



# MALHEUR COUNTY PLANNING DEPARTMENT

251 B Street West, #12 Vale, Oregon 97918

Phone (541)473-5185

## Conditional Use Permit Application Preparation and Submittal

Submit 9 copies of your application, plus the original application with signatures.

Public notice will not be issued until your application is judged complete by the Planning Department.

**It is strongly advised that the Planning Department reviews your application before copies are made.**

Submission of an incomplete application may cause your application to be returned to you resulting in a delay in the Planning Commission hearing date.

Please do not staple your application or any individual parts of your application. Please paperclip the 10 copies of your application or separate them by a colored page.

Your plot plan does not need to be drawn to scale but must accurately depict the location of any existing or proposed buildings, wells, septic tanks, drainfields, and access to the parcel, roads, waterways and irrigation canals. (see Plot Plan Instructions)

The application material must be submitted to the Planning Department in the following order:

- Cover letter explaining your proposal. No more than one page.
- Application, including:
- Plot Plan (see instructions)
- Map of water rights and statement of total water rights from irrigation district.
- Accurate directions from the nearest city via main roads
- Photographs (if any)
- Study maps (soils, crops, water rights, dwellings)
- Permission to enter property letter
- Agency letters (irrigation district, fire department, road department, and others as necessary)
- Support letters (if any)

To aid in preparation of the staff report, the Planning Department asks that you be available for a short site visit with Planning Staff during the two weeks preceding the Planning Commission meeting.

If the parcel is not clearly obvious to those conducting a site visit, we suggest you put white flagging on the subject parcel no later than one week before the Planning Commission meeting.

## MALHEUR COUNTY PLANNING DEPARTMENT APPLICATION REQUIREMENTS

The following information will help acquaint you with the process and application requirements for proposals that require Planning Commission approval, or conditional use approval, before a permit may be obtained.

1. A pre-application conference with a staff member of the Planning Department is necessary. This is an informal meeting during which the applicant explains his/her proposal in detail. Staff can then assist the applicant by explaining the applicable State Statutes, Administrative Rules and County Zoning Regulations and how they relate to the proposal.
2. Fill out the application form as completely as possible. Be thorough, use accurate drawings, maps and pictures to support your application. Use additional sheets if necessary when answering the questions on the application. It is recommended that the applicant make an appointment at least 7 business days prior to the cut-off date for the completeness review of the application with the Planning Department staff. An application deemed incomplete on the cut-off date, may be returned, resulting in a delay in the hearing date.
3. Malheur County is required to send notice of the proposed action to adjoining property owners. The Planning Staff will generate a current tax assessment map showing the subject parcel and a list of the names and addresses of all property owners within 750 ft. of the borders of the subject parcel within the EFU, ERU or EFFU zones, and 250 ft. within all other zones.
4. Obtain approval letters from the following agencies:
  - a. Affected Fire Protection District
  - b. Appropriate Irrigation District
  - c. Appropriate Drainage District
  - d. Appropriate Road District
  - e. The nearby city, if the property is within or near the city's urban growth boundary.
5. Payment of the required application fee must accompany the application.
6. **Scheduling:** Applications must be submitted no less than thirty (30) days prior to the next regularly scheduled Planning Commission hearing date. The Planning Commission meets once a month on the fourth Thursday, except when the date falls near a holiday, in which the third Thursday is often used. The Malheur County Extension Office, 710 SW 5<sup>th</sup> Ave., Ontario, Oregon, is the customary location for Planning Commission meetings. Meetings are routinely held in the evenings. Beginning time is generally 7:30 pm. Check with the Planning Department for specific time of any particular meeting.
7. Applications will not be accepted until the Planning Director has determined that the requirements of Malheur County Code, Chapter 6, Section 6-9-5 have been met and the application is complete. An application is complete, when, in the judgment of the Planning Director, all applicable issues have been adequately addressed in the application. Acceptance criteria need to be addressed, or a later determination that additional information is needed to adequately address the applicable criteria.

**IMPORTANT NOTE:** Your application can be subject to substantial and perhaps insurmountable legal difficulties if you risk discussing it with a Planning Commission or County Court member prior to a decision by each respective body. Such discussion is known as “**ex parte contact**” and may taint the judgment of the public body so that an impartial decision cannot be made. These documents may not be exhaustive of all the requirements for a land use action. Please consult the Malheur County Planning Department and the Malheur County Code.

## CONDITIONAL USES

The Malheur County Zoning Ordinance identifies allowed uses within the different zones as “permitted uses” (uses that are permitted after an administrative review) and “conditional uses” (uses that are permitted if specific criteria is set forth in the Malheur County Code (MCC), Oregon Revised Statutes (ORS), and Oregon Administrative Rules (OAR) are met.

Conditional uses are reviewed by the County Planning Commission in a quasi-judicial land use hearing. Parties to a quasi-judicial land use hearing are entitled to a hearing and are to be given adequate notice of the hearing. Oregon land use regulations require that, within an agricultural zone, (Exclusive Farm Use, Exclusive Range Use) written notice is to be given to property owners within 750 ft. of the border of the property. The Planning Department will provide a list of the names and mailing addresses of the record owners of any parcel within 750 ft. of the borders of the subject parcel. The hearings are conducted in an orderly manner and all parties are allowed to present evidence and rebut evidence presented by the opposition.

A quasi-judicial land use decision must be accompanied by findings of fact supported by substantial evidence (substantial evidence is evidence that “a reasonable mind could accept as adequate to support the decision”) presented at the hearing. Findings of fact are required in land use decisions for two reasons. First, if the Planning Commission decision is appealed, the County appellate body (e.g. County court) and the State appellate bodies (e.g. Land Use Board of Appeals, LUBA, and the State Courts) may not, under state or local law, conduct a de novo review, i.e., rehear the land use application in the same manner as the Planning Commission. Findings of fact provide the appellate body a record of the land use decision being challenged. Second, findings of fact also encourage the applicant and the Planning Commission to use hard and clear reasoning in addressing the criteria and arrive at a decision that is within the bounds of the Planning Commission’s lawful authority.

The burden of proof in a land use decision is on the applicant. The applicant must provide the Planning Commission information supported by substantial evidence to enable them to make the decision. The decision can only be based upon the relevant criterion that is set forth in the land use regulations. Testimony that does not directly address the relevant criteria cannot be used by the Planning Commission in making their decision. Failure of the applicant to present evidence on a factual issue may result in a denial of the conditional use, based on the applicant’s failure to carry the burden of proof. It is recommended that the applicant provides the Planning Commission with a draft proposal of findings of fact to support their application.

While it is clear that findings of fact that adequately address the criteria are necessary in making a land use decision, what constitutes “adequate” findings of fact is not so clear. The Land Use Board of Appeals and the courts are quick to point out inadequate findings of fact; however, they have not set forth examples of adequate findings or given a clear definition of the term. ORS 215.416 (9) generally outlines the necessary elements of findings of fact required in a quasi-judicial land use hearing. These include:

1. **Criteria and standards relevant to the decision:** The relevant criteria used for various land use decisions will differ but generally will be found in the County Code, Oregon Revised Statutes and Oregon Administrative Rules. Planning Department staff will assist the applicant in determining which criteria are applicable to the request.
2. **Facts relied upon in the decision:** The findings of fact document needs to bring together the relevant factual information submitted by the applicant as evidence at the land use hearing. The facts should be stated in sufficient detail to give the reviewing body a clear understanding of the justification of the action being requested.
3. **An explanation tying the facts to the criteria and justifying the land use decision:** The criteria and the facts should be tied together in an explanation of the applicant’s conclusions justifying the approval of the conditional use. These conclusions must justify the ultimate decision by stating the reasons for the decision. They should explain in detail how the criteria were met in making the decision, rather than merely stating the applicable criteria is met.