicable.
- B. Specific Plans: Specific plan recommendations.
- C. Developments and Viewpoints: Existing development and viewpoints of property owners in the surrounding area.
- D. Services and Utilities: Availability of services and utilities to the subject property(ies).
- E. Effect: The effect of the proposed use on the stability of the community's social and economic characteristics.
- F. Fish and Wildlife: 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. A written response from Oregon Department of Fish and Wildlife shall be sent for the applicant's proposal and placed in the record. (Ord. 86, 12-7-1993)
- G. General Criteria:
 - 1. Increasing setbacks of structures to reduce the possibility(ies) of overshadowing adjoining property, noise, odor or night lighting nuisances.
 - 2. Landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and county.
 - 3. Location and size of driveway access points and right-of-way widening, and improvement(s) for present and future traffic circulation consistent with the adopted Malheur County Road Standards, or the standards of the appropriate road district and the access management standards of the Malheur County Transportation System Plan.
 - 4. Visual screening of outdoor waste and storage areas.
 - 5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.
 - 6. Special criteria listed below, as applicable. (Ord. 125, 6-20-2000)
- 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)

6-6-8: SPECIFIC CRITERIA TO EVALUATE SUITABILITY: In addition to the general criteria above, the specific criteria listed below, and the standards for the zone in which the conditional use is to be established shall govern the following conditional uses. (Ord. 86, 12-7-1993)

6-6-8-1: NON-RESOURCE DWELLINGS IN AN EFU, ERU OR EFFU ZONES:

A. Conditions for Allowance - The use:

1. Is compatible with farm uses and is consistent with ORS 215.243; and
2. Does not interfere seriously with accepted farming practices on adjacent lands; and
3. Does not materially alter the stability of the overall land use pattern of the area; and
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. Chain of Title: As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the nonfarm parcel:

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 on the deed(s) of the non-resource dwelling property, 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.

C. Evidence: 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 308.370. (Ord. 86, 12-7-1993)

6-6-8-2: NON-RESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONES:

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; and
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? and
3. Will the proposed use materially alter the stability of the overall land use pattern of the area? Explain; and
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:
 - i. 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.
 - ii. Are the proposed parcels located on land with predominantly low productivity Class 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? How so? And
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 areas of interest items? Or
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)? or
7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

B. Non-resource Partition Approval: As a condition of a non-resource partition approval, the owner shall be required to sign and allow the following statement to be entered into the chain of title (recorded on the property's deed) for the nonagricultural parcel:

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.

C. Evidence of Disqualification: Evidence shall be provided to the **Malheur County Planning Department** 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 308.370 and as required by ORS 215.236.

D. Application of Provisions: This section shall not apply to divisions of land resulting from lien foreclosures or foreclosures of recorded contracts for the sale of real property. (Ord. 86, 12-7-1993)

6-6-8-3: TEMPORARY USE OF A MANUFACTURED DWELLING OR RECREATIONAL VEHICLE DURING FAMILY HARDSHIP: **An application for a** temporary use of a manufactured dwelling or recreational vehicle during a family hardship may be permitted under the following conditions: (Ord. 147, 4-14-2004)

A. A bona fide medical hardship must exist **and documentation from a physician shall be submitted with the application and fee to the Malheur County Planning Department.**

B. Tenancy shall be limited to a member or members of the property owner's immediate family and a person who is directly responsible for care of the owner or members of the owner's immediate family.

C. The permit shall be subject to **an** annual renewal **with the submittal of a letter from a physician;** the use shall be terminated **and the temporary dwelling removed within six (6) months once when** the hardship no longer exists.

D. The planning commission may attach **any** other conditions that it deems necessary. (Ord. 86, 12-7-1993)

6-6-8-4: MINERAL, AGGREGATE, OR GEOTHERMAL RESOURCE EXPLORATION, MINING AND PROCESSING:

A. Submitted plans, application and **fee submitted to the Malheur Planning Department** and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.
2. Setbacks from property lines.

3. Location of vehicular access points.
4. Fencing needs.
5. Prevention of the collection and stagnation of water at all stages of the operation.
6. Rehabilitation of the land upon termination of the operation.

B. In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to farming activity and/or livestock being raised in the vicinity. (Ord. 86, 12-7-1993)

6-6-8-5: JUNKYARDS and AUTO WRECKING YARDS: Junkyards and auto wrecking yards may be permitted under the following conditions:

A. A junkyard or auto wrecking yard shall be fully enclosed by a sight obscuring fence, maintained in good condition, not less than six feet (6') in height, and of a design approved by the Malheur County Planning Commission.

B. All automobiles, wrecked or otherwise, shall be kept inside the fenced area at all times, except that vehicles belonging to customers may be parked outside the fence while they are at the establishment or business.

C. All sales, display, storage, repair or other handling of products, merchandise, equipment and other articles shall occur within an enclosed building or the fenced area. (Ord. 86, 12-7-1993)

6-6-8-6: MINOR HOME OCCUPATIONS, HOME OCCUPATIONS, AND HOME BUSINESSES:

A. Minor Home Occupation: A minor home occupation shall comply with the following standards:

1. Location: Any zone, not excluded below, in which a minor home occupation is a conditional use.
2. Scale: A minor home occupation must fit within the dwelling, without expanding the structure, or within an existing residential garage or accessory building, and must be incidental to the use of the dwelling as a residence, and incidental to the original uses of the residential garage or accessory building.

3. Participants: No persons other than family members living on the property shall be engaged in the minor home occupation.
4. Character: The property upon which the minor home occupation exists shall be kept in a clean, neat, and orderly fashion. There shall be no visible evidence of the conduct of a minor home occupation from outside the property except as otherwise allowed by this section.
5. Storage: All materials associated with the minor home occupation shall be contained within the allowed dwelling, garage or accessory building.
6. Display: There shall be no display of products visible from outside the allowed dwelling or accessory structure.
7. Signs: Notwithstanding Chapter 7 of this title, there shall be no signs advertising or identifying the minor home occupation.
8. Traffic: Customer, client and/or business traffic shall not exceed five (5) trips per day. Business delivery vehicles shall not exceed gross vehicle weight of eleven thousand (11,000) pounds. U.S. postal service deliveries are exempt from this requirement.
9. Parking: Vehicles owned, leased or operated by the participants of a minor home occupation shall not be parked or stored on the street or in the public right-of-way.
10. Noise and Other Nuisance Factors:
 - i. Noise: Noise shall be kept to a minimum at all times, especially between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M. Equipment that creates a shrill or penetrating sound shall, at all times, be operated only within an enclosure that effectively prevents noise measured at the nearest dwelling, exceeding the otherwise ambient noise level of the neighborhood. Where a question arises regarding noise levels, the Malheur County Planning Director's determination shall be final.
 - ii. Odors: Odors shall not be detectable from any boundary of a minor home occupation property at any time.
 - iii. Electrical Interference: A minor home occupation shall not create visual or audible electrical interference in any radio, television, or other electrical device off the subject property or cause fluctuations in line voltage off the subject property.

B. Home Occupation: A home occupation shall comply with the following standards:

1. **Location:** Any zone, not excluded below, in which a home occupation is a conditional use.

2. **Scale:** A home occupation be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located, except that such other buildings may not be utilized as bed and breakfast facilities or rental units unless they are legal residences . must fit within the dwelling and must be incidental to the use of the dwelling as a residence. If there is no existing accessory structure one may be built, provided the side walls are no higher than ten feet (10') from the elevation of the floor and the building covers no more than eight hundred (800) square feet in area.
3. **Participants:** Be operated by a resident or employee of a resident of the property on which the business is located. Employ on the site no more than five (5) full-time or part-time persons at any given time. Family members living on the property and a combination of no more than five (5) full time employees are the only persons that may be employed in a home occupation.
4. **Character:** The property upon which a home occupation exists shall be and kept in a clean, neat, and orderly fashion. There shall be no visible evidence of the conduct of a home occupation from outside the property except as otherwise allowed by this section.
5. **Storage:** All materials associated with a home occupation shall be contained within the allowed dwelling or accessory structure.
6. **Display:** There shall be no display of products visible from outside the dwelling or allowed accessory structure.
7. **Signs:** Notwithstanding Chapter 7 of this title, one sign not bigger than three (3) square feet in silhouette area, excluding the post, is permitted in association with the home occupation. Colors used shall be muted so as to be unobtrusive and serve only for identification purposes, not advertising purposes. Signs shall meet the setback requirements for the zone, but in no event shall a sign be placed closer than ten feet (10') from any existing road right-of-way. The top of the sign shall not be higher than eight feet (8') above the ground if freestanding. A sign placed upon the dwelling or accessory structure of the minor home occupation shall not be above the roof/eave height.
8. **Traffic:** Customer, client and/or business traffic shall not exceed five (5) trips per day. Business delivery vehicles shall not exceed gross vehicle weight of eleven thousand (11,000) pounds. U.S. postal service deliveries are exempt from this requirement.
9. **Parking:** Vehicles owned, leased or operated by the participants of a home occupation must be provided on the subject parcel where the home occupation is operated and shall not be parked or stored on the street or in the public right-of-way.
10. **Noise and Other Nuisance Factors:**

- i. **Noise:** Noise shall be kept to a minimum at all times, especially between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M. Equipment that creates a shrill or penetrating sound shall, at all times, be operated only within an enclosure that effectively prevents noise measured at the nearest dwelling exceeding the otherwise ambient noise level of the neighborhood. Where a question arises regarding noise levels, the Malheur County Planning Director's determination shall be final.
- ii. **Odors:** Odors shall not be detectable from any **property** boundary of a home occupation **property** at any time.
- iii. **Electrical Interference:** A home occupation shall not create visual or audible electrical interference in any radio, television, or other electrical device off the subject property or cause fluctuations in line voltage off the subject property.

C. Home Business: A home business shall comply with the following standards:

1. **Location:** Any zone, not excluded below, in which a home business is a conditional use.
2. **Scale:** A home business must fit within the dwelling and must be incidental to the use of the dwelling as a residence. If there is no existing accessory building, one may be built, provided the side walls are no higher than ten feet (10') from the elevation of the floor and the building covers no more than two thousand five hundred (2,500) square feet in area.
3. **Participants:** Family members living on the property and a combination of no more than ten (10) full time employees are the only persons that may be employed in a home business.
4. **Character:** The property upon which a home business exists shall be **and** kept in a clean, neat, **and** orderly fashion.
5. **Storage:** All materials associated with a home business shall be screened from view or contained within the allowed dwelling or accessory structure(s) of the home business.
6. **Display:** There shall be no display of products visible from outside the allowed dwelling or accessory structure(s) of the home business.
7. **Signs:** A home business must comply with Chapter 7 of this title.
8. **Traffic:** Customer, client and/or business traffic shall not exceed fifteen (15) trips per day. Business delivery vehicles shall not exceed gross vehicle weight of eleven thousand (11,000) pounds. U.S. postal service deliveries are exempt from this requirement.

9. **Parking:** Vehicles owned, leased or operated by the participants of a home business shall not be parked or stored on the street or in the public right-of-way.

10. Noise and Other Nuisance Factors:

i. **Noise:** Noise shall be kept to a minimum at all times, especially between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M. Equipment that creates a shrill or penetrating sound shall, at all times, be operated only within an enclosure that effectively prevents noise measured at the nearest dwelling exceeding the otherwise ambient noise level of the neighborhood. Where a question arises regarding noise levels, the Malheur County Planning Director's determination shall be final.

ii. **Odors:** Odors shall not be detectable from any **property** boundary of a home business **property** at any time.

iii. **Electrical Interference:** A home business shall not create visual or audible electrical interference in any radio, television, or other electrical device off the subject property or cause fluctuations in line voltage off the subject property.

D. Application Requirements:

1. Minor home occupations, home occupations, and home businesses are subject to the application **and fee** requirements in Section 6-6-5 of this chapter and shall be reviewed as a conditional use **land use action**.

2. Notwithstanding the application requirements of Section 6-6-5 of this chapter and the public hearing requirements of Chapter 11 of this title, an applicant proposing to operate a minor home occupation or home occupation must submit to the Malheur County Planning Director a letter of intent to operate and pay applicable fees. After issuance of a public notice, as well as notice to nearby landowners **for an and opportunity to for** comment, the Malheur County Planning Director may schedule a public hearing before the planning commission. If, based on public comment, the Malheur County Planning Director determines a public hearing is not warranted, a letter of authorization to operate may be issued.

3. An application for a business shall be in accordance with the application requirements of Section 6-6-5 of this chapter and the public notice and hearing requirements of Chapter 11 of this title.

4. At any time during the application process, the Malheur County Planning Director may request any additional information relevant to the establishment or operation of a minor home occupation, home occupation, or home business.

E. Prohibitions:

1. The following shall not be permitted:

- i. Home businesses in rural residential land use zones.
- ii. Retail sales, showroom activities, or storefront operations conducted on the site of a minor home occupation, home occupation, or home business.
- iii. Automotive repair, including engine, automotive body painting of more than one (1) vehicle at a time, owned by a person not residing at the site, regardless of compensation paid for the service.
- iv. Outdoor storage associated with auto repair under this chapter of more than one (1) vehicle at a time not owned by a person or persons residing at the site.
- v. Household appliance sales, repair, or rehabilitation.
- vi. Ministorage facilities operated as a minor home occupation, home occupation, or home business.
- vii. Junkyards operated as a minor home occupation, home occupation, or home business.
- viii. Nothing in this section authorizes construction of any structure without a building permit and that would not otherwise be allowed in the zone in which the home occupation or home business is to be established.
- ix. Minor home occupations, home occupations and home businesses shall not involve the manufacture or generation of materials deemed hazardous by other local, state, or federal law or regulation. Hazardous materials and hazardous wastes shall be stored in accordance with state and federal laws and regulations.
- x. Minor home occupations, home occupations and home businesses shall not be transferred to another person or site without first applying for a new permit.

F. Exclusions: This section shall not apply to:

- 1. A childcare provider who regularly provides childcare in the provider's home, in the family living quarters, for no more than three (3) children other than the person's own children, or for children from only one family other than the person's own family.
- 2. Farm or ranch use as defined by ORS 215.203(2) where the business activities of the farm or ranch are conducted in a home or office on the property.
- 3. Hobby or collection activities associated with automobile or aircrafts, including sales, barter or trades among hobbyist, who are in compliance with Malheur County code public nuisance ordinances. (Ord. 184, 10-21-2009)

6-6-8-7: RECREATIONAL VEHICLE PARKS:

A. Performance and Dimensional Standards: A recreational vehicle park shall conform to state standards in effect at the time of construction and the following conditions:

1. The space provided for each recreational vehicle shall be not be less than seven hundred (700) square feet, exclusive of any space used for common areas such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles and landscaped areas.
2. Roadways shall not be not less than thirty feet (30') in width, if parking is permitted on the margin of the roadway, or not less than twenty feet (20') in width if parking is not permitted on the edge of the roadway and shall be covered with crushed gravel or paved with asphalt, concrete or similar impervious surface and designed to permit easy access to each recreational vehicle space.
3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide for the control of runoff of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an accessway to the recreational vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.
4. A recreational vehicle space shall be provided with piped potable water service. Unless the park is designed for self-contained recreational vehicles only, each recreational vehicle space shall also be provided with sewage disposal service. Sewage disposal service when required by this section shall consist of all spaces equipped for full sewage hookup or a minimum of twenty five percent (25%) of the available spaces equipped for full sewage hookup and a recreational vehicle dumping station on site.
5. A recreational vehicle space shall be provided with electrical service.
6. Trash receptacles for the disposal of solid waste materials shall be provided in convenient locations for the use of guests of the park, and located in such number and of such capacity that there is no uncovered accumulation of trash at any time.
7. No recreational vehicle shall remain in the park for more than thirty (30) days in any sixty (60) day period.
8. The total number of parking spaces in the park, except for the parking provided for the exclusive use of the manager or employees of the park, shall be one space per recreational vehicle space. Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete or similar material.
9. Unless the park is designed for self-contained recreational vehicles only, the park shall provide one toilet and one lavatory for each sex for each fifteen (15) recreational vehicle spaces.

10. The park shall provide one utility building, or room containing one clothes washing machine, one clothes drying machine and fifteen (15) square feet of space for clothes drying lines for each ten (10) recreational vehicle spaces or any fraction thereof, unless such facilities are available within a distance of three (3) miles and are adequate to meet these standards (documentation shall be provided with the application to show that the facilities away from the park meet the required standards).

11. Building spaces required by subsections "A9 and A10" of this section shall be lighted at all times of the night and day, shall be ventilated, shall be provided with heating facilities, which shall maintain a minimum room temperature of sixty-five degrees Fahrenheit (65°F), shall have floors of waterproof material, and shall have sanitary ceiling, floor and wall surfaces. Floor drains adequate to permit easy cleaning are recommended but not required.

12. A neat appearance shall be maintained at all times in the park. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest of the park.

13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.

14. Access to the recreational vehicle park shall be from an arterial or collector street. (Ord., 11-8-1994)

6-6-8-8: WIRELESS TELECOMMUNICATION FACILITIES:

A. Siting Prioritization:

1. All wireless telecommunication facilities shall be sited in accordance with the following priorities, in order of preference:

i. Co-location by placement of antenna or other transmission, and reception devices on an existing tower, building or other structure such as a utility pole or tower, water tank or similar facility.

ii. Use of alternate technology whereby transmission and reception devices are placed on new or existing structures, which are consistent in height with and sited similarly to types normally found in the surrounding area, such as telephone, electrical, or light poles.

iii. Siting of a new tower in a visually subordinate manner. As used in this subsection "visually subordinate" means the relative visibility of a wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape. Visually subordinate facilities may be partially visible, but not visually dominant in relation to their surroundings as viewed from residences, highways and other vantage points.

iv. Siting of a new tower in a visually dominant location, but employing concealment technology. As used in this subsection a "concealment technology" means technology through which a wireless telecommunication facility is designed to resemble an object present in the natural environment or to resemble a building of a type typically and customarily found in the area.

v. Siting of a new tower in a visually dominant manner without employing concealment technology.

vi. Siting a new tower shall not be located next to an existing tower on an adjacent tax lot.

B. Height, Setback and Access Requirements:

1. Wireless telecommunication facilities shall be limited to the height necessary to provide the service.

2. Notwithstanding the setback requirements in the zone in which the facility is to be located, the following setbacks apply. Telecommunications towers shall be:

i. Setback from the property line at least the height of the tower plus ten percent (10%). A "tract" (contiguous property under the same ownership) shall be considered a single parcel for purposes of setbacks.

ii. Except as provided in subsection "B2b(1)" of this section, the plot leased by the licensed carrier for the wireless telecommunication facility shall be at least six hundred feet (600') from residences and schools not on the applicant's tract, or as far away from nearby residences and schools as it is sited from the closest dwelling on the applicant's tract.

iii. A facility may be sited closer to a school when the school district makes a request and demonstrates the facility is necessary for educational purposes.

C. Construction Standards:

1. The following construction standards shall apply to all new or replacement telecommunication facilities:

i. No lighting of wireless telecommunication facilities is allowed, except as required by the federal aviation administration, Oregon Department of Aviation or as a condition of approval by the Malheur County Planning Commission.

- ii. Based on the existing conditions and vegetation at the proposed site, the wireless telecommunication facility shall be constructed or surfaced with materials to reduce visibility of the facility by the use of nonreflective materials that minimize glare and blend the structure into the surrounding environment.
- iii. Antenna(s) and associated equipment located on the same structure as the antenna shall be surfaced in a nonreflective material color to match the structure on which it is located.
- iv. Warning and safety signs, up to three (3) square feet in area, are allowed. All other signs are prohibited.
- v. Equipment areas must be enclosed by a chain link fence or equivalent with or without slats for screening.
- vi. Nothing in this subsection pre-empts the coloring requirements of the Federal Aviation Administration (FAA) or the Oregon Department of Aviation.

D. Application Requirements:

- 1. All new or replacement wireless telecommunication facilities proposed on lands, other than those under ORS 215.283(1)(d), or prohibited under this section, shall be reviewed as a conditional land use application action with applicable fee, and subject to the application requirements in Section 6-6-5 of this chapter, this section and applicable provisions of ORS 215.296.
- 2. Conditional use applications for new or replacement wireless telecommunication facilities will be accepted only from carriers licensed by the Federal Communications Commission (FCC) or from authorized agents of licensed carrier (documentation of licenses shall be submitted with the conditional use application).
- 3. All new or replacement wireless telecommunication facilities proposed on lands where they are a permitted use under ORS 215.283(1)(d) are subject to the application requirements in Section 6-6-5 of this chapter and this section.
- 4. All new or replacement wireless telecommunication facilities proposed on lands where they are a permitted use under ORS 215.283(1)(d) must demonstrate the facility is necessary in accordance with ORS 215.275 and OAR 660-033-0130 16(a).
- 5. The co-location of a wireless telecommunication facility on an existing structure or building is not subject to the application process specified in this section or Section 6-6-5 of this chapter. However, the applicant must submit to the Malheur County Planning Director a letter of intent to co-locate, pay applicable fees, and receive a letter of authorization from the Malheur County Planning Director.

6. In addition to the application procedures specified in Section 6-6-5 of this chapter, applications for wireless telecommunication facilities shall include:

- i. A location map showing:
 - (A) The applicant's proposed facility site;
 - (B) Other sites in the vicinity evaluated for the proposed facility; and
 - (C) Other similar existing facilities in the area.
- ii. A photographic simulation showing how the facility will appear on the landscape.
- iii. A site specific study of the wireless telecommunication facility identifying the proposed color and surfacing of the facility and associated fixtures.
- iv. Technical information reasonably justifying the need to locate the proposed facility in the requested location.
- v. Documentation from the Federal Aviation Administration (FAA), the Oregon Department of Aviation, the Federal Communications Commission (FCC) and any other local or state agency with jurisdiction that the tower has been reviewed and is not determined to be a hazard to life, health or property if constructed as proposed.

7. At any time during the application process, the Malheur County Planning Director may request any additional information relevant to the construction of the wireless telecommunication facility.

8. All applications for wireless telecommunication facilities shall be heard before the Malheur County Planning Commission.

E. Permit Renewal and Expiration Requirements:

1. Permit renewal is based on:
 - i. The applicant shall submit submitting documentation that the wireless telecommunication facility is in compliance with non-ionizing electromagnetic radiation (NIER) emission standards as established by the Federal Communications Commission (FCC);
 - ii. Demonstration that the wireless telecommunication facility was constructed and placed into service within one (1) year of issuance of the final approval by the Malheur County; and
 - iii. Demonstration that the wireless telecommunication facility has been used as such for a period of one (1) year.

2. If the wireless telecommunication facility is not in compliance with this section, all facilities shall be removed. The property owner shall bear the ultimate responsibility for removal of the facilities. After the Malheur County makes a determination of discontinued or non-use, the property owner shall, within six (6) months, complete removal operations.

F. Performance: The Prior to issuing a construction permit, Malheur County will require a performance bond not to exceed ten thousand dollars (\$10,000.00) from the applicant to provide for removal of a wireless telecommunication facility, should the facility be non-operational for a period of one (1) year.

G. Exclusions:

1. Wireless telecommunication facilities shall not be permitted in land use zones designated rural residential (R-1), rural service center (RSC), and airport approach overlay (AA).
2. This section does not apply to commercial and public radio and television transmission towers. (Ord. 146, 4-14-2004)

6-6-9: NONCONFORMING USES:

6-6-9-1: CONTINUATION OF NONCONFORMANCE: The lawful use of any building, structure or land existing at the time of the enactment, or amendment of this title may be continued. Any alteration, restoration or replacement of those uses shall be in accordance with the following provisions, and shall be determined by the Malheur County Planning Commission at a public hearing pursuant to ORS 215.130 and the Malheur County Comprehensive Plan. (Ord. 86, 12-7-1993)

6-6-9-2: ALTERATION: Alteration or completion of any nonconforming use or related structure may be permitted as follows:

- A. When necessary to reasonably continue the use.
- B. When necessary to comply with any lawful requirement for alteration in the use.
- C. When alteration or extension of a nonconforming use does not cause the structure to deviate further from the standards of this title.
- D. When a structure is determined to be suitable for only nonconforming uses, and proposed new uses are determined to be no more detrimental to surrounding properties than the use to be replaced. (Ord. 86, 12-7-1993)

6-6-9-3: RESTORATION, REPLACEMENT or CHANGE:

A. Time for Restoration After Disaster: Restoration or replacement of a nonconforming use shall be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one (1) year from the occurrence of the fire, casualty or natural disaster. (Ord. 86, 12-7-1993)

B. Manufactured Dwelling Replacement: Removal of a nonconforming manufactured dwelling and replacement thereof with another manufactured dwelling for the purpose of upgrading the residence shall not be considered a change or alteration of the use. (Ord. 147, 4-14-2004)

C. Change: If a nonconforming use is replaced by another use, the new use shall conform to this title. (Ord. 86, 12-7-1993)

6-6-9-4: DISCONTINUANCE: If a nonconforming use is discontinued for a period of three (3) years, including leaving such property vacant, further use of the property shall conform to this title. (Ord. 86, 12-7-1993)

6-6-9-5: COMPLETION OF NONCONFORMING STRUCTURES: Nothing in this title shall require any change in the plans, construction, alteration or designated use of a structure for which construction has commenced prior to the adoption of this title, except that if the designated use will be a nonconforming use, it shall, for the purpose of Section 6-6-9-4 of this chapter, be a discontinued use if not in operation within three (3) years of the date of issuance of the building permit. (Ord. 86, 12-7-1993)

6-6-10: ADDITIONAL CONDITIONS: In authorizing a new conditional use or the alteration of an existing conditional use, the Malheur County Planning Commission may impose, in addition to those standards and requirements expressly set forth in this title, any other conditions that the Malheur County Planning Commission considers necessary to protect the best interests of the surrounding area or the county as a whole. (Ord. 86, 12-7-1993)

6-6-11: ASSURANCE REQUIREMENTS: Malheur **The** County may require an applicant to furnish the county with a performance bond or such other forms of assurance that the county deems necessary and reasonable, to guarantee development in accordance with the standards established and conditions attached in granting a conditional use. (Ord. 86, 12-7-1993)

6-6-12: TIME LIMIT ON AUTHORIZATION:

A. Authorization of a conditional use shall be void after two (2) years or such lesser time as the Malheur County Planning Commission may specify, unless substantial construction pursuant **thereto** has taken place. However, the Malheur County Planning Commission may extend authorization for additional periods, on request or on its own motion, without the necessity of following any formal procedures such as those set out in this chapter and in Chapter 10 of this title.

B. Authorization for a proposed residential development on lands zoned exclusive farm use, exclusive range use, or exclusive farm-forest use shall be valid for four (4) years.

1. An extension of this authorization shall be valid for two (2) years.

2. For purposes of this section, "residential development" only includes dwellings provided for under ORS 215.283(1)(s), 215.284, 215.705(1) to (3) and Section 6-4-9, "Lot Or Parcel Of Record Dwellings", of this title. (Ord. 145, 4-14-2004)

CHAPTER 7 SIGNS

SECTION:

6-7-1: Purpose and Scope

6-7-2: Types of Signs

6-7-3: Limitations on Signs

6-7-4: Automobile Service Station Signs

6-7-5: Signs Within an Urban Growth Area Zone

6-7-6: Nonconforming Signs

6-7-7: Variances

6-7-8: Application Material

6-7-1: PURPOSE AND SCOPE:

A. Purpose: The purpose of this chapter is to maintain or improve the aesthetic quality of **the** Malheur County's agricultural, residential and business environment, to promote traffic safety through the regulation of the design, placement, quality of materials, construction, location, electrification, illumination and maintenance of all signs visible from public property, public rights-of-way, and private areas open to public vehicular traffic.

B. Scope: Signs are structures, rigid panels or fabrics, which are regulated as different types of land uses dependent upon factors including general types of message, size and location. Billboards, marquees and some types of temporary or manually changeable copy signs are recognized as types of land use that serve a general advertising purpose rather than the identification and directional purpose of the majority of signs regulated by this chapter. These regulations are not intended to, and do not dictate or limit the content of those signs allowed for general advertising purposes, except those that may carry an obscene message or may provide an illegal product or action.

C. Sign Regulation: Except for a type 1 or type 2 sign, no sign shall hereafter be erected, moved or structurally altered without a zoning permit, and without being in conformity with the provisions of this chapter. Official signs of the state, county or municipalities are exempt from all provisions of this chapter. All signs shall be on the same lot as the subject matter of the sign, except as specifically allowed otherwise. Permitted signs in the various zones are indicated by the following tables (see section 6-7-2, "Types Of Signs", of this chapter):

Zone Types Of Signs Permitted

Zone Types Of Signs Permitted

EFU	1, 2, 3, 4
ERU	1, 2, 3, 4
EFFU	1, 2, 3, 4
R-1	1, 2, 3, 4
R-2	1, 2, 3, 4
RSC	1, 2, 3, 4, 5, 8, 10
C-1	2, 3, 4, 5, 8, 9, 10
M-1	2, 3, 4, 5, 8, 9, 10
M-2	2, 3, 4, 5, 8, 9, 10
PM	2, 3, 4

(Ord. 86, 12-7-1993)

6-7-2: TYPES OF SIGNS:

A. Type 1: One nameplate not exceeding three (3) square feet in area for each dwelling unit, indicating the name of the homesite, or the name of the occupant, providing that the nameplate or sign is attached to the house or is set back from the property line at least ten feet (10').

B. Type 2: Signs permitted in all zones and exempt from zoning permit requirements. Type 2 signs include:

1. Plaques, Cornerstones, Nameplates: Building plaques, cornerstones, nameplates and similar building identifications attached to the building, but not a commercial nature;
2. House Numbers: House and building numbers; (Ord. 86, 12-7-1993)
3. Political and Civic Signs: Temporary signs in connection with political and civic campaigns; provided, that such signs are removed within fifteen (15) days following conclusion of the campaign. These signs shall not exceed thirty two (32) square feet in area or eight feet by four feet (8' x 4'); (Ord. 127, 10-3-2000)
4. Proposed or Existing Construction: Temporary signs identifying proposed or existing construction;
5. For Sale" or "Lease" Signs: Signs indicating property or structures for sale, lease or rent;
6. Protection of Property: Signs for the purpose of protection of property, such as no hunting, trespassing or dumping signs; or signs warning of potential danger due to physical or health hazards;
7. Garage Sale Signs:
 - i. Shall not exceed four (4) square feet in silhouette area per sign.
 - ii. Shall not be located in the public right-of-way (i.e., on telephone poles, street signs and traffic signs).
 - iii. Shall not be located on a property containing another temporary sign other than a real estate sign.
 - iv. Only one (1) on premises sign and five (5) temporary off-premises signs (1 per off site tax lot) are permitted.
 - v. Shall include the name, address and telephone number of the resident holding the garage sale. Absent this identification, a sign may be removed without warning.
 - vi. Shall be removed upon close of the sale and such garage sale shall not extend beyond three (3) consecutive days, and shall not be held in any one residence more than three (3) times during the calendar year.
 - vii. Shall not be artificially illuminated. (Ord. 86, 12-7-1993)
8. Agricultural Product Signs: One sign not greater than thirty-two (32) square feet promoting or advertising agricultural products or livestock grown, raised or produced on the parcel or tract on which the sign is located and the parcel or tract is zoned EFU or ERU.

9. Commercial Activity In conjunction with Farm Use Signs: One (1) sign not greater than thirty-two (32) square feet for a commercial activity in conjunction with farm use approved in accordance with Chapter 6 of this title. Additional signs, not to exceed three (3) signs, may be approved by the Malheur County Planning Director on a case-by-case basis provided the signs are necessary for the operation or location of the commercial activity in conjunction with farm use. (Ord. 163, 1-17-2007)

Except for political and civic signs, type 2 signs shall not exceed sixteen (16) square feet in area. Type 2 signs shall not be placed or extended into a road right-of-way. Type 2 signs shall not require a zoning permit. (Ord. 127, 10-3-2000)

C. Type 3: One (1) temporary sign per tract of land or subdivision advertising the sale of the tract or the lots, and not exceeding thirty-two (32) square feet in area nor twelve feet (12') in height providing that the sign is located at least ten feet (10') from the property line.

D. Type 4: Signs not exceeding twelve (12) square feet in area, directing vehicular traffic to places of interest which would otherwise be difficult to find, or directing vehicular traffic so as to avoid traffic safety problems. The Malheur County Planning Director may allow a maximum of three (3) such signs; provided, that no more than two (2) signs are located on the property. The Malheur County Planning Director may allow two (2) of the three (3) signs to be off-premises signs; provided, that the signs face opposite traffic directions. A type 4 sign shall be set back ten feet (10') from property lines.

E. Type 5: One sign not exceeding sixty (60) square feet in area for buildings other than dwellings; provided, that such sign shall be attached to and parallel with the front walls of the building.

F. Type 6: One sign facing each bordering street, not exceeding thirty-two (32) square feet in area nor eight feet (8') in height above the roofline of the building for buildings other than dwellings providing that the sign is attached to the building and does not project into a road right-of-way.

G. Type 7: Signs identifying the use of the premises or the sale of products produced on the premises; provided, that any such sign shall be attached to, parallel with, and no larger than the wall on which it is mounted.

H. Type 8: One projecting or freestanding sign not to exceed twenty feet (20') in height nor sixty-five (65) square feet in area for each face. The minimum setback for any part of a sign shall be ten feet (10'), or shall be at the discretion of the Malheur County Planning Director and shall be measured horizontally from the lot line to the nearest part of the sign. A projecting or freestanding sign shall be allowed only by a ruling of the Malheur County Planning Director and shall be limited to those businesses for which an attached flat sign is not suitable due to the nature of the business or the characteristics of the lot.

I. Type 9: One off-premises freestanding sign (billboard) not to exceed six hundred (600) square feet in area for each face, nor twenty feet (20') in elevation as measured from the ground level below the sign, or the level of abutting roadway surface, whichever is higher. No billboard shall be allowed to have more than four (4) steel exposed supports and all illumination devices shall be concealed within the nonstructural trim. The minimum setback for any part of a sign shall be ten feet (10') and shall be measured horizontally from the lot line to the nearest part of the sign. Billboards allowed in the county shall be subject to the requirements of ORS Chapter 377 and shall be approved by the Malheur County Planning Director.

J. Type 10: One on premises sign identifying two (2) or more businesses that may occupy one building or one off-premises sign identifying two (2) or more businesses that may be located so that another sign allowed by this chapter would not be visible from main traveled routes. The total square footage of the sign shall not exceed six (6) square feet per business described on the sign, and the sign shall be set back ten feet (10') from the property line. (Ord. 86, 12-7-1993)

6-7-3: LIMITATIONS ON SIGNS:

A. No sign shall be placed as to interfere with visibility or effectiveness of any official traffic sign or signal, with the driver vision at any access point or intersection;

B. No sign shall be illuminated by flashing lights;

C. No sign shall contain, include or be composed of any conspicuous animated part;

D. Light from signs shall be directed away from and not be reflected upon adjacent premises;

E. Signs shall be removed by the property owner within sixty (60) days after the advertising business, product or service is abandoned or no longer in use;

F. In addition to the limitations on signs as provided in subsections "A through C" of this section, additional sign restrictions may be required as determined by the Malheur County Planning Commission in approved conditional uses, as provided by the Malheur County Planning Director in approving a type 4, type 8, type 9 or type 10 sign. (Ord. 86, 12-7-1993)

6-7-4: AUTOMOBILE SERVICE STATION SIGNS: Automobile service stations may have one (1) additional freestanding changeable fuel price sign for the single purpose of advertising the price of fuel. The sign will be limited to twelve (12) square feet in silhouette area. (Ord. 86, 12-7-1993)

6-7-5: SIGNS WITHIN AN URBAN GROWTH AREA ZONE: Signs located within an urban growth area zone will comply with the applicable sign regulations of the city within whose urban growth area zone it is located. If the city does not have sign regulations, county regulations will apply. (Ord. 86, 12-7-1993)

6-7-6: NONCONFORMING SIGNS:

A. An existing sign shall be brought into conformance with this chapter upon substantial change in the nature of the business it serves or if a change is made in design of the sign frame or supporting structure. A change in plastic face plate of a nonconforming sign will not require replacement of the total sign, but the new sign face shall conform as fully as possible to the standards of this chapter. Examples of substantial changes in the nature of the business are: a change from professional office such as a doctor, attorney or accountant to a retail outlet; or, a change from retail outlet to a service business such as a plumbing or auto repair shop.

B. Any sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all the provisions of this chapter, except the signs that are temporarily removed to allow remodeling of the premises and shall be allowed to be relocated upon the completion of remodeling. (Ord. 86, 12-7-1993)

6-7-7: VARIANCES:

A. Minor Variance: A minor variance not greater than ten percent (10%) of the applicable dimensional standard for signs may be granted by the Malheur County Planning Director as per subsection "C" of this section.

B. Other Variances: All other sign variances shall be pursuant to the provisions of Chapter 8 of this title, and will include the standards of subsection "C" of this section.

C. Variance Standards: In addressing the standards in Chapter 8 of this title, the granting authority shall additionally consider whether the architectural design of a building, the location of a building site or location of a building thereon, or some other circumstance relating to the sign proposal is unusual or unique and that, because of this, a hardship will be created in that the applicant will be denied an opportunity to identify his business or location relatively equal to the opportunity accorded other members of the community not burdened with such unusual or unique architectural design, building site or other circumstance. (Ord. 86, 12-7-1993)

6-7-8: APPLICATION MATERIAL: An applicant shall submit **with** his application for a zoning permit for a sign, with **in addition to the** a site plan **(drawing)** of the sign showing the size, location, and elevations **is** required for the zoning permit, **a plan and elevations of the sign itself.** (Ord. 86, 12-7-1993)

CHAPTER 8 VARIANCES

SECTION:

- 6-8-1: Purpose
- 6-8-2: Circumstances for Granting Variances
- 6-8-3: Application Procedure
- 6-8-4: Time Limit on Authorization for Variance

6-8-1: PURPOSE: The Malheur County Planning Commission may authorize variances from the requirements of this Title where it can be shown that, owing to special and unusual circumstances related to a specific lot, strict application of the ordinance provisions would cause an undue or unnecessary hardship. In granting a variance, the Malheur County Planning Commission may attach conditions that it finds it necessary to protect the interest of the surrounding property or vicinity and otherwise achieve the purposes of this Title. The variance provisions of this Chapter are intended to provide specific relief from dimensional standards of this Title, such as building setbacks. A variance shall not be granted for a change in the allowed land uses of any zoning district. Final action on applications, which are filed in complete form shall be taken within one hundred twenty (120) days in accord with the provisions and exceptions of ORS 215.428. (Ord. 86, 12-7-1993)

6-8-2: CIRCUMSTANCES FOR GRANTING VARIANCES: A variance may be granted only in the event that the circumstances in subsections “A through D” below have clearly been met.

- A. Exceptional or extraordinary circumstances apply to the property that do not generally apply to other properties in the same zone or vicinity, resulting from lot size or shape, topography or other circumstances over which the owners of property since enactment of this Title have had no control; or
- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess; and
- C. The variance would not be materially detrimental to the purpose of this Title, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any County plan or policy; and
- D. The variance requested is the minimum variance that would alleviate the hardship. (Ord. 86, 12-7-1993)

6-8-3: APPLICATION PROCEDURE: The procedure for applying for a variance shall be as follows:

- A. The property owner shall file an application with the Malheur County Planning Department, using forms prescribed pursuant to Section 6-9-5 of this Title.
- B. The applicant shall make payment of a filing fee as prescribed pursuant to Subsection 6-9-5B of this Title.
- C. The variance application shall be filed no less than thirty (30) days prior to the next regularly scheduled meeting of the Malheur County Planning Commission.
- D. Before the Malheur County Planning Commission may act on a variance request, it shall hold a public hearing thereon.
- E. Within ten (10) working days after a decision has been made on a variance request, the Malheur County Planning Department shall provide the applicant with written notice of the Malheur County Planning Commission's decision. (Ord. 86, 12-7-1993)

Notes See Section 6-9-1 of this Title.

6-8-4: TIME LIMIT ON AUTHORIZATION FOR VARIANCE: Authorization of a variance shall be void after one year, or such lesser time as the authorization may specify, unless substantial construction pursuant thereto has occurred taken place. However, the Malheur County Planning Commission may extend authorization for an additional period not to exceed one year, on request, or on its own motion without the necessity of following any formal procedures as set out in this Chapter and in Chapter 10 of this Title. (Ord. 86, 12-7-1993)

CHAPTER 9 ADMINISTRATION AND ENFORCEMENT

SECTION:

- 6-9-1: Planning Commission
- 6-9-2: Administration
- 6-9-3: Zoning Permits
- 6-9-4: Authority To Make Final Decisions
- 6-9-5: Application Requirements
- 6-9-6: Acceptance Of Application
- 6-9-7: False Statements On Applications And Supporting Documents
- 6-9-8: Applicable Standards

- 6-9-9: Notice To Division Of State Lands
- 6-9-10: Notice To Oregon Department Of Transportation (ODOT)
- 6-9-11: Conflicting Procedures
- 6-9-12: Time Computation
- 6-9-13: Record Of Actions
- 6-9-14: Review Of Ordinance
- 6-9-15: Statutory Remedies
- 6-9-16: Proposed Order
- 6-9-17: Reapplication Limits
- 6-9-18: Decision
- 6-9-19: Notice Of Decision

6-9-1: PLANNING COMMISSION:

- A. Under the authority of ORS 215.020, there is hereby established a Malheur County Planning Commission.
- B. The Malheur County Planning Commission shall consist of nine (9) members, each to serve a term of four (4) years.
- C. A minimum of five (5) members shall be present at a scheduled meeting to or hearing shall represent a quorum of the Malheur County Planning Commission.
- D. The Malheur County Planning Commission shall make decisions by a majority of the quorum present. (Ord. 86, 12-7-1993)

6-9-2: ADMINISTRATION: The Malheur County Court may appoint Malheur County planning staff to issue zoning and other permits, and to assist the Malheur County Planning Commission as authorized by ORS 215.020 – 215.042. (Ord. 86, 12-7-1993)

6-9-3: ZONING PERMITS: Prior to the construction, or change of use of any structure, or change of use of any lot, a zoning permit for such construction or change of use shall be obtained from the Malheur County planning staff. (Ord. 86, 12-7-1993)

6-9-4: AUTHORITY TO MAKE FINAL DECISIONS:

- A. The Malheur County Planning Director may make administrative decisions on outright permitted uses as provided in Chapter 3 of this title, and site development plans as provided in Chapter 5 of this title. The Malheur County Planning Director may make land use decisions as provided in Chapter 12 of this title.
- B. The decisions of the Malheur County Planning Director on site development plans as provided in Chapter 5 and on outright permitted uses as provided in Chapter 3 of this title shall be ministerial decisions under ORS 197.015(10)(b) and not land use decisions, and shall be reviewable by the Malheur County Planning Commission.
- C. The Malheur County Planning Commission shall be the final hearings body and make final decisions on conditional uses, variances, nonconforming uses and administrative decisions referred by the Malheur County Planning Director. The Malheur County Planning Commission shall be the hearings body of appeals of Malheur County Planning Director administrative decisions.
- D. The Malheur County Court shall be the final hearings body for legislative hearings, and the final hearings body of quasi- judicial decisions when appealed. The Malheur County Court's hearings shall be held on the record. If the applicant or a party provides information that shows good cause, the Malheur County Court hearings may be held de novo.
- E. Final decisions of the Malheur County Court may be appealed to the Oregon Land Use Board (LUBA) of appeals. (Ord. 86, 12-7-1993)

6-9-5: APPLICATION REQUIREMENTS:

- A. Property Owner: For the purpose of this section, the term "property owner" shall mean the owner of record or the contract purchaser, and does not include a person who holds a security interest.
- B. Applications: Applications for development or land use actions shall:
 - 1. Be submitted by the property owner, or a person who represents the property owner shall be in writing that he or she has authority from the "property owner" as defined herein to make the application;
 - 2. Be completed on a form prescribed by the Malheur County Planning Director;
 - 3. Include supporting information required by the zoning ordinance and that information necessary to demonstrate compliance with applicable criteria; and
 - 4. Be accompanied by the appropriate filing fee. unless such fees are waived by the planning commission.

C. Exception: The following applications are not subject to the ownership requirements set forth in subsection "B1" of this section:

1. Applications submitted by, or on behalf of a public entity, or public utility having the power of eminent domain with respect to the property subject to the application; or
2. Applications for development proposals sited on lands owned by the state or federal government. (Ord. 86, 12-7-1993)

6-9-6: ACCEPTANCE OF APPLICATION:

A. Development action and land use action applications shall not be accepted until the Malheur County Planning Director has determined that: 1) the requirements of Section 6-9-5 of this chapter have been met; and 2) the application is complete, or the application is deemed to be complete under state law.

B. An application is complete when, in the judgment of the Malheur County Planning Director, all applicable issues have been adequately addressed in the application.

C. Acceptance of an application as complete, shall not preclude a determination at a later date that additional criteria needs to be addressed, or a later determination, that additional information is needed to adequately address applicable criteria. (Ord. 86, 12-7-1993)

6-9-7: FALSE STATEMENTS ON APPLICATIONS AND SUPPORTING DOCUMENTS: If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage or any other fact material to the acceptance or approval of the application and such misstatement is relied upon by the Malheur County Planning Director or hearings body in making a decision whether to accept or approve the application, the Malheur County Planning Director may, upon notice to the applicant and subject to the applicant's right to a hearing, declare the application void. (Ord. 86, 12-7-1993)

6-9-8: APPLICABLE STANDARDS: With respect to the acknowledged portions of the Malheur County's Comprehensive Plan, the standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted, if the application and requested information, if any, are received within one hundred eighty (180) days from of the time the application was first submitted. (Ord. 86, 12-7-1993)

6-9-9: NOTICE TO OREGON DIVISION OF STATE LANDS (DSL): In addition to any notice required by this title, the Malheur County Planning Department shall provide the notices required by ORS 215.418 concerning state identified wetlands within ten (10) days of the acceptance of an application as complete. This section shall not become operative until the Oregon Division of State Lands (DSL) has provided to the Malheur County Planning Department with a copy of applicable portions of the statewide wetlands inventory. (Ord. 86, 12-7-1993)

6-9-10: NOTICE TO OREGON DEPARTMENT OF TRANSPORTATION (ODOT): In addition to any notice required by this title, the Malheur County Planning Department shall provide notice to ODOT as required by OAR 660-12-045(2)(f) of the following land use actions:

- A. Land use applications that require public hearings;
- B. Subdivision and partition applications;
- C. Other applications which affect private access to state roads;
- D. Other applications within airport noise corridors and imaginary surfaces which affect airport operations. (Ord. 125, 6-20-2000)

6-9-11: CONFLICTING PROCEDURES: Except as set forth in this section, where other provisions of the Malheur County ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-12: TIME COMPUTATION: Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the county is not open for business pursuant to a county ordinance, in which case it shall also be excluded. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-13: RECORD OF ACTIONS: A complete file including the application form, maps, letters and other relevant documents, findings of fact and minutes of hearings shall be maintained by the Malheur County Planning Department for each application and made available to the public. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-14: REVIEW OF ORDINANCE: At the time of **the** Malheur County's periodic review as set forth in the Oregon Land Conservation and Development Commission's OAR 660 division 25, or more frequently if required or desired, the Malheur County Planning Director shall submit to the Malheur County Planning Commission an evaluation of the effectiveness of this title and suggestions for modification, if necessary. The Malheur County Planning Commission shall process any necessary changes through Chapter 10 of this title. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-15: STATUTORY REMEDIES: Any person violating a provision of this title shall be subject to the provisions of ORS 215.185 and 215.190, in addition to other remedies provided by law **1**. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

Notes See subsection 1-9A-3C of this code.

6-9-16: PROPOSED ORDER: The Malheur County Hearings Body may require that any prevailing party draft a set of proposed findings and conclusions. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-17: REAPPLICATION LIMITS: If a specific application is denied, no reapplication for substantially the same proposal may be made for six (6) months following the date of the final decision; **and an application can be resubmitted one time**. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-18: DECISION: Approval or denial of a land use action shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria, standards and facts set forth. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-19: NOTICE OF DECISION: **A The** Malheur County Hearings Body's decision shall be in writing and mailed to all parties, however, one person may be designated by the Malheur County Hearings Body to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

CHAPTER 10 LEGISLATIVE AMENDMENTS

SECTION:

- 6-10-1: Authorization to Initiate Amendments
- 6-10-2: Hearing Required
- 6-10-3: Notice
- 6-10-4: Initiation of Legislative Changes
- 6-10-5: Hearings Body
- 6-10-6: Final Decision
- 6-10-7: Compliance with Comprehensive Plan
- 6-10-8: Notice and Record Of Actions

6-10-1: AUTHORIZATION TO INITIATE AMENDMENTS: An amendment to the text of this title or to the zoning maps may be initiated by the Malheur County Court, the Malheur County Planning Commission, the Malheur County Planning Director or by application **from** **of** a property owner. (Ord. 86, 12-7-1993)

6-10-2: HEARING REQUIRED: Public hearings before the Malheur County Planning Commission shall be set at the discretion of the Malheur County Planning Director, unless otherwise required by state law. (Ord. 86, 12-7-1993)

6-10-3: NOTICE:

A. Published Notice:

1. Notice of a legislative change shall be published in a newspaper of general circulation in **the** Malheur County at least twenty (20) days prior to each public hearing.
2. The notice shall state the time, **and** place of the hearing, and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice: Notice shall be posted at the discretion of the Malheur County Planning Director, and where necessary to comply with ORS 203.045.

C. Individual Notice: Individual notice to property owners, as defined in Section 6-11-3 of this title, is not required unless the Malheur County Planning Director or Malheur County Planning Commission determines otherwise.

D. Media Notice: Copies of the notice of hearings shall be transmitted to other newspapers published in Malheur County. (Ord. 86, 12-7-1993)

6-10-4: INITIATION OF LEGISLATIVE CHANGES: A legislative change may be initiated by application of individuals upon payment of required fees, as well as by the Malheur County Court or the Malheur County Planning Commission. (Ord. 86, 12-7-1993)

6-10-5: HEARINGS BODY:

A. The following shall serve as hearings, or review body for legislative changes in this order:

1. The Malheur County Planning Commission.
2. The Malheur County Court.

B. Any legislative change initiated by the Malheur County Court shall be reviewed by the Malheur County Planning Commission prior to action being taken by the Malheur County Court. (Ord. 86, 12-7-1993)

6-10-6: FINAL DECISION: All legislative changes shall be adopted by ordinance. (Ord. 86, 12-7-1993)

6-10-7: COMPLIANCE WITH COMPREHENSIVE PLAN: In considering an amendment to the text or the zoning maps, the Malheur County Planning Commission and Malheur County Court shall determine the following:

- A. That the proposed change is consistent with the Malheur County's Comprehensive Plan.
- B. That the level of development in other locations has reached the point whereby additional land is needed for the proposed use(s), and that the area of the proposed change can best meet such needs.
- C. That adequate rural services are available and will not be overburdened.

D. That amendments to the text or zoning map which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Malheur County's Transportation System Plan. This shall be accomplished by one of the following:

1. Limiting allowed land uses to be consistent with the planned function of the transportation facility;
2. Amending the Malheur County's Transportation System Plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

A text or zoning map amendment significantly affects a transportation facility if it:

- i. Changes the functional classification of an existing or planned transportation facility;
- ii. Changes standards implementing a functional classification system;
- iii. Allows types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or
- iv. Would reduce the level of service of the facility below the minimum acceptable level identified in the Malheur County's Transportation System Plan. (Ord. 125, 6-20-2000)

6-10-8: NOTICE AND RECORD OF ACTIONS: Notice and record for the Malheur County Court's final actions will be made in the following manner:

- A. A copy of the final court order on the action shall be sent within five (5) working days to the applicant and any other party to the proceedings leading to the adoption, and whomever requested notice in writing. The final order shall be filed in the office of the Malheur County Clerk and the Malheur County Planning Department.
- B. Amendments to the zoning maps shall be made on certified copies of the Malheur County Zoning Maps and filed in accordance with Sections 6-3-2 and 6-3-3 of this title.
- C. Additional copies of final order, amended zoning maps and a record of all minutes of the hearing pertaining to the adoption of such amendments shall be maintained by the Malheur County Planning Department and made available to the public.

D. Pursuant to ORS 197.615(1) and OAR 660-18-040, four (4) copies of any amendment and findings to support its adoption shall be submitted to the director of **the** Oregon Department of Land Conservation and Development within five (5) working days after the final decision by the Malheur County Court. (Ord. 86, 12-7-1993)

CHAPTER 11 QUASI-JUDICIAL LAND USE HEARINGS

SECTION:

- 6-11-1: Filing of Staff Report for Hearing
- 6-11-2: Hearings Body
- 6-11-3: Notice of Hearing
- 6-11-4: Contents of Notice
- 6-11-5: Burden of Proof
- 6-11-6: Nature of Evidence
- 6-11-7: Limitations on Oral Presentations
- 6-11-8: Standing
- 6-11-9: Record
- 6-11-10: Disclosure of Ex Parte Contacts
- 6-11-11: Challenge for Bias, Prejudgment of Personal Interest
- 6-11-12: Hearings Procedure
- 6-11-13: Continuances (Rep. by Ord. 148, 4-14-2004)
- 6-11-14: Close of The Record (Rep. by Ord. 148, 4-14-2004)
- 6-11-15: Objection to Jurisdiction, Procedure, Notice or Qualifications

6-11-1: FILING OF STAFF REPORT FOR HEARING:

- A. At the time an application **is deemed complete**, **that in** the judgment of the Malheur County Planning Director **shall** require a hearing, **is complete**, **and a** hearing date shall be set.
- B. A staff report shall be completed seven (7) days prior to the hearing.

C. A copy of the staff report shall be mailed to the applicant, made available to **such** other persons who request a copy, and shall be filed with the Malheur County Hearings Body.

D. **Oral or** Written modifications and additions to the staff report shall be allowed prior to or at the **scheduled** hearing. (Ord. 86, 12-7-1993)

6-11-2: HEARINGS BODY:

A. The following shall serve as the hearings body in this order:

1. Malheur County Planning Director.
2. Malheur County Planning Commission, where the planning commission initiates a review of an administrative action, or Malheur County Planning Director's decision pursuant to Section 6-12-1 of this title.
3. Malheur County Court.

B. Where the Malheur County Planning Director must decline to hear a matter on the grounds of a conflict of interest, the Malheur County Planning Commission shall substitute for the Malheur County Planning Director. (Ord. 86, 12-7-1993)

6-11-3: NOTICE OF HEARING:

A. Individual Mailed Notice:

1. Except as otherwise provided for herein, notice of a land use application, other than for a utility facility line, shall be mailed at least twenty (20) days prior to the hearing for those matters set for hearing, or within twenty (20) days after receipt of a complete application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:

- i. The applicant.
- ii. Owners of record of property as shown on the most recent property tax assessment roll of property located:
 - (A) Within one hundred feet (100') of the property that is the subject of the notice, where any part of the subject property is within an urban growth boundary (**UGB**).
 - (B) Within two hundred fifty feet (250') of the property that is the subject of the notice where the subject property is outside an urban growth boundary (**UGB**) and not within **a** resource lands **s** zones.

(C) Within five hundred feet (500') of the property that is the subject of the notice where the subject property is within a resource lands zone.

iii. The owner of a public use airport, if the airport is located within ten thousand feet (10,000') of the subject property.

iv. The tenants of a manufactured home park when the application is for the rezoning of any part or all of a manufactured home park.

v. The Malheur County Planning Commission.

vi. The Oregon Department of Transportation (ODOT). (Ord. 125, 6-20-2000)

2. Notwithstanding subsection "A1b(1)" of this section, all owners of property within five hundred feet (500') of property that is the subject of a plan amendment application, or zone change application shall receive notice.

3. The failure of a property owner to receive mailed notice shall not invalidate any land use approval.

B. Published Notice: In addition to notice by mail and posting, notice of a hearing shall be published in a newspaper of general circulation in the Malheur County at least twenty (20) days prior to the hearing.

C. Media Notice: Copies of the notice of the hearing shall be transmitted to other newspapers published in Malheur County. (Ord. 86, 12-7-1993)

6-11-4: CONTENTS OF NOTICE:

A. All mailed notices of a land use action hearing or a land use action application subject to administrative decision shall:

1. Describe the nature of the application and the proposed use or uses which could be authorized;

2. List the applicable criteria from this title and the Malheur County Comprehensive Plan that apply to the application at issue;

3. Set forth the street address or other easily understood geographical reference (township, range, section, and tax lot number) to the subject property;

4. State the date, time and location of the hearing, or the date by which written comments must be received;

5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony;

6. If a hearing is to be held, state that any interested person may appear;
 7. Statement that the failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to the Malheur County Court or the Oregon Land Use Board of Appeals (LUBA) based on that issue;
 8. The telephone number of the Malheur County Planning Director and that the Malheur County Planning Director is the person to contact for additional information;
 9. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 10. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) calendar days prior to the hearing and will be provided at reasonable cost; and
 11. All mailed notices shall contain the following statement: NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.
- B. All mailed and published notices for hearing shall contain a statement that recipients may request a copy of the staff report.
- C. All mailed and published notices concerning applications and necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner. (Ord. 86, 12-7-1993)
- 6-11-5: BURDEN OF PROOF: The burden of proof is upon the one seeking change. (Ord. 86, 12-7-1993)
- 6-11-6: NATURE OF EVIDENCE: All relevant evidence shall be received. (Ord. 86, 12-7-1993)
- 6-11-7: LIMITATIONS ON ORAL PRESENTATIONS: The Malheur County Hearings Body may set reasonable time limits on oral testimony. (Ord. 86, 12-7-1993)

6-11-8: STANDING:

- A. Any interested person may appear and be heard in a land use action hearing.
- B. Any person appearing on the record at the hearing or presenting written evidence in conjunction with an administrative action or hearing, shall give his or her name, and address, shall have standing and be a party. (Ord. 86, 12-7-1993)

6-11-9: RECORD:

- A. A magnetic tape audio recording of the hearing shall be made.
- B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.
- C. Exhibits shall be numbered in the order presented in two (2) categories, proponents and opponents, and shall be dated.
- D. When exhibits are introduced, the proponent or opponent exhibit number or letter shall be read into the record. (Ord. 86, 12-7-1993)

6-11-10: DISCLOSURE OF EX PARTE CONTACTS: Prior to making a decision, the Malheur County Hearings Body or any member thereof shall not communicate directly or indirectly with any party, individual(s), or his representative(s) in connection with any issue involved in a pending hearing, except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Malheur County Hearings Body member shall:

- A. Publicly announce for the record the substance of such communication; and
- B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.

Communication between Malheur County staff and the Malheur County Hearings Body shall not be considered to be an ex parte contact. (Ord. 86, 12-7-1993)

6-11-11: CHALLENGE FOR BIAS, PREJUDGMENT OF PERSONAL INTEREST: Prior to, or at the commencement of a hearing, any party may challenge the qualification of the Malheur County Hearings Body, or a member thereof, for bias, prejudgment or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Malheur County Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Malheur County Planning Commission member with a conflict identified under ORS 215.035 must disqualify himself or herself after disclosure. (Ord. 86, 12-7-1993)

6-11-12: HEARINGS PROCEDURE: A hearing shall be conducted as follows:

- A. Explanation of Purpose: The Malheur County Hearings Body shall explain the purpose of the hearing and announce the order of the proceedings, including reasonable time limits for on presentations by parties.
- B. Statement: A statement by the Malheur County Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made prior to commencement of the public hearing.
- C. Facts Received Outside of Hearing: Any facts received, noticed or recognized outside of the public hearing shall be stated for the record.
- D. Challenges: Challenges to the Malheur County Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
- E. Applicable Substantive Criteria: The Malheur County Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the Comprehensive Plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to the Land Use Board of Appeals (LUBA) based on that issue.
- F. Order of Presentation:
 - 1. Open the hearing.
 - 2. Staff report.
 - 3. Proponent's presentation.
 - 4. Opponent's presentation.
 - 5. Proponent's rebuttal. (Ord. 86, 12-7-1993)
 - 6. Staff comment.
 - 7. Questions from or to the Chair may be entertained at any time at the Malheur County Hearings Body's discretion.
 - 8. Close the hearing. (Ord. 86, 12-7-1993; amd. Ord. 218, 1-30-2019)
- G. Record Available: The record shall be available for public review at the hearing. (Ord. 86, 12-7-1993)

6-11-13: CONTINUANCES: (Rep. by Ord. 148, 4-14-2004)

6-11-14 CLOSE OF THE RECORD: (Rep. by Ord. 148, 4-14-2004)

6-11-15: OBJECTION TO JURISDICTION, PROCEDURE, NOTICE OR QUALIFICATIONS:
Any objections not raised prior to the close of the oral testimony are waived. (Ord. 86, 12-7-1993)

CHAPTER 12 PLANNING DIRECTOR DECISIONS

SECTION:

6-12-1: Planning Director Action on Land Use Applications

6-12-2: Limitations on Planning Director Actions

6-12-3: Administrative Decision

6-12-1: PLANNING DIRECTOR ACTION ON LAND USE APPLICATIONS:

A. The Malheur County Planning Director may make land use decisions as set forth in. Section 6-12-2 of this Title without prior notification, as prescribed under Section 6-12-3, or he Malheur County Planning Director may refer the application for the Malheur County Planning. for a hearing. (Ord. 86, 12-7-1993) The Planning Director may make ministerial and administrative decisions as set forth in this Chapter. The Planning Director may refer any application for a ministerial or administrative decision to the Planning Commission for a hearing. The Planning Director's decision to approve, deny or send to a public hearing before the Planning Commission shall be made within thirty (30) days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant

6-12-2: LIMITATIONS ON PLANNING DIRECTOR ACTIONS (MINISTERIAL): The Malheur County Planning Director may make administrative on the following land use actions:

A. The Planning Director may make ministerial decisions without public notice or a hearing. Ministerial decisions involve land use actions governed by non-discretionary standards. Interpretation of policy or legal judgment is not necessary, clear and objective approval criteria exist and the use or development has no recognizable impacts. Generally, uses or developments evaluated through the ministerial process are permitted outright in the applicable zone. Ministerial decisions do not require notification to anyone other than the applicant. Ministerial decisions include, but are not limited to:

1. Co-location of antennas and new wireless facilities.
2. Lot of record dwelling - not on high value farmland.
3. Final partition and subdivision plat approval.
4. Land Use Compatibility Statement.

5. Alteration, restoration or replacement of a lawfully established dwelling.

6. Deferred replacement dwelling.

A. Farmstead lots as allowed in Section 6-4-4 of this Title.

B. Mining of aggregate resources as allowed in subsection 6-3A-3E3 of this Title.

C. Hardship dwellings as allowed in subsection 6-3A-3Q of this Title.

D. Partitions. (Ord. 86, 12-7-1993)

6-12-3: ADMINISTRATIVE DECISIONS:

A. The Malheur County Planning Director's decision to approve, deny or send to a hearing shall be made within thirty (30) days after an application is accepted as complete. This time limit may be waived by the written consent of the B. Notice of the Malheur County Planning Director's decision and the appeal period shall be sent as set forth in subsection 6-11-3(A)(1)(a) through (e) of this Title.

The Planning Director may make administrative decisions and issue a planning and zoning permit administratively. Administrative decisions involve some discretion regarding the applicant's compliance of review standards and criteria. Impacts and actions are presumed to be appropriate in the zone. Written findings of the administrative decision shall be made. Administrative decisions include, but are not limited to:

1. Farmstead lots as allowed in Section 6-4-4 of this Title.

2. Lot of record dwelling on high value farmland.

3. Temporary hardship dwellings as allowed in subsection 6-3A-3Q of this Title.

4. Minor home occupations in 6-6-8-6.

5. Family farm help dwelling. Dwelling occupied by a relative of the farm operator or farm operator's spouse who assists or will assist with the management of the commercial farm operation.

6. Facility for the processing of farm crops or the production of biofuel, as defined in ORS 315.141, located on a farm operation that provides at least one-quarter (1/4) of the crops processed at the facility. The building established for the processing facility shall not exceed ten thousand (10,000) square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than ten thousand (10,000) square feet to processing activities within another building supporting farm uses. A processing facility shall comply with applicable standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

7. Farm dwelling.

8. Farm labor dwelling.

9. Temporary uses.

B. Notice of the Planning Director's decision and appeal period shall be sent as set forth in 6-11-3A1a through e of this Title.

C. The notice of decision shall contain the applicable information required by Section 6-11-4 of this Title.

D. Any party can appeal the decision to the Planning Commission in accordance with Chapter 13 of this Title. On appeal, a de novo hearing shall be held by the Planning Commission.

Any party can appeal the decision to the Malheur County Planning Commission in accordance with Chapter 13 of this Title. On appeal, a de novo hearing shall be held by the Malheur County Planning Commission. (Ord. 86, 12-7-1993)

CHAPTER 13 APPEALS

SECTION:

6-13-1: Who May Appeal

6-13-2: Appellate Authority

6-13-3: Filing Appeals

6-13-4: Notice of Appeal

6-13-5: Hearing on Appeal

6-13-6: Rehearing

6-13-1: WHO MAY APPEAL:

A. The following persons may file an appeal:

1. A party;
2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice; and
3. A person to whom notice is mailed is deemed notified even if notice is not received. (Ord. 86, 12-7-1993)

6-13-2: APPELLATE AUTHORITY:

- A. The appellate body for appeals from administrative determinations of the Malheur County Planning Director shall be the Malheur County Planning Commission.
- B. The appellate body for appeals from final decisions of the Malheur County Planning Commission shall be the Malheur County Court.
- C. Appeals from decisions of the Malheur County Court shall be in conformance with the applicable ORS provisions. (Ord. 86, 12-7-1993)

6-13-3: FILING APPEALS:

- A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Malheur County Planning Department, an appeal fee. **and** The appellant **must shall** pay for the transcription of the hearing, **appealed from** and submit the transcript to the Malheur County Planning Department. No transcript is required for appeals from the decision of the Planning Director.
- B. The notice of appeal and appeal fee must be received at the office of the Malheur County Planning Department no later than five o'clock (5:00) P.M. on the tenth **(10)** day following **the** mailing of the decision. Notices of appeals may not be received by facsimile machine, **email or text**.
- C. The transcript of the hearing may be submitted to the Malheur County Planning Department within ten (10) days after the date notice of appeal is filed, or within ten (10) days after the hearing tape is mailed or given to the appellant, whichever is later. (Ord. 86, 12-7-1993)

6-13-4: NOTICE OF APPEAL: Every notice of appeal shall include:

- A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Malheur County hearings body an adequate opportunity to respond to and resolve each issue.
- B. A request **to that** the Malheur County Planning Department **to** supply **the** appellant with a copy of the **magnetic tape audio** recording of any hearing before the Malheur County Planning Commission, unless **a request such tape** has already been **made for a copy of the audio recording requested**. (Ord. 86, 12-7-1993)

6-13-5: HEARING ON APPEAL:

- A. All persons filing a notice of appeal shall be a party to an appeal.

B. All parties shall be mailed notice of the hearing on appeal at least ten (10) days prior to the hearing.

C. The review on appeal of the decision of the Malheur County Planning Director shall be de novo and shall be heard as provided in "Land Use Action Hearings", of this Title. All appeals from the Malheur County Planning Commission's final decision shall be based on the record made before the Malheur County Planning Commission.

D. The order of the Malheur County Hearings Body shall be as provided in this Title.

E. The record of the proceeding from which appeal is taken shall be a part of the record on appeal. (Ord. 86, 12-7-1993)

6-13-6: REHEARING: Rehearings shall not be allowed. (Ord. 86, 12-7-1993)

TITLE 7 SUBDIVISIONS AND LAND PARTITIONING

CHAPTER 1 PURPOSES, GENERAL PROVISIONS AND DEFINITIONS

SECTION:

7-1-1: Adoption, Title and Revision Policy

7-1-2: Purposes

7-1-3: Ordinance Relationships

7-1-4: Construction of Words

7-1-5: **Definitions** (Place holder – moved to Section 6-1-3 definitions)

7-1-1: ADOPTION, TITLE AND REVISION POLICY: There is hereby adopted, as provided herein, a subdivision and partitioning ordinance for Malheur County, a political subdivision of the State of Oregon.

This title shall be known as the SUBDIVISION ORDINANCE OF MALHEUR COUNTY and shall be reviewed and, if necessary, revised to keep consistent with legislative change and the changing needs and desires of the citizens of Malheur County. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-1-2: PURPOSES: In accordance with the provisions of ORS chapters 92 and 215, this title sets forth the minimum standards governing the approval of land development, including subdivisions and partitions, within Malheur County as necessary to carry out the Malheur County's Comprehensive Plan and Zoning Ordinance and to promote the public health, safety and general welfare. The purposes of these provisions and regulations are to:

- A. Encourage well planned subdivision and partition development so that good livable neighborhoods with all needed facilities and amenities may be provided.
- B. Encourage development in harmony with the natural environment and within the carrying capacities of natural resources.
- C. Safeguard the interests of the public, the applicant and the future lot owner.
- D. Improve land records and boundary monuments.
- E. Ensure equitable processing of subdivision plats and partitioning plans.
- F. Provide for orderly and efficient development, and to coordinate development with public facility and service plans and capabilities.

No person may subdivide or partition land within the County of Malheur except in accordance with ORS Chapters 92 and 215, and the provisions of this title and Title 6 of this code. (Ord. 25, 3-2-1983; amd. 1989 Code)

Notes See title 6 of this code.

7-1-3: ORDINANCE RELATIONSHIPS:

- A. To the Comprehensive Plan: A subdivision plat shall conform to the policies of the comprehensive plan, as adopted by the Malheur County Court.
- B. To the Comprehensive Plan Map And Transportation System Plan (TSP): A subdivision plat shall conform with plans for the location, widening or extension of streets, highways and for other projects of a similar nature as shown on the Comprehensive Plan Map and in the Malheur County Transportation System Plan (TSP), as adopted by the Malheur County Court.
- C. To the Zoning Ordinance: A subdivision plat shall conform in all respects with applicable regulations of the zoning ordinance, as adopted by the Malheur County Court. (Ord. 125, 6-20-2000)

Notes See Title 6 of this code.

7-1-4: CONSTRUCTION OF WORDS: The following rules of construction shall apply unless inconsistent with the plain meaning of the context of this title:

- A. Tense: Words used in the present tense shall include the future tense.

- B. Number: Words used in the singular shall include the plural, and words used in the plural shall include the singular.
- C. Shall and May: The word "shall" is mandatory. The word "may" is permissive.
- D. Gender: The masculine shall include the feminine and neuter.
- E. Headings: In the event there is any conflict or inconsistency between the heading of an article, section or paragraph of this title and the context thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such context. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-1-5: All Definitions are placed in Section 6-1-3 of this code. This section reserved for later use. **DEFINITIONS:**

For the purpose of this title, certain words and terms used herein are defined as follows:

ACCESS: The place, means or way by which pedestrians and vehicles shall have safe, adequate and usable ingress and egress to a property. Access management guidelines are located in table 7-2 of the Malheur County transportation system plan.

ACCESSWAY: A walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway and additional land on either side of the walkway, often in the form of an easement or right of way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in manner that provides convenient access for pedestrians.

BICYCLE: A vehicle designed to operate on the ground on wheels, propelled solely by human power, upon which any person or persons may ride, and with two (2) tandem wheels at least fourteen inches (14") in diameter. An adult tricycle is considered a bicycle.

BICYCLE FACILITIES: A general term denoting improvements and provisions made to accommodate or encourage bicycling, including parking facilities and all bikeways.

BIKEWAY: Any road, path, or way that is some manner specifically open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are shared with other transportation modes. The five (5) types of bikeways are:

A. Multiuse Path: A paved ten (10) to twelve foot (12') wide way that is physically separated from motorized vehicular traffic; typically shared with pedestrians, skaters, and other nonmotorized users.

B. Bike Lane: A four (4) to six foot (6') wide portion of the roadway that has been designated by permanent striping and pavement markings for the exclusive use of bicycles.

C. **Shoulder Bikeway:** The paved shoulder of a roadway that is four feet (4') or wider; typically shared with pedestrians in rural areas.

D. **Shared Roadway:** A travel lane that is shared by bicyclists and motor vehicles.

E. **Multiuse Trail:** An unpaved path that accommodates all terrain bicycles; typically shared with pedestrians.

BLOCK: A contiguous series of lots bounded on all sides by streets, railroad right of way, or subdivided land.

BUILDING LINE: A dashed line on a plat restricting the location of buildings or structures or that distance as prescribed by the zoning ordinance, when applicable.

CONTIGUOUS LAND: Two (2) or more parcels or units of land including water under a single ownership which are not separated by an intervening parcel of land under separate ownership.

DEVELOPER: Any person, corporation, partnership or other legal entity who creates or proposes to create a subdivision, partition or other land development, and includes any agent of a developer.

DEVELOPMENT: The construction, installation or change of a building or other structure; the division of land into two (2) or more parcels; any building or mining operation; or the creation or termination of rights of access.

DWELLING UNIT: A structure providing complete independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation. A dwelling unit shall have a minimum habitable floor area of four hundred (400) square feet.

EASEMENT: A grant of right to use land for specific purposes, but in which ownership of the land is not transferred.

FAMILY: As defined in section 6-1-3 of this code, zoning ordinance.

FINANCIAL PARTITION: An exception in exclusive agricultural zones in effect only during a foreclosure on property in accord with section 7-7-12 of this title.

FLAG LOT: A parcel of land created by a subdivision or partition which includes a narrow projection to a public road for purposes of access to the main portion of the parcel. The projection is commonly known as the "flagpole".

LANE: A term used to indicate or suggest that a road or street is, or may be, privately owned.

LEGAL DESCRIPTION: The method by which the outer boundaries of a site or premises and all appurtenant easements and applicable restrictions or covenants are described or established by reference to established points, monuments, etc.

LOT: A unit of land created by a subdivision or partitioning of land and is a unit for disposition, transfer of ownership or interest or for development.

LOT AREA: The total horizontal net area within the lot lines of a lot.

LOT, CORNER: A lot situated at the intersection of two (2) or more streets.

LOT DEPTH: The depth of a lot shall be the horizontal length of a straight line connecting the bisecting points of the front and rear lot lines.

LOT LINE, FRONT: In the case of an interior lot, a line separating the lot from the street. In the case of a corner lot, the line separating the street frontages of the lot from the street.

LOT LINE, REAR: A lot line which is opposite and most distant from the front lot line.

LOT LINE, SIDE: Any lot boundary line not a front line or a rear lot line.

LOT, THROUGH OR DOUBLE FRONTAGE: A lot having frontage on two (2) parallel or approximately parallel streets other than alleys.

LOT WIDTH: The average horizontal distance between the side lot lines, measured at right angles to the lot depth.

MAP, PARTITION MAP: The diagram, drawing and associated writing which depicts a partition.

MASTER PLAN: A map, sketch, or other presentation filed with the planning commission showing the ultimate development layout of a parcel of property that is to be developed in successive stages of subdivision. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable development pattern thereon. The master plan will, therefore, be used as a guide in each successive stage of the development until its completion.

NEIGHBORHOOD ACTIVITY CENTER: An attractor or destination for residents of surrounding residential areas. Includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops, employment areas.

NOMINAL ONE ACRE: An approximate one-six-hundred-fortieth (1/640) of the public lands survey section in which it is located. In no case shall a nominal acre be less than thirty five thousand (35,000) square feet.

OFFICIAL MAP: The comprehensive plan map as adopted by the planning commission and county court.

OPEN SPACE: Those lands within a subdivision which have been dedicated, in common to the ownership within the subdivision or to the public, specifically for the purpose of providing places for recreational uses or for scenic purposes.

OWNER: The individual, firm, association, syndicated partnership or corporation having sufficient proprietary interest in the land sought to be subdivided or partitioned to commence and maintain proceedings to subdivide or partition the same under this title.

PARCEL: As defined in section 6-1-3 of this code, zoning ordinance.

PARTITION: The act of partitioning land, or an area or tract of land which is partitioned.

Major Partition: A partition which includes the actual creation of a road or street to serve one of the parcels in the partition.

Minor Partition: A partition which does not require the creation of a road or street. Dedication of right of way may be required in order to acquire or preserve access to other lands.

PARTITION LAND: To divide an area or tract of land into two (2) or three (3) parcels within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under single ownership at the time of the first partitioning. "Partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size unless better field management or irrigation control will result. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner. "Partition land" does not include the creation of cemetery lots.

PLANNED UNIT DEVELOPMENT: A land area designed as a unified combination of land uses; generally with a mixture of residential, single- and multi-family types, open space or recreation areas for the direct use and benefit of all the lot owners within the development and sometimes shopping or community facilities. A planned development includes a "planned unit", a "homeowners' association" and "common property" which are defined as follows:

Common Property: A parcel or parcels of land together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual sites in the planned unit.

Homeowner Association: An incorporated, nonprofit corporation to operate under recorded land agreements through which: a) each lot owner in a planned unit or other described land area is automatically a member, and b) each lot is automatically subject to a charge for the expenses for the organization's activities, such as maintaining a common property.

Planned Unit: A land area which: a) has both individual building sites and open space, known as common property such as park and b) is designed and organized as a separate entity without necessarily having participation of other building sites or other common property.

PLAT: A final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

PUBLIC HEARING: A public forum of the planning commission or the county court in which, after public notification, the commission or court hear testimony from all concerned citizens regarding the action which is the cause of the hearing. Public hearings shall be conducted when prescribed by this title, and may be conducted at the request of the commission or court at other times.

PUBLIC NOTIFICATION: Each notice of hearing authorized by this title shall be published in newspaper of general circulation in the county at least ten (10) days prior to the date of hearing. Notice shall also be mailed to all owners of property within two hundred fifty feet (250') of the subject property. The notice of hearing shall be mailed at least ten (10) days prior to the date of hearing. Failure of a person to receive the prescribed notice shall not impair the validity of the hearing.

RESERVE STRIP: A strip of land, usually one foot (1') in width, across the end or along the edge of a street, roadway or alley, which is reserved or held by the county for the purpose of controlling access, or for future street, roadway or alley extension or widening.

RIGHT OF WAY: The area between the boundary lines of an alley, easement, street or highway.

ROAD OR STREET: A public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

Cul-De-Sac (Dead End Street): A short street having one end open to traffic and being terminated by a vehicle turnaround.

Half Street: A portion of the width of a street usually along the edge of a subdivision, where the remaining portion of the street could be provided in another subdivision.

Marginal Access Street: A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

Rural Arterial: A roadway that provides linkage between population centers within the region and connection to state and national highways, serving primarily through traffic with limited access.

Rural Collector: A roadway that provides both local access and circulation within rural areas of the county, distributing trips from the arterials through the area to their ultimate destinations, often serving abutting uses directly.

Rural Local: A roadway having the primary function of providing access to immediately adjacent land and serving little to no through traffic.

Stubbed Street: A street having only one outlet for vehicular traffic and which is intended to be extended or continued to serve future subdivisions or developments on adjacent lands.

Walkway: A hard surfaced are intended and suitable for pedestrians, including sidewalks and the surfaced portions of accessways.

SUBDIVIDE LAND: To divide an area or tract of land into four (4) or more lots within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of the first division.

SUBDIVIDER: A generalized term meaning any person, firm, corporation, partnership or association who causes the land to be divided into lots or parcels as defined herein. It is synonymous with "developer".

TENTATIVE PLAN: A clearly legible drawing of the proposed layout of streets, blocks, lots and other elements of a subdivision which shall help furnish a basis for the planning commission's approval or disapproval of the general layout of the subdivision or major partition.

TRACT: A generalized, all inclusive term used to describe any area of land.

USE: The purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

Notes See Title 6, Chapter 11 of this code.

CHAPTER 2 GENERAL REQUIREMENTS AND TECHNICAL REVIEW

SECTION:

- 7-2-1: Scope of Regulations
- 7-2-2: Minimum Standards
- 7-2-3: Technical Review Conferences
- 7-2-4: Technical Review Factors

7-2-1: SCOPE OF REGULATIONS:

A. Regulations Mandatory: Any map, subdivision, plat, replat, partition or plan hereafter made of any subdivision or partition lying within the territorial limits of Malheur County, with the exception of areas within incorporated cities or towns, shall be presented for approval and recorded as prescribed by this title. No such subdivision map, plat, partition or plan shall be recorded or have validity unless it shall have the approval of the county planning commission or such other approvals as required by this title. An exception exists within the designated urban growth area of a city in which the urban growth area agreement may transfer these powers to that city. If so stated in the agreement, the city's regulations shall apply within the UGA.

B. Public Hearing: All subdivision preliminary plats and major partition proposals shall be subject to subdivision review before the Malheur County Planning Commission. In the event of review by the Malheur County Court, the court may also hold a subdivision review.

C. Note: A partitioner, whose action in dividing land may result in a series of partitions may be required to make filings with the Oregon Real Estate Commissioner as required in ORS 92.305 through 92.495 prior to sale or advertising for sale the subject parcels. Because of this, it is recommended that the partitioner acquaint himself with the regulations of the Oregon Real Estate Commissioner before proceeding with a subdivision or series partition. (Ord. 25, 3-2-1983; amd. 1989 Code)

Notes See Title 6, Chapter 11 of this code.

7-2-2: MINIMUM STANDARDS: No proposed subdivision or partition shall be approved unless said subdivision or partition complies with the Malheur County Comprehensive Plan for the county, the applicable zoning, and the requirements and standards set forth in this title and ORS chapter 92. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-2-3: TECHNICAL REVIEW CONFERENCES: The Malheur County Planning Director may schedule a technical review conference with the an independent appointed (by Malheur County) county engineer and the subdivider and/or his engineer or surveyor. Representatives of other agencies may attend and shall be encouraged by the Malheur County Planning Director to attend. As a result of the discussion between the subdivider and/or his engineer, or surveyor and the Malheur County Planning Director, the subdivider or the Malheur County Planning Director may request additional meetings as necessary.

Because of scheduling difficulties in attempting to meet at one time and place among the various affected departments, agencies, and jurisdictions, and utility companies, it is expedient and necessary that the subdivider, developer or partitioner contact each directly prior to formal submission of a proposal to the Malheur County Planning Department. This will greatly reduce the potential for oversights or problems that may to emerge during formal review. Failure to have made these checks may result in an application being rejected for further consideration as being incomplete. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-2-4: TECHNICAL REVIEW FACTORS: In Review of proposed subdivisions, the Malheur County Planning Director or his designate shall confirm that the following factors have been considered:

- A. Conformance to the Malheur County's Comprehensive Plan and Zoning Ordinance.
- B. Preliminary plat requirements.

- C. Quantity and quality of existing or proposed water supply, adequacy of the existing or proposed sewage system, and the capability of the soil for long term support of proposed subsurface sewage systems.
- D. Relationship to the existing and future road network as identified in the Malheur County Transportation System Plan, including roads within and contiguous to the development in reference to right-of-way width, roadway width and construction standards, and functional road classifications as identified in the County's Transportation System Plan.
- E. Avoidance or remedy of possible adverse effects on the development caused by natural hazards such as floods, slides or faults.
- F. Recognition and remedy of unusual conditions of the property such as a high water table, slope, bedrock or other topographic or geologic conditions that might limit the capability to build on the land using ordinary and reasonable construction techniques.
- G. Owner of record.
- H. Evidence that each and every parcel can be used for the purpose for which they are intended.
- I. Agreements or bylaws to provide for management, construction, maintenance or other services pertaining to common facilities or elements in the development.
- J. Protective covenants or deed restrictions.
- K. The erosion potential, stability and bearing qualities of the soil.
- L. The effect of the proposed development upon the immediate area's stormwater drainage pattern, the impact of the proposed development upon downstream areas, and the effect on ground water supply.
- M. Conformance with the access management guidelines for rural roadways.
- N. Development of bicycle and pedestrian facilities providing safe, direct and convenient access to neighborhood activity centers, where appropriate. (Ord. 125, 6-20-2000)

CHAPTER 3 TENTATIVE PLAT PLAN FOR SUBDIVISION

SECTION:

- 7-3-1: Pre-Application Procedure
- 7-3-2: Filing Procedure
- 7-3-3: Form and Scale of Tentative Plat Plan
- 7-3-4: Contents of Tentative Plat Plan

- 7-3-5: Statement to Accompany Tentative Plat Plan
- 7-3-6: Lands Subject to Hazardous Conditions
- 7-3-7: Tentative Subdivision Approval
- 7-3-8: Appeal to County Court
- 7-3-9: Termination of Tentative Approval

7-3-1: PRE-APPLICATION PROCEDURE: The following procedure shall be followed whenever land is to be subdivided:

Prior to submitting a preliminary plat plan, the subdivider is encouraged to submit a tentative plat sketch plan to the Malheur County Planning Department and discuss the property to be subdivided, with respect to the standards of this Title, the requirements of State law, existing private and public developments, relationship to the County's Comprehensive Plan and Development Code, and any special problems that may be encountered. Changes or modifications to in the tentative plat sketch plan shall be discussed if the tentative plat plan, as submitted, does not meet the objectives of these regulations. (Ord. 25, 3-2-1983; 1989 Code)

7-3-2: FILING PROCEDURE:

A. The subdivider shall prepare a tentative plat plan in accordance with the provisions of this Title, which shall be filed with the Malheur County Planning Department sixty (60) days prior to the Malheur County Planning Commission meeting at which time a subdivision review is desired. Such filing shall be made prior to the initiation of any construction work within the proposed subdivision which might be affected by change in the tentative plat plan.

B. The subdivider shall provide a statement from the appropriate city administrative officer of any incorporated city within six (6) miles of the proposed subdivision or development stating any recommendations planning, engineering or other appropriate staff of the city have regarding the proposed subdivision.

C. The time of filing shall be construed to be the time when the tentative plat plan, complete with required information, is filed with and officially received by the Malheur County Planning Department. The required information must demonstrate accuracy throughout the review process. Failure to do so, followed by written notice of the technical information inadequacy, constitutes a denial of the proposed development. If the corrections are submitted to the Malheur County Planning Department within thirty (30) days of notice of inadequacy, the proposal is considered to be resubmitted, starting the schedule calendar anew but with application fees waived. Technical information inadequacies may be grounds for ultimate denial of the proposed land development.

D. The subdivider shall file ten (10) copies of tentative **plat plan**, together with an application in writing, form to be provided by the Malheur County Planning Department, **and submitted to** **with** the Malheur County Planning Department.

E. In conformance with ORS 215.428, all land development applications shall be processed within one hundred twenty (120) days. This time schedule will be affected by conditions explained in subsection "C" of this Section. (Ord. 25, 3-2-1983; 1989 Code)

7-3-3: FORM AND SCALE OF TENTATIVE **PLAT PLAN**: The tentative **plat plan** shall be clearly and legibly drawn and shall show all pertinent information to scale in order that the Malheur County Planning Commission may have adequate understanding of what is proposed during the review process. The scale of the preliminary plat shall be appropriate to depict necessary detail on eighteen inch by twenty four inch (18" x 24") sheets. (Ord. 25, 3-2-1983; 1989 Code)

7-3-4: CONTENTS OF TENTATIVE **PLAT PLAN**: The following information shall be shown on the tentative subdivision **plat plan** or provided in accompanying materials. Tentative **plats plans** shall contain the following information. If, after review of the tentative **plat plan**, additional information is required, such information shall be submitted by the applicant. He shall be given an appropriate time to compile the requested information, and all deadlines shall be modified to accommodate the additional time required.

A. General Information:

1. A subdivision name which does not conflict with the name of an existing subdivision, or any name on a recorded plat.
2. Name and address of the owner and/or subdivider.
3. Name and address of the licensed surveyor who prepared the plat.
4. Date of preparation, north point, scale, approximate acreage and boundary lines.
5. Appropriate identification clearly stating that the map is a tentative **plat plan**.
6. Section, range, township, **and tax lot where the** **in which** proposed subdivision is **to be** located.

B. Existing Conditions:

1. The location, names and widths of improved and unimproved streets within or adjacent to the subdivision.
2. The location, width, and use or purposes of any easements **(documents of easement to be submitted with application for subdivision)** on the property.

3. Contour lines sufficient to show the direction and general grade of land slope. Contours shown on United States Geological maps may be superimposed for this purpose.
4. The location and direction of natural watercourses and areas subject to flooding.
5. The location of structures, irrigation canals and ditches, pipelines and railroads, and any natural features such as rock outcroppings and cover, which are of an area or size sufficient to influence the design of the subdivision.
6. The location of city boundary lines and the boundary lines of public districts, which lie within the subdivision or within five hundred feet (500') of the exterior boundaries of the subdivision.
7. A vicinity map showing the relationship of the proposed subdivision to surrounding development, streets, any public sewer and water utilities, extent and availability of electric and gas utility facilities.
8. Zoning classification of land and adjoining land. (Ord. 25, 3-2-1983; amd. 1989 Code)

C. Information Concerning Proposed Development: Information concerning proposed development shall conform to Chapter 4 of this title. Among the items to be considered are the following:

1. The location, name, width, approximate grades and curve radii of all proposed streets.
2. Statement pertaining to type and dimensions of roads and who will be responsible for their maintenance.
3. The location, width and purpose of proposed easements.
4. The location and approximate dimensions of lots, proposed lot and block numbers.
5. An outline of the areas proposed for partial recording of a final plat, if phased recording is contemplated.
6. The relationship of the proposed subdivision to future streets on adjacent land controlled by the subdivider.
7. A shadow subdivision layout of abutting undeveloped lands to illustrate that the subject proposed land development adequately and appropriately extends streets to its borders.
8. Source and method of water supply to serve the subdivision, and a statement of any and all water rights.

9. Any proposed restrictions and covenants affecting the plat. The location and design of all proposed pedestrian and bicycle facilities, including accessways. (Ord. 125, 6-20-2000)

7-3-5: STATEMENT TO ACCOMPANY TENTATIVE **PLAT PLAN**: The tentative **plat plan** shall be accompanied by written statements giving essential information regarding the following matters **and submitted with the subdivision application to the Malheur County Planning Department**:

A. Water Supply: A statement of water rights from the **Malheur County Watermaster**, and a statement of the proposed method of water supply including source, quality and method of distribution.

Where the proposed source of water is by individual or community wells, demonstration of an adequate supply of water for all anticipated needs of the platted area shall be presented. Demonstration of an adequate supply of water may consist of:

1. Test wells drilled with adequate frequency to demonstrate the general availability of water.
2. Documentation from the **County's Watermaster on** of the availability of water and the general history of wells in the area.

B. Sewage Disposal: A statement of tentative approval of feasibility on the proposed method of sewage disposal from the appropriate state and/or county agencies.

C. Estimated Time: When improvements are proposed to be made or installed.

D. Public and Private Utilities: A letter from each of the utility companies serving the area in which the subdivision is located stating that each is able and willing to serve the subdivision as proposed, and that satisfactory arrangements have been made as to the cost for financing the utility installations.

E. Fire Protection: A letter indicating the proposed method of fire protection.

F. Irrigation District: A map of the irrigation rights involved and an irrigation management system, such as a district which will be responsible for distribution and management of the irrigation water within the subdivision. This organization shall have the legal authority to settle disputes concerning the handling of water in the development. (The proposal for establishment of such an organization must be approved by the appropriate irrigation district and is subject to review by the Malheur County Court.)

G. Proof of Ownership: A subdivision guarantee prepared under provisions of the Oregon Real Estate Commission.

H. School District: A letter from the superintendent of the school district in which the subdivision is located indicating the ability of school facilities to accommodate the estimated number of additional students. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-3-6: LANDS SUBJECT TO HAZARDOUS CONDITIONS: Land which appears to be technically unsuitable for development due to flooding, bad drainage, steep slopes, rock formations or other features likely to be harmful to the safety and general health of the future residents shall not be developed for building purposes and shall be used for open space unless adequate methods for overcoming these conditions are submitted by an appropriate state licensed engineer and approved by all agencies which regulate the technical unsuitability in coordination with the Malheur County Planning Director. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-3-7: TENTATIVE SUBDIVISION APPROVAL:

A. Technical Review Conference: Within twenty one (21) days of receipt of the proposal, the Malheur County Planning Director shall convene a conference as specified in Chapter 2 of this title and shall prepare written report with recommendation regarding the proposed subdivision to for the Malheur County Planning Commission written reports of his recommendations regarding the proposed subdivision.

Written reports to the Malheur County Planning Commission on the technical review conference shall be submitted by the Malheur County Planning Director as a part of the regular commission agenda packet.

B. Subdivision Review Authorization: Within sixty (60) days of submission of a tentative subdivision plat plan, as required by Section 7-3-2 of this chapter, the Malheur County Planning Commission shall conduct a subdivision review of said tentative subdivision plat plan. The subdivision review shall be conducted in conformance with subsections "C through F" of this section.

C. Subdivision Review Criteria: Subdivision review shall consist of an analysis of the tentative plat plan proposal as it relates to the following:

1. The Malheur County Planning Director's report on the consideration of the factors listed in Section 7-2-4 of this title.
2. Tentative subdivision plat plan presentation as prescribed by Section 7-3-4 of this chapter.
3. Statements to accompany tentative plat plan as required by Section 7- 3-5 of this chapter.
4. Proposals for excluding or overcoming land subject to natural hazard as discussed in Section 7-3-6 of this chapter.
5. Public comments received by the Malheur County Planning Department which relate only to compliance of the tentative plat plan proposal with subsections "C2 through C4" of this section. Comments which do not address these items will not be entered into the record. (Ord. 25, 3-2-1983; amd. 1989 Code)

D. Notification of Subdivision Review: Prior to the Malheur County Planning Commission meeting at which **time** the Malheur County Planning Commission receives a tentative **plat plan** proposal, the following **public notices** shall be provided:

1. A notice in the legal notice column of a newspaper of general circulation at least ten (10) days prior to the meeting at which **time** the subdivision review is to be initiated. Said notice to briefly describe the proposal, give the location of the property involved, a list of the sections of this title which are pertinent to the subdivision review, the time and location of the meeting, and other information necessary to adequately describe the proposal and the responses desired.

2. Individual notification by first class mail to property owners of record within two hundred fifty feet (250') of the subject property. In addition to the information listed in subsection "D1" of this section, individual notice shall include a map of the area of sufficient scale, and detail to locate the subject property relative to surrounding property.

Failure to receive individual notification will not invalidate the procedure conducted under this section if a good faith attempt has been made to provide such notice.

3. Notice to the Oregon Department of Transportation (ODOT) as required by OAR 660-12-045(2)(f). (Ord. 125, 6-20-2000)

E. Action Resulting from Subdivision Review:

1. Decision Required: Following such subdivision review, the Malheur County Planning Commission may approve, modify or disapprove the **tentative plat plan** proposal, and shall set forth findings for said decision. If no action is taken by the Malheur County Planning Commission within sixty-five (65) days of the commission meeting, at which **time** the commission received the tentative **plat plan**, the tentative **plat plan** as filed shall be deemed **to be** approved and it shall be the duty of the planning commission secretary to certify such approval. The Malheur County Planning Commission may, however, upon declaration of a need for additional information, clarification of submitted material, or a need for modification or redesign of submitted **tentative plat plan** and in agreement with the subdivider, initiate a second sixty-five (65) day period which shall be considered to commence upon the day of agreement for such.

2. Placing of Conditions and Relationship To Final Plat: If the tentative **plat plan** is approved, subject to conditions, conditions shall relate only to the authority granted to the Malheur County Planning Commission by this title and the zoning ordinance. The ordinance and provisions used to place such conditions shall be specified in the findings.

Approval of the tentative plat plan shall not constitute final acceptance of the tentative plat of the proposed subdivision for recording; however, approval of such tentative plat plan shall be binding upon the county for purposes of the preparation of the final plat.

F. Review by Malheur County Court: Within five (5) days after the date of the planning commission's action, the Malheur County Planning Director shall transmit the complete record of its review and action to the Malheur County Court. Upon receipt of the record, the Malheur County Court may review the decision of the Malheur County Planning Commission on its own initiative, as permitted by Chapter 9 of this title.

The Malheur County Court may affirm, reverse or modify the decision of the Malheur County Planning Commission provided that such decision is not in conflict with the provisions and intent of this title. If the decision is modified or reversed, the Malheur County Court shall construct findings relating to the provisions of this title, which were used to arrive at the decision to modify or reverse.

Unless the applicant is notified of the Malheur County Court's intent to review the decision of the Malheur County Planning Commission within twenty-one (21) days, the decision of the Malheur County Planning Commission shall be affirmed. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-3-8: APPEAL TO MALHEUR COUNTY COURT: If the applicant or an interested party is dissatisfied with any action of the Malheur County Planning Commission with respect to the tentative plat plan, the applicant he may, within fifteen (15) days of such action, appeal the action of the Malheur County Planning Commission to the Malheur County Court.

For the purposes of this section, "interested party" shall mean those individuals entitled to notice under this title, or those who have participated in the hearing(s) before the Malheur County Planning Commission.

Appeals should be filed and administered in accordance with Chapter 9 of this title. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-3-9: TERMINATION OF TENTATIVE APPROVAL: Failure by the developer to submit a final plat within twelve (12) calendar months of the date of approval, or conditional approval of the tentative plat plan by the Malheur County Planning Commission and Malheur County Court, shall terminate all proceedings, provided however, that upon application of the developer in writing, an extension of time not to exceed six (6) calendar months may be granted by the Malheur County Planning Commission. In the event the Malheur County Planning Commission denies a developer's application for extension, the developer may appeal to the Malheur County Court. Where proceedings have terminated because of failure to receive extension by the Malheur County Planning

Commission and the Malheur County Court, a new tentative plat plan shall be filed in accordance with the provisions of this title. (Ord. 25, 3-2-1983; amd. 1989 Code)

CHAPTER 4 SUBDIVISION DESIGN AND IMPROVEMENT REQUIREMENTS

SECTION:

7-4-1: Required Design Improvements Standards

7-4-2: Streets

7-4-3: Utility Lines

7-4-4: Domestic Water

7-4-5: Irrigation Water

7-4-6: Drainage

7-4-7: Stream Easements

7-4-8: Sewage Disposal

7-4-9: Blocks

7-4-10: Lots

7-4-11: Flag Lots

7-4-12: Lot Boundary Or Right Of Way Lines

7-4-13: Fire Protection

7-4-14: Other Improvements

7-4-1: REQUIRED DESIGN IMPROVEMENTS STANDARDS: All subdivisions, developments and major partitions, which are developed pursuant to this title shall at minimum be developed in conformance with the provisions of this chapter. In those cases where a centralized or public sanitary waste system is available or is proposed, the efficient and aesthetically pleasing qualities of a planned unit development is recommended and may be required by the Malheur County Planning Director. In this case, the standards of Chapter 5 of this title shall also be met. Within the urban growth area of a city, the more restrictive or greater standards of the respective city shall supersede these standards. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-4-2: STREETS:

A. Relation to Adjoining Street System: A subdivision or major partition shall provide for the continuation of the principal streets existing in adjoining subdivisions and for their proper projection when adjoining property is not subdivided, and such streets shall be of a width not less than the minimum requirements set forth in this title and the Malheur County Transportation System Plan. Where, in the opinion of the Malheur County Planning commission, topographic conditions make such continuation, or on a formation, or conformity impractical, exception may be made.

Where the submitted plat submitted covers only a part of the subdivider's tract, a drawing of the prospective future street system of the entire tract shall be furnished.

Also, taking topography into consideration, a shadow subdivision layout shall be prepared for abutting undeveloped property to demonstrate the adequacy and appropriateness of streets within the proposed development, which are to be provided for future extension.

B. Access: The dividing of the land shall be such as to provide each lot or parcel access by means of a public street, with satisfactory access to an existing public street or to a proposed street as shown in the proposed plat. New public streets and private drives shall meet the access management guidelines for rural roadways.

C. Existing Streets: Whenever existing streets adjacent to or within a development are of inadequate width, additional right-of-way shall be required at the time of division. In those cases where improvement of the road is below standard, improvement may be required to include including paving.

D. Road Widths: Unless otherwise indicated on the official map, the width of rights-of-way and roadway improvements shall be in compliance with the following:

1. Rural Minor Arterial: A right-of-way width of sixty to eighty feet (60–80') measured from property line to property line.
2. Rural Major Collector: A right-of-way width of sixty feet (60').
3. Rural Minor Collector: A right-of-way width of fifty to sixty feet (50–60').
4. Rural Local: A right-of-way width of forty to fifty feet (40–50') except in cases where the topography or other physical conditions make such a width impractical. This determination shall be at the discretion of an appointed independent (by Malheur County) the county engineer.
5. Cul-De-Sac: A right-of-way width of fifty feet (50') and shall terminate in a turnaround with a minimum property line radius of fifty feet (50').

E. Road Improvement Standards:

1. Compliance: Standards for all design and road improvements shall be in accordance with those specifications and requirements prescribed by the Malheur County Road Department in the adopted "county road standards" or by the appropriate road district.
 2. Street or Road Acceptance: Any street or road, which is not constructed to standards prescribed by the Malheur County shall not be accepted for maintenance by the county. The Malheur County Court must determine whether a road or street is to be accepted by the county.
 3. Connection to Existing Roads: Property which is developed so as to include the creation of a road shall have connection to an existing road, which is maintained by a public agency. This connector road shall be built to Malheur County or appropriate road district standards by the developer.
 4. Street Alignment: Streets located on opposite sides of an intersecting street shall have their centerline directly opposite each other where possible, otherwise, the centerline shall be separated by not less than two hundred feet (200').
 5. Intersection Angles: Street intersection shall be as near right angles as possible except where topography requires a lesser angle, but in no case shall the acute angle be less than sixty degrees (60°).
- F. Streets Adjacent to Railroads: When the proposed division of land contains or is adjacent to a railroad, a street parallel to the railroad may be required on each side of such railroad. A land strip of not less than twenty-five feet (25') in width shall be provided along such railroad right-of-way for screen planting between the railroad and residential lots.
- G. Future Extension of Streets: Where necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision and the resulting dead-end streets may be approved without a permanent turnaround. Reserve strips and street plans may be required to preserve the objectives of street extension.
- H. Street Grades: Street grades shall not exceed eight percent (8%), except where under unavoidable topographic conditions grades to ten percent (10%) may be permitted.
- I. Street Names: Street names shall not duplicate the name of any other street or way within the county or the larger emergency service area.
- J. Cul-De-Sacs and Accessways: Cul-de-sacs, courts or similar type streets shall be permitted; however, through streets are encouraged except where topographical, environmental, or existing adjacent land use constraints make connecting streets infeasible. The maximum length of cul-de-sacs shall be no more than one thousand feet (1,000') from the entrance to the center of the turnaround radius of fifty feet (50') at the property line and not less than forty feet (40') at the curb line or traveled way.

Where cul-de-sacs are planned, accessways shall be provided connecting the ends of cul-de-sacs to each other, to other streets, or to neighborhood activity centers. The

hearings body or Malheur County Planning Director may determine, based upon evidence in the record, that an accessway is impracticable. Such evidence may include, but is not limited to:

1. Physical or topographic conditions make an accessway connection impractical. Such conditions include, but are not limited to, freeways, railroads, extremely steep slopes, wetlands, or other bodies of water where a connection cannot reasonably be provided.
2. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future, considering potential for redevelopment.
3. Where accessways would violate provisions of leases, easements, covenants, restrictions, or other agreements existing as of June 20, 2000, that preclude a required accessway connection.

K. Pedestrian and Bicycle Circulation: On site facilities shall be provided that accommodate safe and convenient pedestrian and bicycle access within new subdivisions, multi-family developments, planned development, shopping centers, and commercial districts, and connecting to adjacent residential areas and neighborhood activity centers within one-half (1/2) mile of the development. Residential developments shall include streets with sidewalks and accessways. Pedestrian circulation through parking lots shall be provided in the form of accessways.

Bikeways shall be required along arterial and collectors with Average Daily Trips (ADTs **determined by ODOT**) greater than three thousand (3,000). Sidewalks shall be required along arterials, collectors, and most local streets, except that sidewalks are not required along controlled access roadways (freeways). (Ord. 125, 6-20-2000)

7-4-3: UTILITY LINES: Where such services and utilities are available, water, electrical, phone and TV cable shall be installed when property is developed. Such installation shall be underground if possible. Lines shall be laid and stubbed to the property lines before road surfacing is placed. Easements for utility lines need to be wide enough to accommodate trenching and service equipment. This should not be less than ten feet (10') in width and in many cases may need to be fifteen feet (15') **wide** or more **wide dependent depending** upon the number and depth of utilities anticipated to be placed there. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-4: DOMESTIC WATER:

A. Central water distribution systems may be installed in all subdivisions or major partitions and where available, shall connect to a public distribution system.

B. A statement of all water rights shall be provided with the application for subdivision, and all partitions.

C. All water systems and/or wells shall meet the standards of the following agencies, when applicable:

Oregon State Health Division,

Malheur County Health Department, and

Other state or federal agencies which have requirements applicable to wells and water systems.

(Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-5: IRRIGATION WATER: Where the property being partitioned or subdivided has a water right, a water rights division plan shall be approved by the appropriate irrigation district. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-6: DRAINAGE: The subdivider shall provide such drainage structures or improvements necessary to prevent the ponding of surface water within the roadway of a street, and to assure the unimpeded flow of water within natural drainage courses transversed by a street. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-7: STREAM EASEMENTS: The reservation of an easement along any stream or surface drainage course located in the area for the purpose of widening, deepening, sloping, improving or protecting the stream or drainage course. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-8: SEWAGE DISPOSAL: The method of sewage disposal for each lot within a land division shall be in accordance with the requirements and standards for sewage disposal administered by and under the jurisdiction of the following agencies when applicable:

Oregon State Department of Environmental Quality (DEQ),

Malheur County Health Department, and

Other state or federal agencies which have regulations applicable to septic tank/drainfields, community disposal.

Subdivider shall be responsible for providing the necessary information required to determine the adequacy of the method of sewage disposal proposed. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-9: BLOCKS: The width of blocks shall be such as to allow two (2) tiers of lots unless exceptional conditions are, in the opinion of the Malheur County Planning Commission, such as to render this requirement undesirable and that makes a relatively short length of double frontage lots unavoidable. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-10: LOTS:

A. Lots shall not be greater in average depth than three (3) times their average width. A ten percent (10%) variation in depth may be allowed to accommodate irregular topography or other factors. Where individual septic systems are to be used, the buildable area of the lots or parcels shall be a nominal (approximate) one (1) acre. Where a public or central septic system will be used, lot area may be reduced to one-quarter (1/4) of a nominal (approximate) acre or as specified in the specific zone of the proposed division of land.

B. Lots shall have frontage upon a dedicated public road or street of not less than seventy five percent (75%) of their average lot width. Exceptions exist: flag lots as provided in Section 7-4-11 of this chapter, and lots around the end of a cul-de-sac, and lots around the external radius of a ninety degree (90°) or similar sharp street corner. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-11: FLAG LOTS: Flag lots offer an opportunity to utilize ground which might otherwise go to waste within a residential district. The access stem of a flag lot shall not be less than twenty feet (20') in width. In addition to other setbacks, a fifty foot (50') radius shall be provided from the end point of the access stem nearest the buildable portion of the lot. This is to secure adequate turnaround for emergency vehicles, guests and errant vehicles. One flag lot is prohibited from being placed behind another flag lot unless a canal, river, major topographical obstruction or existing development makes a public street or cul-de-sac impracticable in the judgment of the Malheur County Planning Director. (Ord. 125, 6-20-2000)

7-4-12: LOT BOUNDARY OR RIGHT-OF-WAY LINES: No lot shall be divided by the boundary line of a county or city, school district or other taxing district or by the right-of-way or easement of an irrigation facility or utility line. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-13: FIRE PROTECTION:

A. If the development or subdivision is not within an existing fire protection district, the subdivider shall make prospective buyers aware of that fact by placing the information on the tentative and final plat of the subdivision or partition.

B. Fire hydrants connected with the public water supply shall be installed in all land divisions with central water supply.

C. Provisions for fire protection shall be made where forest or other vegetation is likely to constitute a fire hazard as follows:

1. Fire Breaks: Fire breaks shall be provided as may be specified by the appropriate fire protection agency. Access roads may be used as fire breaks where provided at suitable locations as determined by the fire protection agency or Oregon Department of Forestry.

2. Emergency Access: Two (2) or more improved all weather access points from the development, subdivision or major partition may be required by the Malheur County Planning Commission for the purpose of fire protection egress and ingress to ensure public safety as may be specified by the appropriate fire protection agency. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

7-4-14: OTHER IMPROVEMENTS: In addition to the improvements required by the provisions of this title, the subdivider may be required to provide other improvements because of specific features of the land, or the design of the subdivision or major partition. Improvements such as bridges, culverts and the fencing of watercourses, right-of-way and the creation of recreation areas and facilities may be required where necessary for health, safety and general welfare of residents of the subdivision or major partition. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

CHAPTER 5 PLANNED UNIT DEVELOPMENTS (PUD)

SECTION:

7-5-1: Purpose

7-5-2: Aesthetic Considerations of Planned Unit Developments

7-5-3: Development Standards

7-5-4: Owners' or Renters' Association

7-5-5: Tentative Plan

7-5-6: Common Open Spaces

7-5-7: Review and Approval

7-5-1: PURPOSE: The planned unit development concept is established to allow development of tracts of land that are large enough to allow creativity and flexibility to be exercised to a greater extent than is possible in a conventional subdivision setting. Deviation from specific site development standards of this Title and the Zoning Ordinance, Title 6 of this Code, is allowed; provided that, the general intent of the provisions of this Title and applicable zoning regulations are observed. The basis of this approach is to utilize the economy of shared services, encourage the grouping of compatible uses, and to take the highest advantage of the following:

- A. Recognition and resolution of problems created by increasing population density.
- B. A comprehensive approach to development which results in a better placement and use of buildings, open spaces, circulation and parking facilities, and other improvements that would result from a traditional subdivision approach.
- C. Economic incentives which could encourage a developer to set aside increasing percentages of open space, or to develop recreation or other amenities to higher levels. (Ord. 25, 3-2-1983; 1989 Code)

7-5-2: AESTHETIC CONSIDERATIONS OF PLANNED UNIT DEVELOPMENTS: The developer of a planned unit development shall include the appropriate architectural and site development plans which shall show proposed building location, specific landscaping; prominent existing trees; ground treatment, sight-obscuring fences or hedges; off-street parking; vehicular and pedestrian circulation; major exterior elevations of buildings showing their exterior treatment, materials and color; elevational design of advertising structures, showing their message, materials and color. (Ord. 25, 3-2-1983; 1989 Code)

7-5-3: DEVELOPMENT STANDARDS:

A. Densities in a planned unit development may be in excess of the density specified in the zone in which the land is located. In order to encourage provision of open space, the number of dwelling units that might have been provided on land set aside for open space are allowed to be located elsewhere in the development. This increases the density in the built up portions of the PUD. Based upon the following criteria, the number of dwellings transferable from the open space land may be increased:

1. A five percent (5%) increase in density for an approved common open space program if it is to be maintained in a clean and natural appearance by the developer, or home owners' association and is dedicated to the public.
2. A ten percent (10%) increase if the approved open space program is to be improved by the developer and dedicated to the public.

3. A fifteen percent (15%) increase in density for distinctiveness and excellence in setting, design and landscaping which will provide unusual enhancement to the development and a perceivable benefit to the community as a whole.

B. The Malheur County Planning Commission may prohibit or limit any increase in density by the amount necessary to avoid undue burdens on public services, or if density increase would substantially reduce livability in the proposed development.

C. Construction of roads, placement of utilities and provision of any amenities shall be provided in conformance with Chapters 4, 6 and 8 of this Title unless such provisions are not applicable to the proposed development. (Ord. 25, 3-2-1983; 1989 Code)

7-5-4: OWNERS' OR RENTERS' ASSOCIATION: A tentative plan for a planned unit development shall be accompanied by a proposed owners' or renters' association agreement which shall address the following considerations at a minimum:

A. Method for insuring adequate financial support for all common areas and facilities.

B. Any and all provisions necessary to maintain the development as an asset to itself and the community.

C. Procedures for amendment for sufficient cause. Such amendments are reviewable by the Malheur County Planning Commission. (Ord. 25, 3-2-1983; 1989 Code)

7-5-5: TENTATIVE PLAN: A tentative plan for a planned unit development shall:

A. Be prepared and reviewed in conformance with Sections 7-2-2, 7-2-3, 7-2-4, 7-3-1, 7-3-2, 7-3-3, and 7-3-4 of this Title.

B. Contain information described in Sections 7-3-5 and 7-3-6 of this Title.

C. Contain the following information concerning the proposed development:

1. A map to scale showing street systems, lot or partition lines and other divisions of land for management, use or allocation purposes.

2. Areas proposed to be conveyed, dedicated or reserved for public streets, parks, parkways, playgrounds, school sites, public buildings, and similar public and semi-public uses and facilities.

3. A development schedule indicating:

i. The approximate date when construction of the project can be expected to begin.

ii. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

- iii. The anticipated rate of development.
 - iv. The approximate dates when each stage in the development will be completed.
 - v. The area, location and degree of development of common open space that will be provided at each stage.
4. Agreements, provisions or covenants which govern the use, maintenance, financial support, and continued protection of the planned unit development and any of its common open space areas.
- D. In addition to the above requirements for a tentative **plat plan**, the final **plat plan** shall contain a plot plan for each building site and common open space area, showing the location of buildings, structures and other improvements and indicating the open spaces around buildings and structures. (Ord. 25, 3-2-1983; 1989 Code)

7-5-6: COMMON OPEN SPACES:

- A. An acceptable common open space program shall meet the following criteria:
- 1. The location, size and authorized uses are appropriate to the character of the proposed development.
 - 2. Open space shall be improved for the use intended and shall be completed on a schedule coordinated with the residential construction in the development.
 - 3. The developer shall post a bond or other approved assurance that the improvements in the common open space will be completed within a specified period of time. The County shall release the bond or other assurance when the improvements have been completed according to the development plan.
- B. Open space management shall conform to one of the following:
- 1. Common open space shown on the final development **plat plan** shall be conveyed to an association of owners or tenants, created as a nonprofit corporation under the laws of the State. There shall be restrictions in the deed which provide that failure of the association to provide maintenance during the growing season and to protect grass, shrubbery and trees for the following periods of time, ownership and control is automatically vested in the County:
 - i. Lack of water - one week.
 - ii. Lack of insect pest control - one month.
 - iii. Lack of weed control - one growing season.
 - iv. Lack of recreation facility maintenance and serviceability - one growing season.

The association shall adopt and impose articles of incorporation and bylaws, and adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to and approved by the Malheur County Court. Such an association shall be formed and continued for the purpose of maintaining the common open space and all improvements. Such provisions shall be set forth as a part of each sale, lease or rental contract or deed involving any lot, parcel, facility, component or interest in the subject development.

2. In lieu of the above, the common open space may be dedicated to the public. The home owners' association may act as an advisory body to the Malheur County Court on the types and quality of maintenance and improvements proposed within these common open space areas. In this case, the home owners' association shall, before the beginning of April each year, pay the Malheur County for the maintenance costs incurred the previous growing season. Special funding and payment schedules may be mutually agreed to between the Malheur County and the home owners' association for new capital improvements to the open space sponsored by that association.

C. In the event the home owners' association becomes ineffective, the Malheur County Court shall create a special service district controlled by the Malheur County to provide for payment of maintenance and improvements carried out by the Malheur County on the open space.

D. No common open space may be put to a use not specified in the final development plat plan unless the final development plat plan is first amended to permit the use. However, no change of use may be authorized as a waiver of any of the covenants limiting the use of common open space areas and all rights to enforce these covenants against any use permitted are expressly reserved by the County. (Ord. 25, 3-2-1983; 1989 Code)

7-5-7: REVIEW AND APPROVAL: Review and decision procedures by the Malheur Planning Department, Malheur Planning Commission and Malheur County Court will be conducted in conformance with Chapters 2, 3 and 6 of this Title. (Ord. 25, 3-2-1983; 1989 Code)

CHAPTER 6 FINAL SUBDIVISION AND PLANNED DEVELOPMENT PROCEDURES

SECTION:

- 7-6-1: Final Application and Approval
- 7-6-2: Filing Procedure
- 7-6-3: Oregon Real Estate Commissioner
- 7-6-4: Form of Final Plat

- 7-6-5: Contents of Final Plats
- 7-6-6: Review by County Surveyor
- 7-6-7: Final Plat Monument Standards
- 7-6-8: Final Plat Affidavit of Survey
- 7-6-9: Bond for Interior Monuments
- 7-6-10: Certification on A Final Plat of a Subdivision Or Development
- 7-6-11: Dedications and Public Utility Requirements
- 7-6-12: Designation and Conveyance of Reserve Strips as Lots
- 7-6-13: Improvements
- 7-6-14: Water and Sewage Requirements
- 7-6-15: Recording of Final Plat
- 7-6-16: Partitioning of Lots in Platted Subdivisions and Planned Unit Developments

7-6-1: FINAL APPLICATION AND APPROVAL: Within one (1) year from the date of any approval or conditional approval of the proposed plan, the subdivider may submit a final plat conforming to this chapter and Chapters 4 and 8 of this title. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-2: FILING PROCEDURE: The subdivider shall file with the Malheur County Planning Department one complete set of original tracings, four (4) copies from the tracings, and one copy of deed, deed restrictions, covenants, homeowners' association agreements, bonding agreements for improvements and any other relevant documents and information. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-3: OREGON REAL ESTATE COMMISSIONER: The subdivider shall provide a statement from the Oregon Real Estate Commissioner's office indicating that the appropriate documentation has been received by that office to conform to ORS 92.305 to 92.495. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-4: FORM OF FINAL PLAT: The final plat shall be prepared in accordance with ORS 92.080. All plats subdividing any tracts of land in the Malheur County and dedications of streets or roads and other writings made a part of such plats offered for record in the county shall be made in permanent black India ink, upon material that is

eighteen inches by twenty four inches (18" x 24") in size, is a good quality linen, tracing cloth, Mylar or other suitable drafting material having the same or better capabilities of strength, stability and transparency, and is suitable for binding and copying purposes. The scale of the plat and the lettering shall be of such a size as will be clearly legible but no part shall come nearer than one inch (1") to any edge of the sheet. The plat may be placed on as many sheets as necessary but a face sheet and index page shall be included for plats placed upon three (3) or more sheets. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-5 CONTENTS OF FINAL PLATS: The final plat shall show the following:

- A. Number and Name: The plat number and name of the development or subdivision, date of preparation, north point and scale.
- B. Legal Description: A legal description of all the property being developed or subdivided, by reference to recorded subdivisions and sectional surveys.
- C. Documentation: Affidavits, certificates, acknowledgments, endorsements, acceptance of dedication and notarial seals required by state law and by this title.
- D. Streets: The locations, names and widths of streets and rights-of-way.
- E. Pedestrian and Bicycle Facilities: The locations, design and widths of pedestrian and bicycle facilities, including accessways.
- F. Open Space: The locations and dimensions of all open space, public areas and the net acreage of each.
- G. Easements: The widths and side lines of all easements to which the lots are subject, and the book and page number of the county records in which any previously existent easement appears. Easement for utilities and other similar purposes shall be denoted by broken lines.
- H. Locations and Widths: Locations and widths of drainage channels, irrigation canals, railroad rights-of-way, reserve strips, streets, alleys and pedestrian-ways adjacent to the proposed development or subdivision.
- I. Rights of Access: Limitations on rights of access to and from streets and lots and other parcels of land; dedications of access rights to specific lots where appropriate.
- J. City Boundary Lines: City boundary lines, near or adjacent to the subdivision.
- K. High Water Lines: Normal high water lines for any creek, river or other body of water.
- L. Dimensions: The net dimensions of each lot. Ditto marks may be used where lot dimensions are repetitively identical. Sufficient data shall be shown to determine readily the bearing and length of each lot line.

M. Lot Numbers: Lot numbers beginning with the number "1" and numbered consecutively in each block; block numbers beginning with the number "1" and continuing consecutively without omission or duplication throughout the subdivision. Block numbers in an addition to a subdivision of the same name shall be a continuation of the number of the original subdivision.

N. For Planned Unit Developments: Appropriate architectural and site development **plats plans** drawn to scale, which shall show proposed subsurface sewage system disposal locations or locations of other means of sewage disposal; water well locations; building locations; specific landscaping; prominent existing trees; ground treatment; sight obscuring fences and hedges; off street parking; vehicular, bicycle and pedestrian circulation; major exterior elevations of buildings, design of advertising structures in conformance with sign standards in the zoning ordinance.

O. Additional Information: Additional information required by the Malheur County Planning Commission as a condition of tentative plat approval.

P. Surveying Data: The following surveying data:

1. The radius, length, central angle, long chord distance and bearing and tangent of all curves.
2. The location of all permanent monuments within the proposed subdivision.
3. Ties to and names of adjacent subdivisions.
4. Ties to boundary lines and section or one-quarter (1/4) section corners immediately surrounding the plat.
5. Adequate boundary control surveys and/or sectional subdivisions and proper monumentation according to ORS chapter 92. (Ord. 125, 6-20- 2000)

Note See title 6, chapter 7 of this code.

7-6-6: REVIEW BY MALHEUR COUNTY SURVEYOR: The Malheur County Surveyor shall examine the plat for compliance with requirements for accuracy and completeness and shall collect such fees as are provided by state law. He may make checks in the field to verify that the map is sufficiently correct on the ground and he may enter the property for this purpose. If he determines that there has not been full conformity, he shall advise the subdivider of the changes or additions that must be made and afford the subdivider an opportunity to make such changes or additions. When the county surveyor determines that full conformity has been made, he shall so certify and return the plat to the Malheur County Planning Department **office**. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-7: FINAL PLAT MONUMENT STANDARDS:

A. The initial point of all final plats shall be marked with a monument, either of stone, concrete or galvanized iron pipe. If stone or concrete is used, it shall not be less than six inches by twenty-four inches (6" x 24"). If galvanized iron pipe is used, it shall not be less than two inches (2") in diameter and three feet (3') long. The monument shall be set or driven six inches (6") below the surface of the ground. The location of the monument shall be with reference to some known corner established by the United States survey.

B. The intersections of all streets and roads and all points on the exterior boundary where the boundary line changes direction shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods. If stone or concrete is used, it shall not be less than one inch (1") in diameter and thirty inches (30") long, and if iron or steel rods are used, they shall not be less than five-eighths inch (5/8") in least dimension and thirty inches (30") long.

C. All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch (1/2") in diameter or iron or steel rods not less than one-half inch (1/2") in least dimension and twenty-four inches (24") long.

D. Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot (.10').

E. All monuments for the exterior boundaries of a subdivision shall be marked and such monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to the recording of the plat of the subdivision if the engineer or land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in subsection 7-6- 8B of this Chapter and if the person subdividing the land furnished to the Malheur County Court a bond or cash deposit guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in Section 7-6-9 of this Chapter. (Ord. 25, 3-2-1983; 1989 Code)

7-6-8: FINAL PLAT AFFIDAVIT OF SURVEY:

A. Except as otherwise provided in this Section, all final plats shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect that he has correctly surveyed and marked with proper monument as provided in Section 7-6-7 of this Chapter indicating the initial point of such monument, and its location with reference to some known corner established by the United States survey, or giving two (2) or more objects for identifying its location, and accurately describing the tract of land upon which the lot and blocks are laid out.

B. If the person subdividing any land has complied with Section 7-6-9, the surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced thereon as submitted for recording. There shall be attached to any such final plat the affidavit of the surveyor that the interior monuments for the subdivision will be marked on or before a specified date in accordance with Section 7-6-7 and referenced on the plat for the subdivision as approved by the County.

C. After the interior monuments for a subdivision have been marked as provided in an affidavit submitted under subsection B of this Section, the surveyor performing such work shall:

1. Within five (5) days after completion of such work, notify the person subdividing the land involved, the Malheur County Surveyor and the Malheur County Court.
2. Reference such monuments on an exact copy of the subdivision plat as previously recorded.
3. Upon approval of such plat copy under ORS 92.100, file such plat copy with the Malheur County Court.

D. Upon receipt of a plat copy filed pursuant to subsection "C" of this Section, the County Clerk shall record such plat copy and endorse the recording reference for such plat copy upon the plat of the subdivision previously recorded. The recording reference for such plat copy shall operate as reference to the interior monuments referenced on such plat and shall constitute constructive notice of such monument references for all purposes as though such monuments had been referenced on the plat of the subdivision as previously recorded. (Ord. 25, 3-2-1983; 1989 Code)

7-6-9: BOND FOR INTERIOR MONUMENTS:

A. If the interior monuments for a subdivision are to be marked on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in such plat shall furnish, prior to recording the plat, to the Malheur County Court a bond or cash deposit, at the option of the Malheur County Court **Board**, in an amount equal to not more than one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation.

B. If the person subdividing the lands described in subsection "A" of this Section pays the surveyor for performing the interior monumentation work and notifies the Malheur County Court of such payment, the Malheur County Court, within three (3) months after such notice, shall release the bond or return the cash deposit upon finding that such payment has been made. Upon written request from the person subdividing the land, the Malheur County Court may pay the surveyor from monies within a cash deposit, if any, to such person.

C. In the event of the death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure or refusal of such surveyor to set such monuments, the Malheur County Court may direct the Malheur County Surveyor in his official capacity or contract with a surveyor in private practice to set such monuments and reference such monuments for recording as provided in ORS 92.070. Payment of the fees of a the Malheur County Surveyor or private surveyor performing such work shall be made as otherwise provided in this Section. (Ord. 25, 3-2-1983; 1989 Code)

7-6-10: CERTIFICATION ON A FINAL PLAT OF A SUBDIVISION OR DEVELOPMENT:
The following certificates and acknowledgments and others required by State law shall appear on the final plat. Such certificates may be combined where appropriate:

- A. A certificate of ownership, signed and acknowledged by the record owner and all parties owning an interest in the property, consenting to the preparation and recordation of the final plat, offering for dedication all parcels of land, streets, alleys, pedestrian-ways, drainage channels, easements and other rights-of-way intended for public use, and offering for dedication rights of access to and from prescribed streets, lots and parcels of land.
- B. A certificate of the registered engineer or licensed surveyor who prepared the survey and the final plat specifying that it is an accurate survey as prescribed in this Title and in accordance with State law.
- C. A certificate for execution by the chairman of the Malheur County Planning Commission.
- D. A certificate for execution by the irrigation and/or drainage district, where applicable water control district, water improvement district, drainage district or irrigation district; otherwise, a statement of water rights.
- E. A certificate of execution by the Malheur County Surveyor.
- F. A certificate of execution by the Malheur County Tax Collector.
- G. A certificate of execution by the Malheur County Assessor.
- H. A certificate for execution by the irrigation district, where applicable.
- I. A certificate for execution by the Malheur County Court.
- J. A certificate for execution by the Malheur County Watermaster regarding any water right.
- K. A certificate for execution by the mayor of an incorporated city within six (6) miles verifying city council approval of the plat. (Ord. 25, 3-2-1983; 1989 Code)

7-6-11: DEDICATIONS AND PUBLIC UTILITY REQUIREMENTS:

A. All parcels of land shown on the final plat as intended for public use shall be offered for dedication for public use at the time the proposed final plat is filed, except those parcels which are intended for the exclusive use of lot owners in the subdivision, their licensees, visitors, tenants and servants, and except parcels of land reserved for public use under the provision of Section 7-6-12. Lands to be devoted to public use are subject to utility or other easements.

B. All streets, pedestrian-ways, drainage channels, easements and other rights-of-way shown on the final plat as intended for public use shall be offered for dedication for public use at the time the final plat is filed.

C. All rights of access to and from streets, lots and parcels of land shown on the final plat intended to be surrounded shall be offered for dedication at the time the final plat is filed. (Ord. 25, 3-2-1983; 1989 Code)

7-6-12: DESIGNATION AND CONVEYANCE OF RESERVE STRIPS AS LOTS: One foot (1') reserve strips provided across the end of stubbed streets adjoining unsubdivided land or along half streets adjoining unsubdivided land may be designated; provided, however, that such reserve strip lots shall be exempt from all other provisions of this Title which govern the size or shape of lots or which are otherwise applicable to lots. Reserve strips shall be deeded to the County. The sole lawful purpose of reserve strips is to prevent access to abutting property only until such time as corresponding right-of-way is dedicated adjacent to the reserve strip upon that abutting property. At such time the restrictions upon the respective reserve strip or portion thereof shall automatically become null and void. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-13: IMPROVEMENTS:

A. The subdivider shall improve, or shall agree to improve and provide bonds accordingly, all lands dedicated for streets, alleys, pedestrian-ways, drainage channels, easements and other rights-of-way; all parks and recreation areas; as a condition precedent to acceptance thereof and approval of the final plat.

B. Improvements shall conform with the specifications of design and materials prescribed by the adopted county road standards or the standards of the appropriate road district. The subdivider shall give notice to the Malheur County Planning Department and Road Department and appropriate road district prior to the commencement of construction of improvements. (Ord. 125, 6-20-2000)

C. The subdivider shall place or bear the cost of placement of all other public utilities such as electrical service, water, sewer, etc. Such utilities shall be stubbed to each lot line to be serviced before the road is constructed.

D. The Malheur County shall have the right to enter upon the sites of improvements for the purpose of inspecting them. (Ord. 25, 3-2-1983; amd. 1989 Code)

E. Any required improvements, plans and profiles, and specifications of proposed road, water and sewage improvements shall be submitted to the appropriate county department for approval at the time the final plat is submitted for checking if this had not been previously done. Such plans and profiles shall show the full details of the proposed improvements. In the event that the developer wishes to construct improvements prior to the filing of the final plat, the Malheur County Planning Director may authorize initiation of such construction, upon submission by the developer of plans and profiles giving full details of the proposed improvements which conform substantially to the approved tentative plat as modified through the approval procedure following written concurrence by the Malheur County Road Department or appropriate road district. (Ord. 125, 6-20-2000)

F. Any performance agreement required plus four (4) copies of the same, shall be submitted to the Malheur County Planning Director to be distributed to, and reviewed by the appointed independent county engineer, roadmaster, district attorney and environmental health director on forms provided by the Malheur County Planning Department. Based upon the recommendations of other departments, the Malheur County Planning Director shall require a security amount adequate to cover the cost of all required improvements and related work. (Ord. 25, 3-2-1983; amd. 1989 Code)

Notes See section 7-3-7 of this title.

7-6-14: WATER AND SEWAGE REQUIREMENTS:

A. Evidence of Water Supply: In developments to be served by individual or community wells, documentation of test wells or other hydrologic testing which demonstrate an adequate supply for all anticipated needs of the development will be required and submitted to the Malheur County Planning Department before final approval is given.

B. Evidence of Sewage Disposal: Written certification of an available method of sewage disposal as required by the Oregon Department of Environmental Quality adequate to serve each lot intended for sewage disposal shall be provided to the Malheur County Planning Department prior to approval of final plat by the Malheur County Court.

C. Drainage: Where topographical and drainage conditions warrant, improved drainageways and drainage works may be required. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-15: RECORDING OF FINAL PLAT:

A. No plat shall have any force or effect until the same has been finally approved by the Malheur County Court. No title to any property described in any offer of dedication shall pass until the final plat has been recorded.

B. No plat shall be recorded unless all ad valorem taxes and all special assessments fees or other charges required by law to be placed upon the tax roll, which have become a lien upon the subdivision or which will become a lien during the calendar year, have been paid.

C. The developer shall also submit with the final plat an exact copy thereof, made with permanent black India type ink or silver halide, permanent photocopy upon a good quality of linen, tracing cloth, Mylar, or other suitable drafting material having the same or better characteristics of strength, stability and transparency. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the plat. The copy shall be filed with the county recorder and shall be filed in the archives of the county, and be preserved by filing without folding. The applicant shall provide without cost, prints from such copy to the Malheur County Assessor, Malheur County Environmental Health Director, **appointed independent county** engineer, Malheur County Planning Department and appropriate postal and fire protection agencies.

The final plat shall be accompanied by a filing fee as set by the Malheur County Court. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-6-16: PARTITIONING OF LOTS IN PLATTED SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS: Lots described on subdivision plats that have been filed under this title shall not be partitioned under Chapter 7 of this title. Property in a platted subdivision may be redivided only if the property is replatted according to the provisions of this chapter or Chapter 3 of this title. (Ord. 25, 3-2-1983; amd. 1989 Code)

CHAPTER 7 LAND PARTITIONING

SECTION:

7-7-1: Applicability of Regulations

7-7-2: Procedures and Requirements For Filing

7-7-3: Requirements for Tentative Or Conditional Approval

7-7-4: Improvement Requirements

7-7-5: Administrative Record of Partitioning

7-7-6: Approval Requirements for Creation Of A Fourth Parcel By Partitioning

- 7-7-7: Final **Plat Map** of Partition
- 7-7-8: Certification of Final Approval
- 7-7-9: Application Review
- 7-7-10: Appeal
- 7-7-11: Special Partitioning Regulations
- 7-7-12: Partitioning for Financial Purposes
- 7-7-13: Notice and Effect Of Violation

7-7-1: APPLICABILITY OF REGULATIONS:

A. **Technical** Review: All land partitioning within **the** Malheur County shall be reviewed by the Malheur County Planning Director or his designate as provided by Section 7-2-3 of this title. The Malheur County Planning Director may issue tentative approval of the partition if the proposal is in conformance with requirements of this chapter, and it does not require referral to the Malheur County Planning Commission as provided by Sections 7-3 and 7-7-6 of this chapter

B. Tentative Approval: The Malheur County Planning Director or his designate may, at his discretion, refer any partition proposal to the Malheur County Planning Commission for tentative approval after completion of the technical review.

C. Objectives: It is one of the objectives of this chapter to encourage or require that the partitioning of land contribute to the betterment of the respective neighborhood and the county as a whole. Irrespective of the **zone zoning** district, a partition proposal may be required to meet the standards of Chapters 4, 5 and 6 of this title which are appropriate, by virtue of surrounding development or requirements of the comprehensive plan, to the specific site. The most common requirement to be met will be the requirement to grant right-of-way for the transportation network.

D. Note: A partitioner must prepare filings with the Oregon Real Estate Commissioner as required in ORS 92.305 through 92.485 prior to sale or advertisement for sale of any lot within an approved subdivision. Because of this, it is recommended that the partitioner acquaint himself with the regulations of the Oregon Real Estate Commissioner before proceeding with a partition within a subdivision or a series partition. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-7-2 PROCEDURES AND REQUIREMENTS FOR FILING: Any person proposing a land partition, or his authorized agent, or representative, shall provide the following documents, in the manner prescribed below, along with the appropriate filing fee to the Malheur County Planning Department:

- A. One copy of a completed Malheur County partition application, and either Subsection “B or C” of this section, whichever is applicable. The design standards of Chapter 4 of this title shall apply.
- B. Proposal for partition of land in an EFU, ERU or EFFU zone shall submit one copy of a tentative **plat map** for partitioning as provided below:
1. The tentative **plat map** for partitioning may be submitted on the Malheur County assessor's map which includes the property to be partitioned.
 2. A plan of the proposed partitioning drawn **in** on the assessor's map which shows the dimensions and legal descriptions of the parcels to be created, location of all existing and proposed easements, and location of existing residential structures on the subject parcel.
 3. Name and address of the applicant, the landowner (if different), intended owner of new parcels (if known), present use of property, and any intended changes of use. (Ord. 25, 3-2-1983; amd. 1989 Code)
 4. For partitioning to accommodate legally existing dwelling site: intended access route to county road or state highway and legal description of access easement.

For all other partitions: intended route of proposed new road right-of-way necessary to provide frontage upon a public road or street for all parcels created and to serve lands beyond, and a legal description of that proposed right-of-way. Location of any proposed right-of-way shall be agreed to by the Malheur County Planning Director after consultation with the **appointed independent county** engineer and shall be consistent with the Malheur County Transportation System Plan (**TSP**). Direct preliminary discussion with the **appointed independent county** engineer is recommended. (Ord. 125, 6-20-2000)
 5. Date of preparation, signature of preparer and signature of landowner.
- C. Proposals for land partitioning in all zones other than those specified in Subsection “B” of this section at minimum shall submit a tentative **plat map** for partitioning as provided below:
1. A vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways and adjoining land use and ownership patterns. The map must include names of all existing roadways shown therein. (An assessor's tax lot map may be used for this item.)
 2. A plan of the proposed partitioning on forms provided by the Malheur County Planning Department, showing approximate tract boundaries and dimensions, the approximate area of each tract or parcel, locations of all easements, and the names, right-of-way widths and improvement standards of existing roads.

3. Names and addresses of the landowner, the applicant (if different), a mortgage if applicable, and the engineer or surveyor employed or to be employed to make necessary surveys and prepare the legal descriptions of each parcel to be created.
4. A statement regarding contemplated water supply, sewage disposal, fire protection and access.
5. North point, scale and date of map, and property identification by tax lot, section, township and range.
6. Statement regarding past, present and intended use of the parcels to be created, or the use for which the parcels are to be offered.
7. If a tract of land has water rights, the application shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the Malheur County Watermaster.
8. Location of all existing buildings, canals, ditches, septic tanks and drainfields.
9. Location of any topographical feature, which could impact the partition, such as canyons, bluffs, rock outcroppings, natural springs and floodplains. (Ord. 25, 3-2-1983; amd. 1989 Code)
10. For partitioning to accommodate legally existing dwelling site: intended access route to county road or state highway and legal description of access easement. For all other partitions: intended route of proposed new road right-of-way necessary to provide frontage upon a public road or street for all parcels created and to serve lands beyond, and a legal description of that proposed right-of-way. Location of any proposed right-of-way shall be agreed to by the Malheur County Planning Director after consultation with the appointed independent county engineer and shall be consistent with the Malheur County's Transportation System Plan (TSP). Direct preliminary discussion with the appointed independent county engineer is recommended.
11. Location, width, name, approximate location and approximate grade of all proposed rights-of-way.
12. The location and design of all proposed pedestrian and bicycle facilities, including accessways if required by this title or the zoning ordinance. (Ord. 125, 6-20-2000)

7-7-3: REQUIREMENTS FOR TENTATIVE OR CONDITIONAL APPROVAL:

- A. No application for partitioning in any zone shall receive tentative approval unless the following minimum requirements are met:

1. A minimum of five (5) years since the subject land was last involved in a partition creating three (3) parcels. If only two (2) parcels were created, the third parcel may be created without resetting the five (5) year clock. (Ord. 25, 3-2-1983; amd. 1989 Code)
2. Proposal is in compliance with the Malheur County's Comprehensive Plan, Transportation System Plan (TSP) and applicable zoning.
3. Proposal does not conflict with acquired public access easements within or adjacent to the partition and contributes its appropriate share to widening, extension and improvement of public rights-of-way and easements. (Ord. 125, 6-20-2000)
4. Each parcel is suited for the use intended or offered.
5. An approved water rights division plan is provided if water rights are involved in the action.
6. A statement from the administrative officer of any incorporated city within six (6) miles of the proposed partition stating any recommendations planning, engineering or other appropriate staff of the city have regarding the proposed partition.

B. In addition to the requirements specified in Subsection "A" of this section, no partition in any zone other than EFU, ERU, or EFFU shall receive tentative approval unless all required public services and facilities are available and adequate, or are proposed to be provided by the petitioner. (Ord. 25, 3-2-1983; amd. 1989 Code)

C. The Malheur County Planning Director or his designate shall complete the his technical review of partition proposals and then forward to the Malheur County Planning Commission all partition proposals which create lots for which a street or road dedication is necessary in order to provide the frontage each parcel must have upon a public road or street (a major partition).

D. The Malheur County Planning Department shall provide notice to the Oregon Department of Transportation (ODOT) as required by OAR 660-12-045(2)(f). (Ord. 125, 6-20-2000)

7-7-4: IMPROVEMENT REQUIREMENTS:

A. Minor Partitions: Inside all zones other than EFU, ERU or EFFU, available public utilities shall be provided as prescribed by subsection 7-6-13C of this title, to all parcels created by the proposed partitioning. (Ord. 25, 3-2-1983; amd. 1989 Code)

B. Major Partitions:

1. Inside all zones other than EFU, ERU or EFFU, available public utilities shall be provided, as prescribed by Section 7-6-13 of this title to parcels created by the proposed partitioning.
2. In all zones, partitions which do not have frontage on a county or public road shall provide a road from the nearest county or public road to the parcels which are to be created by the partitioning.

Exception: Those cases where a single flag lot can be used to provide necessary frontage on an existing public road or street, the nearest one-half (1/2) right-of-way of which conforms to the width standards of this title. The road shall be constructed to the standards specified by the Malheur County Road Department for the area of the county in which the property is located, and by the adopted road standards and access management guidelines, or by the standards of the appropriate road district.

Major partition roads shall be dedicated to the public, and may be accepted into the county road system. Said roads shall be provided as prescribed by Section 7-6-13 of this title.

3. The dedication of additional right-of-way and widening of the existing streets adjacent to or within a tract shall be required where such existing facilities do not conform to dimensional standards herein or are inadequate to safely accommodate traffic anticipated by the Malheur County Road Department.

Through lanes, turn lanes, frontage roads or walkways may be required to ensure traffic and pedestrian safety and to ensure efficient traffic flow. (Ord. 125, 6-20-2000)

7-7-5: ADMINISTRATIVE RECORD OF PARTITIONING: The Malheur County Planning Department shall implement a current record of all partitioning approved in the Malheur County. This record may be the recorded records of the Malheur County Clerk. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-7-6: APPROVAL REQUIREMENTS FOR CREATION OF A FOURTH PARCEL BY PARTITIONING: When any property which exists as a unit of ownership at the date of adoption of this title (regardless of intervening ownership changes of the entire property of new parcels) is partitioned into three (3) parcels, the application for creation of the fourth parcel on the property shall be administered in conformance with the following provisions:

- A. The Malheur County Planning Director shall review the application for compliance with this title and shall transmit the partition application and his comments to the Malheur County Planning Commission. The Malheur County Planning Director shall not have the authority to approve a partitioning application for creation of a fourth parcel from a unit of ownership which existed at the date of adoption of this title.

B. When a partitioning application is referred to the Malheur County Planning Commission as provided in this section, the Malheur County Planning Commission review shall be conducted as follows:

1. The applicant shall submit a master plan for future development of the entire property. This plan shall be constructed in conformance with Sections 7-3-1 through 7-3-6 of this title.
2. The Malheur County Planning Commission shall conduct a master plan review in conformance with Section 7-3-7 of this title.
3. Appeal and termination of a master plan approval shall be conducted in conformance with Sections 7-3-8 and 7-3-9 of this Title.

C. The approved master plan shall be kept on file in the Malheur County Planning Department, and shall guide future development of the property unless changes are approved by the Malheur County Planning Commission.

D. Once a master plan has been approved as required in Subsection "B" of this Section, further partitioning may be approved by the Malheur County Planning Director, or his designate, provided that all further partitioning requests are in substantive conformance with the approved master plan.

E. All partitions processed under this Section shall be surveyed. (Ord. 25, 3-2-1983; 1989 Code)

7-7-7: FINAL PLAT MAP OF PARTITION: Following approval of the tentative plat map for a proposed partitioning, the applicant shall prepare and submit to the Malheur County Planning Department the final plat map or drawing for the subject partitioning. Such filing shall be completed within six (6) months from the date of the approval, or the approval shall be void. The final plat map or drawing shall be prepared in accordance with the following requirements and submitted to the Malheur County Planning Department:

A. Final Map In EFU, ERU or EFFU Zones: In EFU, ERU or EFFU, Zones, the tentative plat map may act as the final plat map if no changes are required by the Malheur County Planning Director, or his designate or the Malheur County Planning Commission.

B. Final Plat Map In Zones Other Than EFU, ERU or EFFU: In zones other than EFU, ERU or EFFU, the final plat map shall meet the following requirements:

1. Maps shall be drawn on eight and one-half inch by eleven inch (8 1/2" x 11") sheets or forms provided by the Malheur County Planning Department.
2. They shall be drawn to scale sufficient to show necessary detail.
3. Name of the owner, developer, and engineer or surveyor shall be shown on the map or drawing.

4. Date, scale, north point, legal description of boundaries and a tie by actual survey to a section or donation land claim corner.
 5. Parcel boundary lines, with dimensions and bearings and the area of each parcel shall be shown. Horizontal closure of all parcel boundaries shall be one in ten thousand (10,000) or better.
 6. An affidavit by the engineer or surveyor having surveyed the land.
 7. A certification of acceptance of any public dedication.
 8. A guarantee of approved or required improvements, including identification of maintenance responsibilities for proposed or existing roads and streets.
 9. A statement of availability of water rights from the Malheur County Watermaster. Also, assignment of water right to each parcel shall be indicated on the map or drawing and certification of approval thereof.
 10. Certification of approval for execution by the parties specified in Section 7-7-8 of this Chapter. (Ord. 25, 3-2-1983; 1989 Code)
- C. Validity: In all cases, no such partition map, or plat or plan shall be recorded or have validity unless it is shall have the approval approved by of the Malheur County Planning Director, the Malheur County Surveyor and the Malheur County Assessor. Approvals shall be by dated signature in permanent black ink. (Ord. 96A, 1-2-1996)

7-7-8: CERTIFICATION OF FINAL APPROVAL: A final plat map shall be considered to have final approval upon completion of the following:

- A. Minor Partitions: Minor partitions must meet the following for final approval:
 1. Execution of a certification of approval by the Malheur Planning Director or his designate.
 2. Execution of a certification of approval by the chairman of the Malheur Planning Commission, if the proposal has been referred to the Malheur Planning Commission.
 3. Completion or satisfactory guarantee of completion of all conditions, or requirements specified in the tentative approval.
 4. A statement of water rights.
- B. Major Partitions: Major partitioning must meet the following for final approval:
 1. Execution of a certification of approval by the Malheur County Planning Director or his designate.

2. Execution of a certification of approval by the chairman of the Malheur County Planning Commission.
3. Execution of a certification of approval by the Malheur County Court.
4. Execution of a certification of approval by the city council of any city **is** within six (6) miles.
5. Completion or satisfactory guarantee of completion of all conditions and requirements specified in the tentative approval.
6. A statement of water rights from the **Malheur County Watermaster**. (Ord. 25, 3-2-1983; 1989 Code)

7-7-9: APPLICATION REVIEW:

- A. Within ten (10) working days after receiving an application for a land partitioning, the Malheur County Planning Director shall, after consultation with the Malheur County Surveyor, initiate **s** review of the application and tentative **plat map**, and shall give tentative approval, **denial deny** or refer the proposal to the Malheur County Planning Commission.
- B. When an application is referred to the Malheur County Planning Commission by the Malheur County Planning Director under provisions of Section 7-7-1 of this Chapter, the Malheur County Planning Commission shall either give tentative approval, **denial deny** or require modification in the proposal. Such action shall take place at the next regular meeting after referral from the Malheur County Planning Director.
- C. When an application is referred to the Malheur County Planning Commission under provisions of Section 7-7-3 of this Chapter, action shall proceed as specified in Section 7-7-6 of this Chapter.
- D. The Malheur County Planning Commission may, of its own initiative, review a tentative approval by the Malheur County Planning Director. (Ord. 25, 3-2-1983; 1989 Code)

7-7-10: APPEAL: An appeal of **a** decision or requirements of the Malheur County Planning Director or Malheur County Planning Commission shall be made in accordance with the provisions of Chapter 9 of this Title. (Ord. 25, 3-2-1983; 1989 Code)

7-7-11: SPECIAL PARTITIONING REGULATIONS:

A. The partitioning of a tract of land in which not more than one (1) parcel is created and transferred to a public or semi-public agency for the purpose of a road, railroad, electric substation or canal right-of-way may be approved by the Malheur County Planning Director. A filing fee shall be may be required with the application to the Malheur County Planning Department.

B. The adjustment of a lot line by the relocation of a common boundary may be approved by the Malheur County Planning Director. Such adjustments shall be presented on the same partition plat map as required for the zone in which the property is located.

A boundary adjustment does not include any of the following:

1. Creation of an additional parcel, ownership or tax lot.
2. Reduction of a parcel below the minimum lot size required by the applicable zoning other than EFU, ERU and EFFU classifications. Within the EFU, ERU and EFFU Zones, the lot line adjustment shall be subject to the land division criteria of Section 6-3A-5 of the Zoning Title of this Code.
3. Transfer of dwellings from one ownership to another.

C. A memorandum of partition may be recorded with the Malheur County Clerk, on a form prescribed by the Malheur County Planning Director, indicating that a partition has been made in accordance with the provisions of this Title, and that the survey plats maps have been filed with the Malheur County Clerk. (Ord. 25, 3-2-1983; 1989 Code)

7-7-12: PARTITIONING FOR FINANCIAL PURPOSES:

A. Upon application to the Planning Director, a special permit may be granted authorizing the creation of a security interest in a parcel of land which is in an EFU, ERU and EFFU Zones.

B. Permits issued under the authority of this Section shall be subject to the following limitations and restrictions:

1. A parcel possessed or subject to a right of possession by a person under the terms of a foreclosure of a security interest, and the remaining parcels, must remain in the same legal use the parcels were in at the time the interest became possessory, except the parcels may be put into agricultural use; but in no case may an additional structure or improvement, other than that, which is the subject of the applicable security interest, be added to any parcel by the authority of the permit authorized in Subsection "A" of this Section. In order to establish uses other than agriculture, or to erect structures other than farm accessory structures, the owner of the parcel must secure a land partitioning approval as otherwise required by this Title.

2. The permit authorized in Subsection “A” of this section shall be valid only for the time of the life of the security interest, except in the case of default and foreclosure upon the interest. In the case of default and foreclosure, the permit shall be valid only until a land partitioning permit is granted, or the parcels are rejoined in a contiguous unit of land under the same ownership.

3. At the expiration of the security interest, if there is no default or foreclosure, the parcels shall be deemed to be rejoined into a contiguous unit of land under one ownership and shall be reunited or combined into a single tax lot and this permit authorization automatically becomes void.

The owner of the property shall be in violation of this Title if he has not, within thirty (30) days of the permit becoming void, made written application to the Malheur County Assessor for the combination of the parcels into a single tax lot.

C. No permit may be issued under this section until the owners of the subject property and the holder of the security interest sign a statement indicating that all parties agree to comply with the limits being placed upon the permit.

D. The permit issued under this section shall be immediately void, if the owner of the property attempts any transfer of the subject parcels, except as provided by the terms of the permit or of this Title and the Zoning Ordinance, Title 6 of this Code.

E. The partitioning permit authorized by this section shall be granted only if the applicant certifies and the Malheur County Planning Director finds that:

1. The intended partitioning is temporary and not created for the purpose of evasion of the requirements of this Title, other Malheur County ordinances or regulations or State law.

2. The partitioning will not result in the need for additional roads or other access.

3. The partitioning will not result in the need for additional improvements.

4. The partitioning will not interfere with adjoining and area land uses.

5. The partitioning will not violate any provisions of applicable zoning or policies of the Malheur County Comprehensive Plan

F. In those situations where foreclosure of less than the full property was not contemplated at the time of financing, and in situations where the lender is willing to allow the landowner to retain his dwelling and not more than three (3) acres, and the landowner will be resident in the dwelling for at least one (1) year, the Malheur County Planning Director may apply the provisions of this section retroactively. (Ord. 25, 3-2-1983; 1989 Code)

7-7-13 NOTICE AND EFFECT OF VIOLATION:

- A. Any property action which is subject to partitioning and which is not approved by the procedures prescribed in this chapter is a violation of this Title.
- B. Notification of such violation will be made by certified return-receipt mail. The violator will be given adequate opportunity to correct the offending action. Failure by the Malheur County Planning Department to discover the violation and/or give notice shall not change the legal status of the violation.
- C. If the action is not corrected within the specified time, a document will be filed with the Malheur County Clerk. This document will reference the property which is in violation, and will encumber the title to the property. Specifically, use of the property for any further development will be forbidden. The purchaser (if one is involved) will obtain no rights pertaining to ownership or utilization of the property.
- D. Penalties for violation as prescribed in this Title may also be pursued by the Malheur County Planning Department. (Ord. 25, 3-2-1983; 1989 Code)

CHAPTER 8 VARIANCES

SECTION:

- 7-8-1: Variances Authorized
- 7-8-2: Application
- 7-8-3: Referrals
- 7-8-4: Action of Planning Commission
- 7-8-5: Appeal of Variance Decision

7-8-1: VARIANCES AUTHORIZED:

- A. Specific variances, unrestricted or conditional, to the regulations prescribed by this Title may be authorized by the Malheur County Planning Commission in accordance with the procedures prescribed in Section 7-8-4 of this Chapter.
- B. Application for a variance shall be deemed to constitute a request for, and consent to a waiver of the statutory one hundred twenty (120) day application processing time provided in ORS 215.428. (Ord. 25, 3-2-1983; 1989 Code)

7-8-2: APPLICATION:

A. Application for a variance shall be made to the Malheur County Planning Director in writing. The subdivider/partitioner shall state fully the grounds for of the application, the facts relied upon, and any other data pertinent to the findings prerequisite to the granting of a variance as prescribed in Section 7-8-4 of this Chapter. The application shall be filed at the time of filing the preliminary plat of the subdivision or partition.

B. The applicant shall submit a statement and supporting facts for each of the findings to be made by the Malheur County Planning Commission in Section 7-8-4 of this Chapter. (Ord. 25, 3-2-1983; 1989 Code)

7-8-3: REFERRALS: The Malheur County Planning Director shall transmit copies of the application for a variance to the appointed independent County Engineer. The Malheur County Planning Director shall forward the appointed independent County Engineer's comments to the Malheur County Planning Commission together with a recommendation on the proposed variance. Any variance requested by the subdivider, or partitioner shall be made the subject of study and report by the Malheur County Planning Commission. Because of the additional time the Malheur County Planning Commission may be required to properly evaluate a variance request in addition to other work, submission of a variance request by the developer shall automatically extend the time for the Malheur County Planning Commission action on a subdivision or partition. (Ord. 25, 3-2-1983; 1989 Code)

7-8-4: ACTION OF MALHEUR COUNTY PLANNING COMMISSION:

A. The Malheur County Planning Commission shall consider the application for a variance at the same meeting at which it considers the tentative plat plan. A specific variance may be granted unqualifiedly, or may be granted subject to prescribed conditions on matters other than those relative to health and safety, provided that the Malheur County Planning Commission shall make all of the following findings:

1. That there are special circumstances or conditions affecting the property that do not normally apply to other property and that such circumstances or conditions make it impossible or impractical to comply with this Title.
2. That the variance is necessary for the proper design and/or function of the subdivision or partition.
3. That the granting of the variance will not be detrimental to the public welfare or injurious to the other property in the area in which the property is situated.

B. The granting of any variance by the Malheur County Planning Commission shall be invalid unless a specific explanation of the Malheur County Planning Commission's conclusion on each of the necessary findings is made a part of the approval and entered into the official minutes of the Malheur County Planning Commission. (Ord. 25, 3-2-1983; 1989 Code)

7-8-5: APPEAL OF VARIANCE DECISION: Malheur County Planning Commission's action on an application for a variance may be made the subject of an appeal by the applicant or an affected person. Such action shall be conducted in conformance with Chapter 9 of this Title. (Ord. 25, 3-2-1983; 1989 Code)

CHAPTER 9 ADMINISTRATION AND ENFORCEMENT

SECTION:

7-9-1: Interpretation

7-9-2: Administration of Title

7-9-3: Notice of Decisions

7-9-4: Appeals to A Hearing Body

7-9-5: Form of Petitions, Applications And Appeals

7-9-6: Notice of Public Hearing

7-9-7: Rules for Conduct Of Hearing

7-9-8: Fees

7-9-9: Abatement and Penalty

7-9-10: Notice of Violation

Notes These provisions as per ORS 92.205 through 92.245.

7-9-1: INTERPRETATION: Where the conditions imposed by a provision of this Title are less restrictive than comparable conditions imposed by the provisions of any other title, which are more restrictive, the more restrictive shall govern. (Ord. 25, 3-2-1983; 1989 Code)

7-9-2 ADMINISTRATION OF TITLE: The Malheur County Planning Director shall have the power and the duty to enforce the provisions of this Title. The Malheur County Court may appoint agents to issue zoning permits and to otherwise assist the Malheur County Planning Director in the processing of applications. (Ord. 25, 3-2-1983; 1989 Code)

7-9-3: NOTICE OF DECISIONS: Approval or denial of an application for a use permitted by this Title shall be based upon, and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, and explains the justification for the decision based on the criteria, standards and facts set forth. (Ord. 25, 3-2-1983; 1989 Code)

7-9-4: APPEALS TO A HEARING BODY: A person may appeal to the Malheur County Court **from** a decision or requirements made by the Malheur County Planning Commission. A person may appeal to the Malheur County Planning Commission **from** a decision or requirements made by the Malheur County Planning Director.

Written notice of the appeal must be filed with **the** Malheur County Planning Department within fifteen (15) days after the decision or requirement is made. The notice of appeal shall state the nature of the decision or requirement and the grounds for action of the appeal shall be as follows:

- A. The appropriate hearing body shall hold a hearing on the appeal within thirty (30) days from the time the appeal is filed. The body may continue the hearing for a good cause.
- B. The hearing body may review a lower decision upon its own motion after giving ten (10) days' notice to the parties involved in the decision, and if such review is initiated within fifteen (15) days of receipt of notice of said lower decision.
- C. An appeal of review proceeding shall be based on, but not limited to the record of the decision being appealed or reviewed. In appeals of subdivision or partition review proceedings, the hearing and record shall be limited to the subdivision or partition review criteria listed in subsection 7-3-7C or Section 7-7-3 of this Title as appropriate.
- D. Following the hearing, the Malheur County Court or Malheur County Planning Commission may affirm, overrule or modify any decision or requirement and shall set forth findings for such decision.
- E. The procedure, public notice and type of hearing for an appeal or review shall be in the same manner as required for the original application. (Ord. 25, 3-2-1983; 1989 Code)

7-9-5: FORM OF PETITIONS, APPLICATIONS AND APPEALS: Petitions, applications and appeals provided for in this Title shall be made on forms prescribed by the Malheur County Planning Department. Applications shall be accompanied by plans and specifications, drawn to scale, showing the actual shape and dimensions of the property in question; the sizes and locations on the lot of all existing and proposed structures; the intended use of each structure; the number of families, if any, to be accommodated thereon; the relationship of the property to the surrounding area, and such other information as is needed to determine conformance with this Title. (Ord. 25, 3-2-1983; 1989 Code)

7-9-6: NOTICE OF PUBLIC HEARING:

- A. Each notice of hearing or subdivision review authorized by this Title shall be published in a newspaper of general circulation in the Malheur County at least ten (10) days prior to the date of hearing.
- B. In addition, a notice of hearing for subdivision or partition review shall be mailed to all owners of property within two hundred fifty feet (250') of the property for which the variance, subdivision, partition or other land use has been requested. The notice of hearing shall be mailed at least ten (10) days prior to the date of hearing.
- C. Failure of a person to receive the notice prescribed in this Section shall not impair the validity of the hearing.
- D. The notice provisions of this section shall not restrict the giving of notice by other means, including mail, the posting of property or the use of radio and television. (Ord. 25, 3-2-1983; 1989 Code)

7-9-7: RULES FOR CONDUCT OF HEARING:

- A. Conduct at Hearings:
 - 1. When the hearing body is conducting a hearing, there shall be no audience demonstration, comments, or other conduct which would disrupt the hearing.
 - 2. Persons may speak only after being recognized by the chair and must state their full name and address for the record at the podium or table with microphone for recording.
 - 3. The hearing body considers only testimony and information that is relevant to the issue of the requested change, and will not allow immaterial or repetitious testimony.
 - 4. Public input and comment on the subject at hand shall be presented in the form and manner prescribed by published Malheur County Court or Malheur County Planning Commission policy.

B. Decision of The Hearing Body: Upon closing the hearing, the hearing body will deliberate the question and reach a decision, or continue the matter for further study or decision, to a time and place **determined and then** announced **at the public hearing**.

C Subdivision Review: The hearing body is conducting the subdivision review to determine compliance of a subdivision or planned unit tentative **plat plan** proposal with specific provisions of this Title. The factors under review are listed in Sections 7-3-2 through 7-3-7 or 7-7-2 through 7-7-4 of this Title. Only information addressed by those sections will be heard and/or entered into the record. (Ord. 25, 3-2-1983; 1989 Code)

7-9-8: FEES: Application required by this Title shall be accompanied by a fee in the amount established and published by the Malheur County Court **1**. (Ord. 25, 3-2-1983; 1989 Code)

Notes See subsection 1-9A-3C of this Code.

7-9-9: ABATEMENT AND PENALTY: Violation of any provision of this Title or of any amendment of this Title is enforceable under either of the following options at the discretion of Malheur County Planning Department:

A. Enforcement through civil proceedings under provisions of local ordinance enforcement which shall provide for a fine of not more than five hundred dollars (\$500.00) per violation.

B. Each and every day in which a location, erection, maintenance, repair, alteration or use of a building or structure, or the subdivision, partitioning or other use of land, is in violation of this Title constitutes a separate violation.

C. Enforcement through statutory authority under ORS Chapter 92 or other appropriate statutes. (Ord. 25, 3-2-1983; 1989 Code)

Notes See subsection 1-9A-3C of this Code.

7-9-10: NOTICE OF VIOLATION: Notice of a violation of a provision of this Title shall be in the form of a certified return receipt letter from **the** Malheur County Planning Department **or hand delivered written notice**. Such notice shall identify the property upon which the violation is located, a description of the violation, and an explanation of the action necessary to gain compliance with this Title.

This notice shall be mailed **(certified mail)** to the last known owner of record **and/or the applicant of an approved land use application** of the subject parcel according to the tax account roles of the Malheur County Assessor.

The owner shall be given ten (10) days from the date of receipt to contact Malheur County Planning Department concerning remedy of the infraction. If there is no such contact, violation will commence on the eleventh day after receipt of notification; the Malheur County Planning Director may establish a date for remedy of the infraction. If the infraction is not remedied by the date established, violation will commence on the following day. (Ord. 25, 3-2-1983; 1989 Code)

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