

TITLE 6 ZONING

CHAPTER 1 PURPOSE AND 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 See section 6-3-3 of this title.15. (Ord. 86, 12-7-1993)

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 resubdivision 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)

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:

ACCEPTED RESOURCE PRACTICE: The mode of operation that is 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.

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.

ACCESSORY USE OR STRUCTURE: A 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).

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.

AFFECTED AREA: Property within the area of a subject property. Specifically, that area within two hundred fifty feet (250'), excluding streets and alleys.

ANCILLARY FACILITIES: All buildings, interior and exterior enclosures, and equipment associated with a wireless telecommunication facility.

ANTENNA(S): An electrical conductor or group of electrical conductors that radiate or receive radio waves.

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.

BUSINESS OFFICE: An office that provides nonretail services such as insurance, real estate, finance or travel, or any office of similar nature and impact.

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 travelways.

COLLOCATION: The practice of locating multiple wireless communications facilities on a single, specific purpose structure, or locating the telecommunication facilities on alternate purpose structures.

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.

COMPREHENSIVE PLAN: The Malheur County Comprehensive Plan.

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.

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.

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 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 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).

DAY-CARE CENTER: An establishment providing specialized group care on a regular basis for more than four (4) children from infancy to age seven (7).

DWELLING: A detached building containing one dwelling unit.

DWELLING, DUPLEX OR TWO-FAMILY: A detached building containing two (2) dwelling units.

DWELLING, MULTI-FAMILY: A building or portion thereof, containing three (3) or more dwelling units.

DWELLING, SINGLE-FAMILY: A detached building containing one dwelling unit and designed for occupancy by one family only.

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.

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.

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.

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 and storage of the products raised on such land for human use and animal use 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.

FARM OR RANCH USE: 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 and storage of the products raised on such land for human use and animal use 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.

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.

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").

FENCE, SIGHT-OBSCURING: A fence or evergreen planting arranged in such a way as to obstruct vision.

FOREST USE: The propagation or harvesting of a forest product.

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 six (6) 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.

GARAGE, RESIDENTIAL: A structure used for the parking of automobiles and recreational vehicles.

HOME OCCUPATION: A lawful activity carried on within a dwelling by members of the family occupying the dwelling; provided, that the residential character of the dwelling is maintained and the activity is conducted in such a manner as not to give an outward appearance or manifest any character of a business in the ordinary meaning of the term, or infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their home. Further provisions are contained in section 6-6-8-6 of this title.

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.

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.

LANE: A driveway or private road providing access from property to a public right of way.

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.

LIVESTOCK: Domestic animals or types customarily raised or kept on farms for profit or other purposes.

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.

LOT: A unit of land that is created by a subdivision of land.

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.

LOT COVERAGE: The percentage of lot area that may be covered by buildings or structures.

LOT DEPTH: The average horizontal distance between the front and back lot lines.

LOT LINE: The property line bounding a lot.

LOT WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MALHEUR COUNTY TRANSPORTATION SYSTEM PLAN: The Malheur County transportation system plan (TSP) adopted by ordinance into the Malheur County comprehensive plan.

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.

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.

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 nonsurface impacts of underground mines.

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.

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.

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.

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.

PARCEL: Includes a unit of land created by a partitioning of land.

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.

PARTITION: The act of partitioning land or an area or tract of land partitioned.

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.

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.

PERSON: Includes natural person, firm, association, partnership, company, corporation, estate, branch of government or any group or combination acting as a unit.

PLANNING COMMISSION: The Malheur County planning commission 1 .

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

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.

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

PROPERTY LINE: Synonymous with "lot line".

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.)

RECREATIONAL VEHICLE: A mobile unit which is designed for temporary human occupancy and licensed as a motor home, recreational trailer or camper by the Oregon motor vehicles division, or similar units licensed by another state or any unit identified as a recreational vehicle by the manufacturer.

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.

RESIDENTIAL FACILITY: A 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.

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').

RESOURCE: A term which in appropriate context means commercial farming, ranching or forestry.

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 plan.

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.

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.

ROADWAY: That portion of a road or street designed and ordinarily used for vehicular traffic.

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.

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.

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.

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.

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 planning department or planning commission for their consideration.

SITE REVIEW: A procedure wherein plats of proposed uses in specific zones are reviewed by the planning director or planning commission to ensure compatibility with adjoining land uses and compliance with applicable ordinance provisions. The planning director's action may be referred to or appealed to the planning commission.

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.

STRUCTURE: Any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks and overhead transmission lines.

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.

SUBDIVISION: An act of subdividing land or an area or tract of land that has been subdivided.

TRACT OF LAND: One or more contiguous lots or parcels under the same ownership.

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

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.

VISUALLY SUBORDINATE: The relative visibility of a transmission tower or wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape.

WIRELESS TELECOMMUNICATION FACILITIES: 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.

YARD: An open space on a lot that is unobstructed from the ground upward except by vegetation or as otherwise provided in this title.

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, 4-14-20

CHAPTER 2

GENERAL PROVISIONS

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 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.
2. Comprehensive plan policies.
3. Comprehensive plan map designations.
4. Urban growth area joint management agreements.
5. Transportation system plan maps, policies and standards. (Ord. 125, 6-20-2000)

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 county 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

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

Resource lands

Exclusive farm use EFU

Exclusive range use ERU

Exclusive farm-forest use EFFU

Resource lands, secondary lands overlay SLO

Rural residential R-1

Rural recreation R-2

Urban growth area UGA

Rural service center RSC

Commercial C-1

Light industrial M-1

Heavy industrial M-2

Agricultural processing plant industrial M-3

Park management PM

Floodplain management overlay FP

Airport approach overlay AA

Environmental hazards overlay EH

Geothermal development overlay G

Design review overlay D

(Ord. 86, 12-7-1993; amd. Ord. 148, 1-7-2004)

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 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 center line 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 LANDS, EFU EXCLUSIVE FARM USE ZONE, ERU EXCLUSIVE RANGE USE ZONE, EFFU EXCLUSIVE FARM-FOREST USE ZONE

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 nonresource uses. (Ord. 86, 12-7-1993)

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 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:
 - a. Located on the same lot or parcel as the dwelling of the resource operator; and is
 - b. 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.
7. Reconstruction or modification of public roads and highways, 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 rights 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. Exploration only for geothermal, gravel and mineral deposits.
12. Breeding, boarding and training horses for profit.
13. Seasonal farm worker housing.

14. 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 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)

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 county or both and for which a permit has been granted under ORS 459.245 by the department of environmental quality 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.

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 as provided in section 6-6-8-6 of this title.

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 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 home in an existing dwelling(s) for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10).

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. 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 for health reasons. The zoning permit for such use shall note that it is temporary and subject to renewal annually without additional fee. 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. Nonresource 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.

T. Reconstruction or modification of public roads and highways 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 but not resulting in the creation of new land parcels.

V. Cemeteries in conjunction with churches.

W. Dog kennels.

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

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:

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); 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:

An affidavit by the farm owner or operator making it clear the occupant will be an

employee shall be signed and submitted.

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) authorize 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 planning director. An objection by an adjoining property owner shall require any further action to be conducted by the planning commission as a conditional use permit. (Ord. 86, 12-7-1993)

6-3A-5: 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 division of land to create parcels for farm or ranch use shall satisfactorily demonstrate to the 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 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, drylot 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. Nonresource Land Partitions: Nonresource 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 2 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. 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

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 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. Daycare in provider's home for less than thirteen (13) children. (Ord. 86, 12-7-1993; amd. Ord. 147, 4-14-2004)

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. Home occupations as provided by section 6-6-8-6 of this title.

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. 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.

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)

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 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 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 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

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 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 zone.

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)

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 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 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 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 ZONE

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 Urban Growth Area Joint Management Agreements that the County has entered into with each of the cities. (Ord. 86, 12-7-1993)

6-3E-2: PERMITTED USES:

Uses permitted outright and conditionally, 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 Area Joint Management Agreement, adopted by County ordinance. (Ord. 86, 12-7-1993)

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 Area Joint Management Agreement adopted by County ordinance. (Ord. 86, 12-7-1993)

6-3E-4: APPLICATION FILING AND REVIEW PROCEDURES:

Applications for permits within the UGA of a particular city shall be filed and reviewed in the manner set forth in the Urban Growth Area Joint Management Agreement established between the County and the city and as adopted by County ordinance. The County Court or its designate shall retain final authority for the approval, disapproval or conditional approval of permit requests. (Ord. 86, 12-7-1993)

6-3E-5: ADOPTION OF URBAN GROWTH AREA JOINT MANAGEMENT AGREEMENTS:

The County shall enter into an Urban Growth Area Joint 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)

6-3E-5-1: JOINT 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). For the purposes of this agreement, the "Ontario Urban Growth Area (UGA)" shall be defined as the

unincorporated area within the Ontario UGB. The City's and the County's comprehensive plans for the UGA 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, in cooperation with the County, shall have lead authority in amending the City Plan, including UGB amendments.

2. The County, in cooperation with the City, shall have lead authority to implement and administer the City Plan within the UGA. 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. 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.

4. 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 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.

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.
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.

E. Roles And Responsibilities:

1. The County shall have full decision-making authority to review all land use permits in the UGA. The City shall have automatic standing to appeal any County

decision in the UGA.

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.

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

a. 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 County 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.

b. 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 pre-application conference.

c. 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.

d. 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.

a. 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 Court, 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.

b. 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.

c. 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 Court. Such a review must be based on one of the following standards:

(1) The County Planning Commission's decision has improperly applied the City Plan policies or development standards.

(2) The City Planning Commission's decision does not comply with the applicable statewide planning goals or State law.

d. 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.

e. 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.

f. JPRC review shall not limit the right of any aggrieved party to an appeal.

F. County Administrative Decisions: In the UGA, 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 agreement. 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, 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 agreement. 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 amendments and plan map changes, or changes to development regulations that affect the UGA or the designation of urban reserve areas 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:

a. The land is within the UGB.

b. The development of the property is compatible with the extension of urban services to the surrounding area.

c. 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 impact, the Ontario UGB and the UGA, and for which either the City or County has the ultimate decision-making authority:

- a. 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.
 - b. Functional plans, or amendments thereto, for utilities, drainage, solid waste, transportation, recreation, or other similar activities.
 - c. Economic and industrial development plans or policies and other kinds of special plans.
 - d. 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.
- K. Urban Services:
- 1. Extension of City services shall be permitted only when consistent with the policies of the City Plan and with any adopted functional plans for urban services.
 - 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:

- a. Major public works projects to be undertaken by the district.
- b. Plans for establishment, improvement, or extensions of facilities provided by the district.
- c. 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, in cooperation with the County, may designate urban reserve areas as part of the City Plan and Urban Area Land Use Designations Map. If the City so designates, the City shall adopt land development regulations for the urban reserve areas to ensure that special 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 agreement.

2. The County, in cooperation with the City, shall be responsible for administration of all incorporated lands, both at the time of 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 agreement.

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 this 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:

a. 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.

b. 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.

c. 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. 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.

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

Q. Fees: Applications 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. 99, 3-26-1996)

6-3E-5-1: JOINT 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). For the purposes of this agreement, the "Ontario Urban Growth Area (UGA)" shall be defined as the unincorporated area within the Ontario UGB. The City's and the County's comprehensive plans for the UGA 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, in cooperation with the County, shall have lead authority in amending the City Plan, including UGB amendments.

2. The County, in cooperation with the City, shall have lead authority to implement and administer the City Plan within the UGA. 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. 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.

4. 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 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.

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.
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.

E. Roles And Responsibilities:

1. The County shall have full decision-making authority to review all land use permits in the UGA. The City shall have automatic standing to appeal any County decision in the UGA.
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.
4. A Joint Technical Review Committee (JTRC) shall be established by the City and the County to coordinate land use decisions in the UGA.
 - a. 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 County 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.
 - b. 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 pre-application conference.
 - c. 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.
 - d. 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.

a. 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 Court, 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.

b. 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.

c. 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 Court. Such a review must be based on one of the following standards:

(1) The County Planning Commission's decision has improperly applied the City Plan policies or development standards.

(2) The City Planning Commission's decision does not comply with the applicable statewide planning goals or State law.

d. 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.

e. 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.

f. JPRC review shall not limit the right of any aggrieved party to an appeal.

F. County Administrative Decisions: In the UGA, 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 agreement. 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, 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 agreement. 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 amendments and plan map changes, or changes to development regulations that affect the UGA or the designation of urban reserve areas 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:

a. The land is within the UGB.

b. The development of the property is compatible with the extension of urban services to the surrounding area.

c. 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 impact, the Ontario UGB and the UGA, and for which either the City or County has the ultimate decision-making authority:

- a. 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.
 - b. Functional plans, or amendments thereto, for utilities, drainage, solid waste, transportation, recreation, or other similar activities.
 - c. Economic and industrial development plans or policies and other kinds of special plans.
 - d. 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.

K. Urban Services:

- 1. Extension of City services shall be permitted only when consistent with the policies of the City Plan and with any adopted functional plans for urban services.
- 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:
 - a. Major public works projects to be undertaken by the district.

b. Plans for establishment, improvement, or extensions of facilities provided by the district.

c. 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, in cooperation with the County, may designate urban reserve areas as part of the City Plan and Urban Area Land Use Designations Map. If the City so designates, the City shall adopt land development regulations for the urban reserve areas to ensure that special 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 agreement.

2. The County, in cooperation with the City, shall be responsible for administration of all incorporated lands, both at the time of 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 agreement.

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 this 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:

a. 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.

b. 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.

c. 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. 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.

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

Q. Fees: Applications 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:

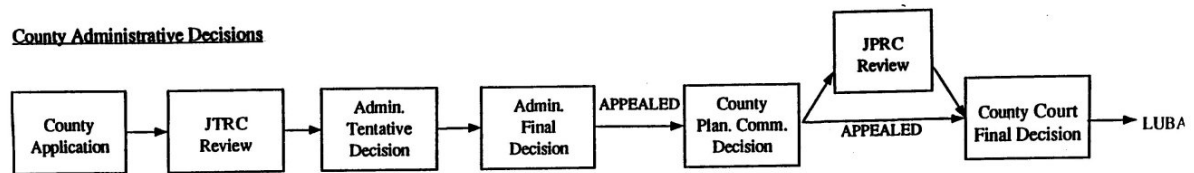
CITY OF ONTARIO

MALHEUR COUNTY

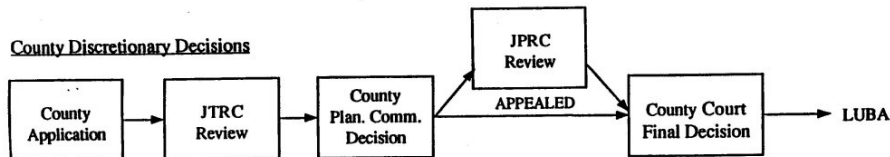
(Ord. 99, 3-26-1996)

ONTARIO URBAN GROWTH AREA JOINT MANAGEMENT AGREEMENT
Decision-making Process Flow Charts

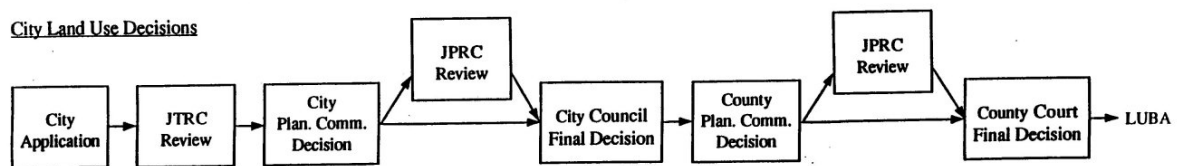
County Administrative Decisions



County Discretionary Decisions



City Land Use Decisions



(Ord. 99, 3-26-1996)

ARTICLE F. RSC RURAL SERVICE CENTER ZONE

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 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 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 hardship is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family for health or financial reasons. The zoning permit for such use shall note that it is temporary and subject to renewal annually without additional fee. 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. (Ord. 86, 12-7-1993; amd. Ord. 147, 4-14-2004)

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:

a. Single-family dwellings, including manufactured dwellings.

b. 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 ¹ 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)

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 acre or a larger area determined to be in compliance with the applicable 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 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 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 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. C-1 COMMERCIAL ZONE

6-3G-1: PURPOSE:

The C-1 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 ¹ 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)

6-3G-2: PERMITTED USES:

The following uses may be permitted outright in a C-1 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 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 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.

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 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

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 ¹ 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)

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 ups 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 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 acre or a larger area determined to be in compliance with the applicable 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 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. 86, 12-7-1993)

ARTICLE I. M-2 HEAVY INDUSTRIAL ZONE

6-3I-1: PURPOSE:

The M-2 Heavy Industrial Zone is designed to provide areas suitable for industrial activities 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 ²⁴ 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)

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 an 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:

a. A specific geothermal-related use is proposed at the time an application for land division is submitted; or

b. 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 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. 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)

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

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 sitings 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 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

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 functionability 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 K. FP FLOOD PLAIN MANAGEMENT OVERLAY ZONE

6-3K-1: PURPOSE:

The FP Flood Plain 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. Flood plain 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 flood plain:

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

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: SPECIAL 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.

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.

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 aviation and hazard easement and submits them to the airport sponsor and County Planning Department.

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)

ARTICLE M. EH ENVIRONMENTAL HAZARDS OVERLAY DISTRICT

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: 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 DEQ, 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

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 fibre 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:

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" 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:
 - a. Surface location sites of the proposed well, including the size and shape of location and access roads;
 - b. North arrow, scale, date and contours of land where the grade exceeds two percent (2%);
 - c. 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;
 - d. The boundary of the parcel to be explored;
 - e. 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
 - f. 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 County Counsel.

B. Insurance: Before commencing or continuing any geothermal operations, the owner or operator shall show the 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
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:

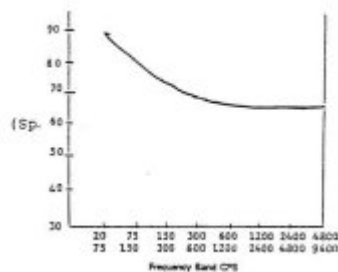
1. Sign: All geothermal well sites shall have a sign having a surface of not less than two (2) square feet and not more than six (6) square feet bearing the current name and number of the well; emergency telephone number of agent; name and/or insignia of the operator and the owner and this sign shall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

2. Noise:

a. Each operator shall limit the continuous generation of wide band noise to that shown on the chart. 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.

b. 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.

c. 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 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:

- a. The derrick and all appurtenant equipment thereto shall be removed;
- b. All tanks, towers, other surface installations shall be removed;
- c. All concrete, pipe, wood or other foreign materials shall be removed from the drill site to a depth of six feet (6') below grade;
- d. All holes and depressions shall be filled and packed with native earth. All waste material shall be removed from the drill site;
- e. 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:

- a. 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.
- b. 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.
- c. 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.

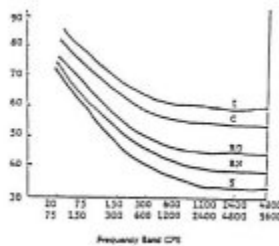
2. Fences: All unattended well sites shall be enclosed by a steel chain link type fence, six feet (6') high. There shall be no opening below such fence greater than four inches (4"). The gate shall be placed at a nonhazardous location and shall be locked at all times.

3. Noise Control:

a. The 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 required. The level may be exceeded to ten percent (10%) for any one occurrence if the noise is intermittent and during daylight hours.

b. 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.

c. 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 Hour Drilling: Drilling may be on a twenty four (24) hour basis providing above is 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.

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 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 right of ways 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 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 right of ways. 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)

CHAPTER 4 SUPPLEMENTAL PROVISIONS

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, and similar recreation vehicles may be stored but not occupied on a lot as an accessory use to a dwelling in any zone. However, recreation 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. (Ord. 86, 12-7-1993)

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 [25](#) 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)

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 subject it 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:
 - a. By publication in at least one newspaper of general circulation published in the County; and
 - b. 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 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 travelways 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:

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 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) 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 EA (environmental assessment), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:
 - a. The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
 - b. The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
 - c. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
 - d. 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 the county engineer as 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 transportation system plan, the procedure for a plan amendment shall be undertaken prior to or in conjunction with the conditional 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 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:

a. Prior to January 1, 1985; or

b. By devise or by interstate 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 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 habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the Malheur County comprehensive plan and land use regulations intended to protect the 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. 1. 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:

a. It meets the other requirements of ORS 215.705 to 215.750 that apply to Malheur County;

b. The lot or parcel is protected as high value farmland as described under ORS 215.710(1); and

c. Malheur County planning commission determines that:

(1) 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 the land or its physical setting that do not apply generally to other land in the vicinity.

(2) The dwelling will comply with the provisions of ORS 215.296(1).

(3) The dwelling will not materially alter the stability of the overall land use pattern in the area.

2. The Malheur County planning department shall provide notice of all applications for dwellings allowed under this subsection to the 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)

CHAPTER 5

D DESIGN REVIEW OVERLAY ZONE

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 there will be commercial and industrial zones. The D overlay zone may be attached to partitions, residential and resource zones because of their historic, scenic, cultural or other resource values, or as may be required to comply with provisions of this title 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.

B. Structures: Sizes and locations of all existing and proposed structures.

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 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 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.

B. Exterior building materials.

C. Exterior colors.

D. Location and design 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: Setbacks shall be adequate to the use proposed, but the requirements imposed by the planning director or commission ²⁶ 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 ²⁷ 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.
C-1 zone	1 space for each 200 square feet of gross floor area.
M-1 and M-2 zones more than 1 space	Not less than 1 space for each 2 employees on the largest shift, or

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: Limitations on the number and location of curb cuts. 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:

a. 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.

b. 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.

c. 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)

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 development plan. At a minimum, in approving the site 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

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 of the planning commission or the 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:

A. Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

B. Has a public announcement of the content of the communication and of the party's right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication 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 structures 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 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 planning director is necessary. This is usually a very informal meeting or discussion during which the applicant explains his proposal in detail. The planning director can then assist the applicant by explaining 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 filled out as completely as possible. A letter which describes the proposal the way the applicant 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, with accurate dimensions, 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 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. A letter must be received by the planning department indicating that the specific proposal will not adversely affect those agency 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.

The agency should mail its comments directly to the planning office. That agency must have a copy of the proposal the applicant intends to submit to the planning commission or the applicant 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) 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 must accompany the application. (Ord. 125, 6-20-2000)

H. Scheduling: Applications must be submitted at least one 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: 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. 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; amd. 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 planning department, using forms prescribed pursuant to section [6-10-5](#) 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 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, the decision is rendered during the first meeting at which the application is considered.

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

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

H. Generally, within ten (10) working days after a decision has been rendered, the 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:

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.
- 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. (Ord. 86, 12-7-1993)
- G. General Criteria:
 - 1. Increasing setbacks of structures to reduce possibilities 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 for present and future traffic circulation consistent with the adopted 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: NONRESOURCE DWELLINGS IN AN EFU, ERU OR EFFU ZONE:

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 nonresource uses. Nonresource 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 nonresource 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: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:

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:

a. If located on range or agricultural lands, are the proposed nonresource 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.

b. Are the proposed parcels located on land with predominantly low productivity 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 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 an historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

B. Nonresource Partition Approval: As a condition of a nonresource partition approval, the owner shall be required to sign and allow the following statement to be entered into the chain of title 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 nonresource uses. Nonresource 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 nonresource 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 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:

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.

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 annual renewal; the use shall be terminated 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 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 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 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: HOME OCCUPATION:

A home occupation is for the purpose of allowing a dwelling resident to start a small business in order to provide supplemental income. It also is a means by which an individual may exercise entrepreneurship on a small scale with the objective of relocating the business to a properly zoned area when expansion is needed beyond the limits of the following criteria of subsections A through I of this section. It will be reviewed on an annual basis to confirm compliance with the conditions of approval.

A. A home occupation must fit within the residence without expanding the structure or within a garage or shed already in existence. If the residence has no accessory garage or shed, 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.

B. Family members living on the premises and one nonresident are the only persons that may be employed in the home occupation.

C. Storage of all materials and finished products shall be contained inside the dwelling or other structure as permitted in subsection A of this section.

D. The property upon which the home occupation exists shall be improved and kept in a clean, neat, orderly fashion with watered, clipped and otherwise well cared for lawn, shrubbery and trees. In some locations this may well be a higher standard than surrounding properties. In such a case, it is intended that the home

occupation property serve as a commendable example in exchange for the privilege of operating a business within an otherwise restricted zone.

E. Noise shall be kept at a minimum at all times and saws or other noisy tools or equipment shall not be run 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 a penetrating sound shall be operated only within an enclosure which effectively prevents noise measured at the nearest dwelling exceeding the otherwise ambient noise level of the neighborhood. In these cases where a question arises regarding noise levels, the planning director's determination shall be final.

F. One sign not bigger than three (3) square feet in silhouette area, excluding the post, is permitted. Colors used shall be muted in color and tone so as to be unobtrusive and serve only for identification purposes, not advertising purposes. No sign shall be placed within required yard setbacks nor be more than two and one-half feet (2 1/2') above the ground if freestanding. A sign placed upon the structure housing the home occupation shall not be above the roof eave height.

G. Vehicular traffic is to be kept at minimum. No product or service is to be offered for sale at the home occupation site which is not produced there.

H. No vehicle, equipment or appliance which is either unlicensed or unserviceable shall be stored outside the structure if the home occupation is a repair service, irrespective of ownership.

I. No business shall operate in violation of statutory law. (Ord. 86, 12-7-1993)

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 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 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.

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. 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:

- a. Collocation 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.
- b. 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.
- c. 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.
- d. 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.
- e. Siting of a new tower in a visually dominant manner without employing concealment technology.

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:
 - a. Set back 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.
 - b. 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.

(1) 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:

a. 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.

b. 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.

c. 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.

d. Warning and safety signs, up to three (3) square feet in area, are allowed. All other signs are prohibited.

e. Equipment areas must be enclosed by a chainlink fence or equivalent with or without slats for screening.

f. Nothing in this subsection preempts the coloring requirements of the federal aviation administration 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 action 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 or from authorized agents of licensed carrier.

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 collocation 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 planning director a letter of intent to collocate, pay applicable fees, and receive a letter of authorization from the director.

6. In addition to the application procedures specified in section [6-6-5](#) of this chapter, applications for wireless telecommunication facilities shall include:

a. A location map showing:

- (1) The applicant's proposed facility site;
- (2) Other sites in the vicinity evaluated for the proposed facility; and
- (3) Other similar existing facilities in the area.

b. A photographic simulation showing how the facility will appear on the landscape.

c. A site specific study of the wireless telecommunication facility identifying the proposed color and surfacing of the facility and associated fixtures.

d. Technical information reasonably justifying the need to locate the proposed facility in the requested location.

e. Documentation from the federal aviation administration, the Oregon department of aviation, the federal communications commission 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 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:

a. The applicant submitting documentation that the wireless telecommunication facility is in compliance with nonionizing electromagnetic radiation (NIER) emission standards as established by the federal communications commission (FCC);

b. Demonstration that the wireless telecommunication facility was constructed and placed into service within one year of issuance of the final approval by the county; and

c. Demonstration that the wireless telecommunication facility has been used as such for a period of one 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 county makes a determination of discontinued or nonuse, the property owner shall, within six (6) months, complete removal operations.

F. Performance: The 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 nonoperational for a period of one 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 planning commission at a public hearing pursuant to ORS 215.130 and the 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 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 planning commission may impose, in addition to those standards and requirements expressly set forth in this title, any other conditions that the 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:

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 planning commission may specify, unless substantial construction pursuant thereto has taken place. However, the 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

6-7-1: PURPOSE AND SCOPE:

A. Purpose: The purpose of this chapter is to maintain or improve the aesthetic quality of the 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
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:

a. Shall not exceed four (4) square feet in silhouette area per sign.

b. Shall not be located in the public right of way (i.e., on telephone poles, street signs and traffic signs).

c. Shall not be located on a property containing another temporary sign other than a real estate sign.

d. Only one on premises sign and five (5) temporary off premises signs (1 per off site tax lot) are permitted.

e. 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.

f. 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.

g. 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 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 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 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 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 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 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 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 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 planning commission in approved conditional uses, as provided by the 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 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 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, in addition to the site plan required for the zoning permit, a plan and elevations of the sign itself. (Ord. 86, 12-7-1993)

CHAPTER 8 VARIANCES

6-8-1: PURPOSE:

The 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 Planning Commission may attach conditions that it finds 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 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 Planning Commission [28](#).

D. Before the 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 Planning Department shall provide the applicant with written notice of the Planning Commission's decision. (Ord. 86, 12-7-1993)

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 taken place. However, the 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

6-9-1: PLANNING COMMISSION:

A. Under the authority of ORS 215.020, there is hereby established a Malheur County planning commission.

B. The planning commission shall consist of nine (9) members, each to serve a term of four (4) years.

C. A minimum of five (5) members present at a scheduled meeting or hearing shall represent a quorum of the planning commission.

D. The planning commission shall make decisions by a majority of the quorum present. (Ord. 86, 12-7-1993)

6-9-2: ADMINISTRATION:

The county court may appoint planning staff to issue zoning and other permits and to assist the 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 planning staff. (Ord. 86, 12-7-1993)

6-9-4: AUTHORITY TO MAKE FINAL DECISIONS:

A. The planning director may make administrative decisions on outright permitted uses as provided in chapter 3 of this title, and site development plan as provided in chapter 5 of this title. The planning director may make land use decisions as provided in chapter 12 of this title.

B. The decisions of the 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 planning commission.

C. The planning commission shall be the final hearing body and make final decisions on conditional uses, variances, nonconforming uses and administrative decisions referred by the planning director. The planning commission shall be the hearings body of appeals of planning director administrative decisions.

D. The county court shall be the final hearings body for legislative hearings, and the final hearings body of quasi-judicial decisions when appealed. The county court's hearings shall be held on the record. If the applicant or a party provides information that shows good cause, the county court hearings may be held de novo.

E. Final decisions of the county court may be appealed to the land use board 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 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 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 requirement 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 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 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 need 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 planning director or hearings body in making a decision whether to accept or approve the application, the 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 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 of the time the application was first submitted. (Ord. 86, 12-7-1993)

6-9-9: NOTICE TO DIVISION OF STATE LANDS:

In addition to any notice required by this title, the county 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 division of state lands has provided to the county 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 county 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 provision 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 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 county's periodic review as set forth in the land conservation and development commission's OAR 660 division 25, or more frequently if required or desired, the planning director shall submit to the planning commission an evaluation of the effectiveness of this title and suggestions for modification, if necessary. The 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 [See subsection 1-9A-3C](#) of this code.29. (Ord. 86, 12-7-1993; amd. Ord. 125, 6-20-2000)

6-9-16: PROPOSED ORDER:

The 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. (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 hearings body's decision shall be in writing and mailed to all parties, however, one person may be designated by the 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

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 county court, the planning commission, the planning director or by application of a property owner. (Ord. 86, 12-7-1993)

6-10-2: HEARING REQUIRED:

Public hearings before the planning commission shall be set at the discretion of the 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 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 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 planning director or 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 county court or the 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 planning commission.
2. The county court.

B. Any legislative change initiated by the county court shall be reviewed by the planning commission prior to action being taken by the 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 planning commission and county court shall determine the following:

- A. That the proposed change is consistent with the 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 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 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:

1. Changes the functional classification of an existing or planned transportation facility;
2. Changes standards implementing a functional classification system;
3. 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
4. Would reduce the level of service of the facility below the minimum acceptable level identified in the transportation system plan. (Ord. 125, 6-20-2000)

6-10-8: NOTICE AND RECORD OF ACTIONS:

Notice and record for the 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.
- 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 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 county court. (Ord. 86, 12-7-1993)

CHAPTER 11

QUASI-JUDICIAL LAND USE HEARINGS

6-11-1: FILING OF STAFF REPORT FOR HEARING:

- A. At the time an application, that in the judgment of the planning director requires a hearing, is complete, 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 hearings body.
- D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing. (Ord. 86, 12-7-1993)

6-11-2: HEARINGS BODY:

A. The following shall serve as the hearings body in this order:

1. Planning director.
2. Planning commission, where the planning commission initiates a review of an administrative action or planning director's decision pursuant to section [6-12-1](#) of this title.
3. County court.

B. Where the planning director must decline to hear a matter on the grounds of a conflict of interest, the planning commission shall substitute for the 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:

a. The applicant.

b. Owners of record of property as shown on the most recent property tax assessment roll of property located:

(1) 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.

(2) 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 and not within a resource lands zone.

(3) 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.

c. The owner of a public use airport if the airport is located within ten thousand feet (10,000') of the subject property.

d. The tenants of a manufactured home park when the application is for the rezoning of any part or all of a manufactured home park.

e. The planning commission.

f. 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 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 comprehensive plan that apply to the application at issue;
3. Set forth the street address or other easily understood geographical reference 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 county court or the land use board of appeals based on that issue;
8. The telephone number of the director and that the 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 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, and gives 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 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 hearings body or any member thereof shall not communicate directly or indirectly with any party or his representative 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 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 County staff and the 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 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 hearings body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Planning Commission member with a conflict identified under ORS 215.035 must disqualify him 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 hearings body shall explain the purpose of the hearing and announce the order of the proceedings, including reasonable time limits on presentations by parties.
- B. Statement: A statement by the hearings body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
- C. Facts Received Outside Of Hearing: Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
- D. Challenges: Challenges to the hearings body's qualifications to hear the matter shall be stated and challenges entertained.
- E. Applicable Substantive Criteria: The 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 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.
6. Opponent's rebuttal may be allowed at the hearings body's discretion.
7. Staff comment.
8. Questions from or to the chair may be entertained at any time at the hearings body's discretion.
9. Close the hearing.

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

6-12-1: PLANNING DIRECTOR ACTION ON LAND USE APPLICATIONS:

A. The 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 may refer the application to the Planning Commission for a hearing. (Ord. 86, 12-7-1993)

6-12-2: LIMITATIONS ON PLANNING DIRECTOR ACTIONS:

The Planning Director may make administrative decisions on the following land use actions:

- 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 DECISION:

- A. The 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 applicant.
- B. Notice of the Planning Director's decision and the appeal period shall be sent as set forth in subsection [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. (Ord. 86, 12-7-1993)

CHAPTER 13 APPEALS

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 Director shall be the Planning Commission.
- B. The appellate body for appeals from final decisions of the Planning Commission shall be the County Court.

C. Appeals from decisions of the 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 Planning Department, an appeal fee, and the appellant must pay for the transcription of the hearing appealed from and submit the transcript to the 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 day following mailing of the decision. Notices of appeals may not be received by facsimile machine.

C. The transcript of the hearing may be submitted to the 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 hearings body an adequate opportunity to respond to and resolve each issue.

B. A request that the Planning Department supply appellant with a copy of the magnetic tape record of any hearing before the Planning Commission unless such tape has already been 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 Planning Director shall be de novo and shall be heard as provided in "Land Use Action Hearings", of this Title. All appeals from the Planning Commission's final decision shall be based on the record made before the Commission.

D. The order of the 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

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 county's comprehensive plan and zoning ordinance [31](#) 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)

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 county court.

B. To The Comprehensive Plan Map And Transportation System Plan: 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, as adopted by the county court.

C. To The Zoning Ordinance: A subdivision plat shall conform in all respects with applicable regulations of the zoning ordinance [32](#), as adopted by the county court. (Ord. 125, 6-20-2000)

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: 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 [33](#) 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, therefor, 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 area 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)

CHAPTER 2

GENERAL REQUIREMENTS AND TECHNICAL REVIEW

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 ³⁴ 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 planning commission. In the event of review by the 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)

7-2-2: MINIMUM STANDARDS:

No proposed subdivision or partition shall be approved unless said subdivision or partition complies with the 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 planning director may schedule a technical review conference with the county engineer and the subdivider and/or his engineer or surveyor. Representatives of other agencies may attend and shall be encouraged by the planning director to attend. As a result of the discussion between the subdivider and/or his engineer or surveyor and the planning director, the subdivider or the 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 county planning department. This will greatly reduce the potential for oversights or problems 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 planning director or his designate shall confirm that the following factors have been considered:

- A. Conformance to the 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 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 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 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 storm water 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 PLAN FOR SUBDIVISION

7-3-1: PRE-APPLICATION PROCEDURE:

The following procedure shall be followed whenever land is to be subdivided:

Prior to submitting a preliminary plan, the subdivider is encouraged to submit a sketch plan to the 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 Comprehensive Plan, and any special problems that may be encountered. Changes or modifications in the sketch plan shall be discussed if the 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 plan in accordance with the provisions of this Title which shall be filed with the County Planning Department sixty (60) days prior to the Commission meeting at which 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 plan.

B. The subdivider shall provide a statement from the 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 plan, complete with required information, is filed with and officially received by the 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 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 plan, together with an application in writing, form to be provided by the Planning Department, with the 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 PLAN:

The tentative plan shall be clearly and legibly drawn and shall show all pertinent information to scale in order that the 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 PLAN:

The following information shall be shown on the tentative subdivision plan or provided in accompanying materials. Tentative plans shall contain the following information. If, after review of the tentative 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 plan.
6. Section, range, township in which proposed subdivision is 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 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.

10. 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 PLAN:

The tentative plan shall be accompanied by written statements giving essential information regarding the following matters:

A. Water Supply: A statement of water rights 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 of the availability of water and the general history of wells in the area.

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 planning director. (Ord. 25, 3-2-1983; amd. 1989 Code)

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 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)

7-3-7: TENTATIVE SUBDIVISION APPROVAL:

A. Technical Review Conference: Within twenty one (21) days of receipt of the proposal, the planning director shall convene a conference as specified in chapter 2 of this title and shall prepare for the planning commission written reports of his recommendations regarding the proposed subdivision.

Written reports to the planning commission on the technical review conference shall be submitted by the 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 plan, as required by section [7-3-2](#) of this chapter, the planning commission shall conduct a subdivision review of said tentative subdivision 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 plan proposal as it relates to the following:

1. The planning director's report on the consideration of the factors listed in section [7-2-4](#) of this title.
2. Tentative subdivision plan presentation as prescribed by section [7-3-4](#) of this chapter.
3. Statements to accompany tentative 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 planning department which relate only to compliance of the tentative 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 planning commission meeting at which the commission receives a tentative 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 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 commission may approve, modify or disapprove the plan proposal, and shall set forth findings for said decision. If no action is taken by the commission within sixty five (65) days of the commission meeting at which the commission received the tentative plan, the tentative plan as filed shall be deemed to be approved and it shall be the duty of the commission secretary to certify such approval. The commission may, however, upon declaration of a need for additional information, clarification of submitted material, or a need for modification or redesign of submitted 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 plan is approved subject to conditions, conditions shall relate only to the authority granted to the 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 plan shall not constitute final acceptance of the plat of the proposed subdivision for recording; however, approval of such tentative plan shall be binding upon the county for purposes of the preparation of the final plat.

F. Review By County Court: Within five (5) days after the date of the planning commission's action, the planning director shall transmit the complete record of

its review and action to the county court. Upon receipt of the record, the county court may review the decision of the planning commission on its own initiative, as permitted by chapter 9 of this title.

The county court may affirm, reverse or modify the decision of the 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 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 court's intent to review the decision of the planning commission within twenty one (21) days, the decision of the planning commission shall be affirmed. (Ord. 25, 3-2-1983; amd. 1989 Code)

7-3-8: APPEAL TO COUNTY COURT:

If the applicant or an interested party is dissatisfied with any action of the planning commission with respect to the tentative plan, he may, within fifteen (15) days of such action, appeal the action of the planning commission to the 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 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 plan by the planning commission and county court, shall terminate all proceedings; provided however, that upon application of the developer in writing, an extension of time not exceeding six (6) calendar months may be granted by the planning commission. In the event the planning commission denies a developer's application for extension, the developer may appeal to the county court. Where proceedings have terminated because of failure to receive extension by the planning commission and the county court, a new tentative 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

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 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 transportation system plan. Where, in the opinion of the commission, topographic conditions make such continuation or on a formation or conformity impractical, exception may be made.

Where the 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 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 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 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 county shall not be accepted for maintenance by the county. The 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 public agency. This connector road shall be built to 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 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 ADTs 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') or more wide dependent 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.

C. All water systems and/or wells shall meet the standards of the following agencies, when applicable:

Oregon state health division,

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,

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 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 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 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.
- 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.
 - 2. Emergency Access: Two (2) or more improved all weather access points from the development, subdivision or major partition may be required by the 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)

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 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 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:

a. The approximate date when construction of the project can be expected to begin.

b. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

c. The anticipated rate of development.

d. The approximate dates when each stage in the development will be completed.

e. 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 plan, the final 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 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:

- a. Lack of water - one week.
- b. Lack of insect pest control - one month.
- c. Lack of weed control - one growing season.
- d. 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 County. 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 County 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 County for the maintenance costs incurred the previous growing season. Special funding and payment schedules may be mutually agreed to between the 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 County shall create a special service district controlled by the County to provide for payment of maintenance and improvements carried out by the County on the open space.

D. No common open space may be put to a use not specified in the final development plan unless the final development 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 Planning Department, Planning Commission and 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

7-6-1: FINAL APPLICATION AND APPROVAL:

Within one 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 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 real estate commissioner's office indicating that 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 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 pedestrianways 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 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 [35](#) .

O. Additional Information: Additional information required by the 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)

7-6-6: REVIEW BY COUNTY SURVEYOR:

The 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 planning 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 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 County Surveyor and the 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 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 County Court a bond or cash deposit, at the option of the 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 County Court of such payment, the 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 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 County Court may direct the 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 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, pedestrianways, 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 Planning Commission.

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, pedestrianways, 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)

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 County Surveyor.

F. A certificate of execution by the County Tax Collector.

G. A certificate of execution by the County Assessor.

H. A certificate for execution by the irrigation district, where applicable.

I. A certificate for execution by the County Court.

J. A certificate for execution by the Water Master 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)

7-6-12: 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, pedestrianways, 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 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 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 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 county road department or appropriate road district ³⁶. (Ord. 125, 6-20-2000)

F. Any performance agreement required plus four (4) copies of the same shall be submitted to the planning director to be distributed to, and reviewed by the county engineer, roadmaster, district attorney and environmental health director on forms provided by the planning department. Based upon the recommendations of other departments, the 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)

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 before final approval is given.

B. Evidence Of Sewage Disposal: Written certification of an available method of sewage disposal as required by the department of environmental quality adequate to serve each lot intended for sewage disposal shall be provided prior to approval of final plat by the 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 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 county assessor, environmental health director, county engineer, county planning department and appropriate postal and fire protection agencies.

The final plat shall be accompanied by a filing fee as set by the 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

7-7-1: APPLICABILITY OF REGULATIONS:

A. Review: All land partitioning within the county shall be reviewed by the planning director or his designate as provided by section [7-2-3](#) of this title. The 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 planning commission as provided by sections [7-7-3](#) and [7-7-6](#) of this chapter.

B. Tentative Approval: The planning director or his designate may, at his discretion, refer any partition proposal to the 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 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 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 map for partitioning as provided below:

1. The tentative 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 planning director after consultation with the county engineer and shall be consistent with the transportation system plan. Direct preliminary discussion with the 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 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 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 county water master.
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 planning director after consultation with the county engineer and shall be consistent with the transportation system plan. Direct preliminary discussion with the 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 comprehensive plan, transportation system plan 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 planning director or his designate shall complete his technical review of partition proposals and then forward to the 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 county 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 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 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 planning department shall implement a current record of all partitioning approved in the county. This record may be the recorded records of the 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 planning director shall review the application for compliance with this title and shall transmit the partition application and his comments to the planning commission. The 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 planning commission as provided in this section, the 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 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 Planning Department, and shall guide future development of the property unless changes are approved by the Commission.

D. Once a master plan has been approved as required in subsection B of this Section, further partitionings may be approved by the 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 MAP OF PARTITION:

Following approval of the tentative plan for a proposed partitioning, the applicant shall prepare and submit to the Planning Department the final 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 map or drawing shall be prepared in accordance with the following requirements and submitted to the Planning Department:

A. Final Map In EFU, EFFU Or ERU Zones: In EFU, EFFU or ERU Zones, the tentative map may act as the final map if no changes are required by the Planning Director, or his designate or the Planning Commission.

B. Final Map In Zones Other Than EFU, EFFU Or ERU: In zones other than EFU, EFFU or ERU, the final 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 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.

7-7-8: CERTIFICATION OF FINAL APPROVAL:

A final 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 Planning Director or his designate.
2. Execution of a certification of approval by the chairman of the Planning Commission if the proposal has been referred to the 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 Planning Director or his designate.
2. Execution of a certification of approval by the chairman of the Planning Commission.
3. Execution of a certification of approval by the County Court.
4. Execution of a certification of approval by the city council of any city 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. (Ord. 25, 3-2-1983; 1989 Code)

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. 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, plat or plan shall be recorded or have validity unless it shall have the approval of the County Planning Director, the County Surveyor and the County Assessor. Approval shall be by dated signature in permanent black ink. (Ord. 96A, 1-2-1996)

7-7-8: CERTIFICATION OF FINAL APPROVAL:

A final 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 Planning Director or his designate.
2. Execution of a certification of approval by the chairman of the Planning Commission if the proposal has been referred to the 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 Planning Director or his designate.
2. Execution of a certification of approval by the chairman of the Planning Commission.
3. Execution of a certification of approval by the County Court.
4. Execution of a certification of approval by the city council of any city 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. (Ord. 25, 3-2-1983; 1989 Code)

7-7-10: APPEAL:

An appeal of decision or requirements of the Planning Director or 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 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 Planning Director. A filing fee may be required.

B. The adjustment of a lot line by the relocation of a common boundary may be approved by the Planning Director. Such adjustments shall be presented on the same partition 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 County Clerk, on a form prescribed by the Planning Director, indicating that a partition has been made in accordance with the provisions of this Title, and that the survey maps have been filed with the 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, EFFU or ERU Zone.

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 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 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 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 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 year, the 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 County to discover the violation 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 County. (Ord. 25, 3-2-1983; 1989 Code)

CHAPTER 8 VARIANCES

7-8-1: VARIANCES AUTHORIZED:

A. Specific variances, unrestricted or conditional, to the regulations prescribed by this Title may be authorized by the 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 Planning Director in writing. The subdivider/partitioner shall state fully the grounds 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 Commission in Section [7-8-4](#) of this Chapter. (Ord. 25, 3-2-1983; 1989 Code)

7-8-3: REFERRALS:

The Planning Director shall transmit copies of the application for a variance to the County Engineer. The Planning Director shall forward the County Engineer's comments to the 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 Planning Commission. Because of the additional time the 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 Commission action on a subdivision or partition. (Ord. 25, 3-2-1983; 1989 Code)

7-8-4: ACTION OF PLANNING COMMISSION:

A. The Planning Commission shall consider the application for a variance at the same meeting at which it considers the tentative 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 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 Planning Commission shall be invalid unless a specific explanation of the Commission's conclusion on each of the necessary findings is made a part of the approval and entered into the official minutes of the Planning Commission. (Ord. 25, 3-2-1983; 1989 Code)

7-8-5: APPEAL OF VARIANCE DECISION:

Planning Commission 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 [37](#)

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 County Planning Director shall have the power and the duty to enforce the provisions of this Title. The County Court may appoint agents to issue zoning

permits and to otherwise assist the 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 County Court from a decision or requirements made by the Planning Commission. A person may appeal to the Planning Commission from a decision or requirements made by the Planning Director.

Written notice of the appeal must be filed with the County 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 County Court or 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 County. 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 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 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.

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 County Court or 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 then announced.

C. Subdivision Review: The hearing body is conducting the subdivision review to determine compliance of a subdivision or planned unit tentative 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 County Court [See subsection 1-9A-3C](#) of this Code.38. (Ord. 25, 3-2-1983; 1989 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:

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 [See subsection 1-9A-3C](#) of this Code.39.

C. Enforcement through statutory authority under ORS Chapter 92 or other appropriate statutes. (Ord. 25, 3-2-1983; 1989 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 County 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 to the last known owner of record 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 concerning remedy of the infraction. If there is no such contact, violation will commence on the eleventh day after receipt of notification; the 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)