

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 review 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 Statues, 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 5th 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.
8. If a tentative approval is obtained from the Planning Commission, in order to secure final approval, the parcel on which the proposed non-farm dwelling will be sited, must be disqualified from farm use appraisal, in accordance with ORS 215.236. **The final approval shall not be granted until these requirements have been met. This may require the payment of back taxes.**

9. On May 28, 1998 the Land Conservation and Development Commission (LCDC) adopted amendments to their Goal 3, Agricultural Lands, Oregon Administrative Rules, regarding the criteria that must be addressed for approval of a non-farm dwelling. One criterion for approval of a non-farm dwelling is the determination whether the land use pattern will be materially altered. Applicants for non-farm dwellings are now required to submit, with their applications, a “cumulative impacts analysis” (a map).

This analysis, requires the applicant to identify a 2,000 (or in some cases a 1,000) acre study area and the number and type of existing and potential dwellings (including dwelling trends since 1993.)

The purpose of the study is to identify potential new non-farm dwellings and parcels that could be approved, determine the type of land use pattern that could result and analyze whether or not the total potential non-farm development would materially alter the stability of the land use pattern of the area.

Much of the information required to make the analysis can be taken from the records of the County Assessor, County Clerk and the Planning Department. Because of staff time limitations in these offices, they may not be able to provide you with this information. This may require you to obtain the services of an attorney, land use consultant or a land title company.

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 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 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 applicants provide 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 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.

PROCEDURES TO CONDUCT CUMULATIVE IMPACTS ANALYSIS

The following is a step-by-step guide to completing the application map and data sheets. The steps are listed in order and should be completed as listed to avoid repetitive work.

1. **Identify the study area**

- A. Identify a tentative study area on a study area map. Planning Staff will assist you in developing a base map using Malheur County Assessor's maps. The map will include property map identifiers and property owners.


The study area must include at least 2,000 acres or a smaller area of at least 1,000 acres if the smaller area is a distinct agricultural area based on topographic features (rivers, valleys, hillsides, etc.) variable soil conditions and types, existing land use development patterns, or the type of farm or ranch operations that distinguish it from other adjacent agricultural areas.

If a study area of less than 2,000 acres is selected, then the applicant must make findings of fact, supported by substantial evidence, that describe the study area, the location of the subject parcel within the study area, and explain why the area is representative of the surrounding land use pattern and is adequate to conduct the cumulative impact analysis.

Areas zoned for urban, rural residential or other non-farm uses cannot be included within the study area. Shade or outline and identify these areas on the study area map. Do not complete any of the data analysis steps for parcels within this area.

- B. Identify the soils in the study area that are on the soils map for Natural Resource Conservation Service (NRCS) Soil Capability Classes I through VII. Planning Staff will assist you in developing a soils base map. List the soil type and soil capability class for each parcel in the study area. (Example: 35B-Virtue Silt Loam...Capability unit IIIe-4).

2. **Identify what is happening in the study area identified in step 1.**

- A. Identify tax lots with existing dwellings. On the study area map with a black marker, place a dot at the dwelling location on the tax lot of each farm dwelling and a red dot for each non-farm dwelling. List the number and type (farm, non-farm, farm labor, hardship) of dwellings on each parcel. Dwellings located on parcels receiving farm use appraisal must be considered farm dwellings.
- B. Identify all contiguous ownerships within study area (example - if John Smith owns contiguous tax lots #100 and #200, note on the map, by use of a hook symbol [] to indicate that he owns contiguous tax lots).
- C. Identify those areas within the study area that are irrigated and not irrigated. This information can be obtained from the appropriate irrigation district. (Using two markers of **different colors**, shade the areas that are irrigated and not irrigated.)
- D. Identify the types of farm use occurring in the study area (row crops, pasture, range land, feed crops such as alfalfa and hay) and undeveloped land. Indicate on the study area map the pre-dominant farm use of each parcel. (This can be done by labeling each parcel with a symbol identifying the farm use of the property, i.e., row crop-RC, pasture-P, range-R, feed crops-FC, undeveloped-U.) Aerial photos and land classifications from the County Assessor's Office identify the present use of the property.
- E. Determine the potential number of "lot of record" dwellings within the study area. To qualify for a "lot of record" dwelling, the parcel must be lawfully created, acquired and owned continuously by the present owner as defined in OAR 660-33-130 (3)(g) prior to January 1, 1985.
- F. Determine the potential number of non-farm dwellings within the study area. To qualify for a non-farm dwelling, the parcel should be less than 160 acres in an Exclusive Farm Use Zone or 320 acres if located within an Exclusive Range Use Zone and have some soils that are not NRCS Soil Capability Class I through VII soils.
- G. Determine the number of parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings. To qualify for a non-farm partition, the parcel must be greater than 80 acres within an Exclusive Farm Use Zone and 160 acres within an Exclusive Range Use Zone and have some soils that are not NRCS Soil Capability Class I through VII soils. There are additional approval standards contained in ORS 215.284 (2), (3) and OAR 660-33-130(4)(c) which, if evaluated, may prevent the parcel from being eligible for a non-farm dwelling or non-farm partition.

3. **Develop findings of fact that describe the existing land use pattern of the study area and that address:**

- A. What the study area looks like now; and,
- B. What the study area would look like if all the potential development occurs.

4. **Determine if the proposed dwelling and/or partition will not materially alter the stability of the overall land use pattern of the area.**

- A. Does the cumulative impact of the proposed non-farm dwelling, and/or non-farm partition, and the potential new non-farm dwellings and parcels within the study area make it more difficult for the existing farming operations within the study area:
 - a. To continue operation due to the diminished opportunity to expand; and the
 - b. Diminished opportunity to obtain water rights; and the
 - c. Diminished land in farm use such that the study area will be destabilized; and the
 - d. Diminished opportunity of crop and livestock producers to carry on normal production practices due to increased population and associated activities.