



Appendix A: Owyhee County AOI Agreements

Report 12-01

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Chapter 1

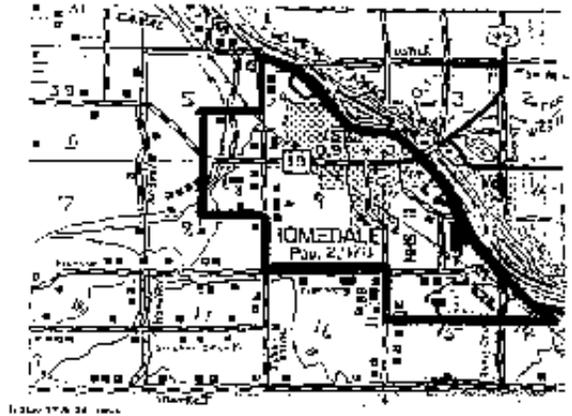
HOMEDALE AREA OF CITY IMPACT

8-1-1: PURPOSE:

- A. The city of Homedale initiated a request that an area of city impact be designated and established in the unincorporated area of the county adjoining the city of Homedale which the planning and zoning commission of Homedale and the city council and mayor of Homedale have identified as a logical urban fringe area. In making such identification, those officials have recognized a trade area, geographic factors, and the potential delivery of public services which are closely associated with the city of Homedale, and have identified the area as being comprised of areas that may reasonably be annexed to the city of Homedale in the future.
- B. After hearing evidence for and against the designation and establishment of the city impact area, the board of county commissioners have determined that the city impact area as designated in this chapter will best serve the growth and development interests and needs of the city of Homedale. The board believes that the mandate of the Idaho local planning act is that such local city interests and needs are primary factors to be considered in establishing an area of city impact. This chapter is intended to serve those legislatively mandated factors. (Ord. 95-02, 9-25-1995)

8-1-2: DESIGNATION OF CITY IMPACT AREA:

The area of city impact for the city of Homedale, Idaho, is hereby established as that area defined by 1995 Homedale city ordinance 304 and the city impact area map adopted by said ordinance. Said map identified as "exhibit A" by the Homedale city ordinance and referred to in section 2 of 1995 Homedale city ordinance 304 is set forth as follows:



(Ord. 95-02, 9-25-1995)

8-1-3: COMPREHENSIVE PLAN:

The comprehensive plan required by the Idaho local planning act and adopted by the city of Homedale shall be applicable to and within the area of city impact designated by section [8-1-2](#) of this chapter. (Ord. 95-02, 9-25-1995)

8-1-4: ZONING ORDINANCE:

The zoning ordinance required by the Idaho local planning act and adopted by the city of Homedale shall be applicable to and within the area of city impact designated by section [8-1-2](#) of this chapter. (Ord. 95-02, 9-25-1995)

8-1-5: SUBDIVISION ORDINANCE:

The subdivision ordinance adopted by the city of Homedale shall be applicable to and within the area of city impact designated by section [8-1-2](#) of this chapter. The Owyhee County subdivision ordinance¹ shall not be applicable to and within the area of city impact designated by section [8-1-2](#) of this chapter, but remains in force and effect as to all other unincorporated areas of the county. (Ord. 95-02, 9-25-1995)

8-1-6: MOBILE HOME ORDINANCE:

In accordance with the provisions of 1995 Homedale city ordinance 304, the Owyhee County mobile home, manufactured home and mobile home park ordinance shall be applicable to and within the area of city impact designated by section [8-1-2](#) of this chapter. (Ord. 95-02, 9-25-1995)

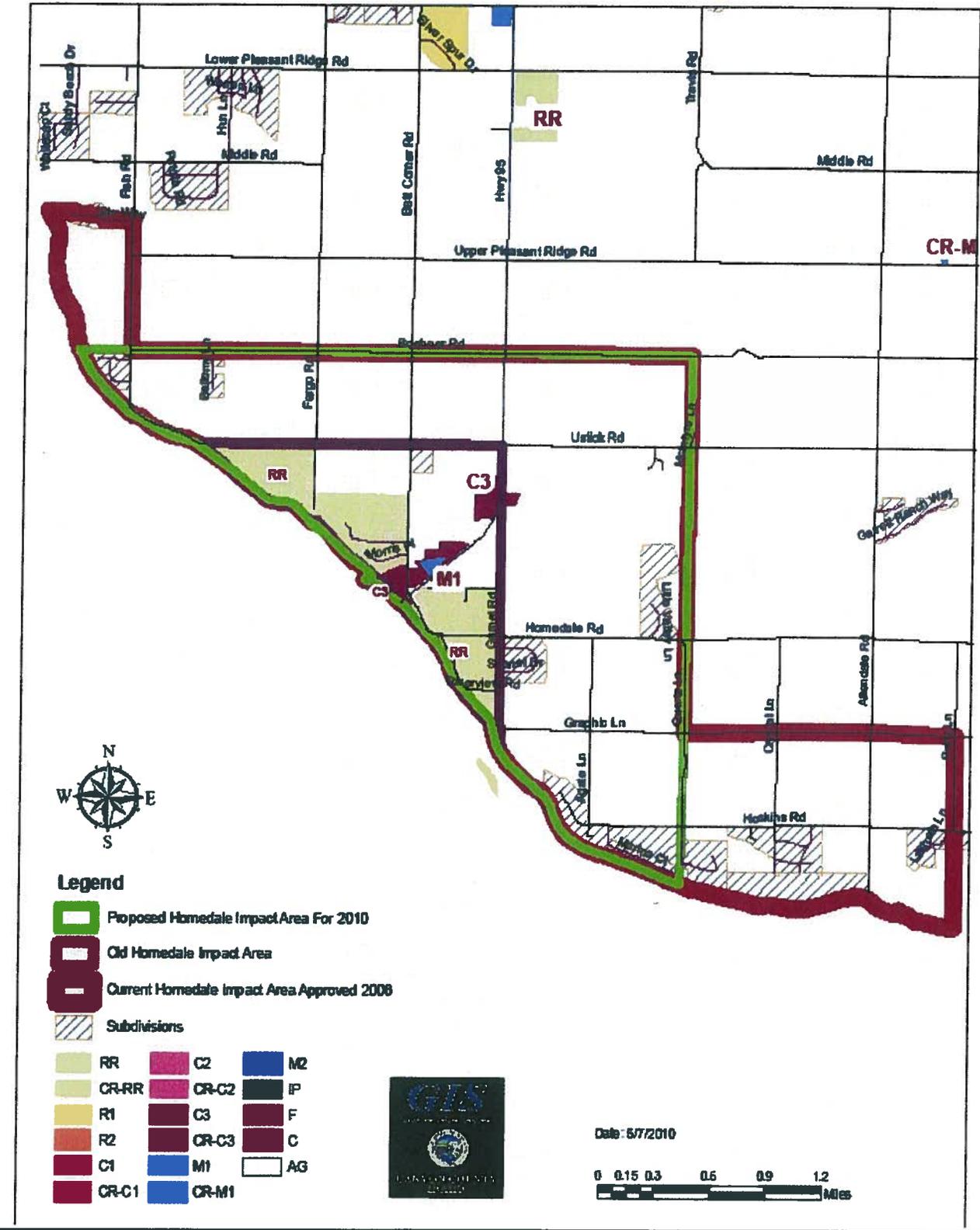
8-1-7: ADMINISTRATION AND ENFORCEMENT:

Administration and enforcement of zoning ordinance, subdivision ordinance and comprehensive plan within the city impact area designated by section [8-1-2](#) of this chapter shall be in accordance with the provisions of section 8 of 1995 Homedale city ordinance 304. The constitutional and statutory authority and responsibility of the county sheriff is not to be impacted in any way by the passage of this chapter. (Ord. 95-02, 9-25-1995)

8-1-8: RENEGOTIATION OF CITY IMPACT AREA:

- A. Review: The county shall review with the city of Homedale the city impact area designated by section [8-1-2](#) of this chapter no later than five (5) years after the effective date hereof.
- B. Request For Renegotiation: Additionally, upon the written request of the city of Homedale or the county of Owyhee delivered by one governing body to the other, renegotiation shall commence no later than thirty (30) days after receipt of the written request. Such renegotiation shall take place in accordance with the mandate of Idaho Code section 67-6526. (Ord. 95-02, 9-25-1995)

Proposed Impact Area Map – Exhibit 3



Chapter 2

MARSING AREA OF CITY IMPACT

8-2-1: TITLE:

This chapter shall be known as the *MARSING, IDAHO, AREA OF CITY IMPACT ORDINANCE*. (Ord. 09-05, 8-4-2009)

8-2-2: PURPOSE; AUTHORITY:

The purpose of establishing the Marsing area of city impact is to identify an urban fringe area in the unincorporated territory surrounding the city within which there is potential for development or changes in land use that must be planned in an orderly and compatible manner with the adopted comprehensive plan and to ensure timely or economical provision of public service, and to protect and sustain existing public services and residential communities, protect the environment, and to promote traffic flow objectives, conform with the comprehensive plan and zoning regulations of the area of city impact, and protect the safety of all users of roadways affected by increased traffic from land use decisions in the Marsing area of city impact. Residential character, the environment, traffic safety, bicycling safety and pedestrian safety are goals furthered by this chapter. This chapter is enacted pursuant to Idaho Code sections 67-6526, 31-714, 31-801, and 31-828; and the Idaho constitution, article 12, section 2, as amended or subsequently modified. (Ord. 09-05, 8-4-2009)

8-2-3: AREA OF CITY IMPACT DEFINED:

The new area of city impact shall consist of an area where development or use of land affects or may affect the city of Marsing in consideration of trade areas, geographic factors, and areas that can reasonably be expected to be annexed to the city in the future and are contiguous with the city limits of the city of Marsing. (Ord. 09-05, 8-4-2009)

8-2-4: GEOGRAPHIC AREA OF CITY IMPACT ESTABLISHED AND DEFINED:

The officially adopted area of city impact is hereby established and shown on the map entitled, "Marsing Area Of City Impact Map" and is officially made a part hereof by reference, said map being specifically adopted in section [8-2A-6](#) of this chapter. (Ord. 09-05, 8-4-2009)

8-2-5: STANDARDS:

Upon adoption by the city and county, the following standards shall apply wherever an agency, planning and/or zoning commission, hearing examiner, or governing body of the county considers a zone change, comprehensive plan change, request for a special or conditional use permit, planned unit development variance request, other land use decision, or subdivision plat within the area of city impact:

- A. Marsing area of city impact comprehensive plan, and
- B. Marsing area of city impact subdivision ordinance, and
- C. Marsing area of city impact zoning ordinance. (Ord. 09-05, 8-4-2009)

8-2-6: ENFORCEMENT:

The county shall be responsible for the administration and enforcement of the county ordinances and regulations within the area of city impact and shall, except as otherwise provided, receive all permit fees for inspections performed to recapture direct costs of inspections, administration, legal publications, any development fees or other costs arising from fulfilling the terms of each ordinance or regulation. (Ord. 09-05, 8-4-2009)

8-2-7: HEARING PROCEDURES WITHIN AREA OF CITY IMPACT:

- A. **County Responsibility:** The county is responsible for all public hearings and final decisions on all completed applications. A complete application and related material and a request for comment for any subdivision shall be sent to the city of Marsing for comment prior to the county scheduling a public hearing. A letter from the city of Marsing commenting on any of the aforementioned applications shall be returned to the county within thirty one (31) days of the receipt of the request. If the city does not respond within thirty one (31) days of the request, it shall be deemed by the county that the city has no comment.
- B. **Renegotiation:** Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of Idaho Code section 67-6526(b) shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section. (Ord. 09-05, 8-4-2009)

8-2-8: ANNEXATION:

Annexation by the city of Marsing shall be limited to those lands lying within the area of city impact and being contiguous to the city limits of the city of Marsing. Upon annexation, the provisions of this chapter, which sets forth the agreement between the city of Marsing and Owyhee County, shall no longer apply to the annexed area. (Ord. 09-05, 8-4-2009)

ARTICLE A. IMPACT AREA MAP

8-2A-1: TITLE:

This article shall be known as the *MARSING, IDAHO, AREA OF CITY IMPACT MAP ORDINANCE*. (Ord. 09-04, 8-4-2009)

8-2A-2: PURPOSE; AUTHORITY:

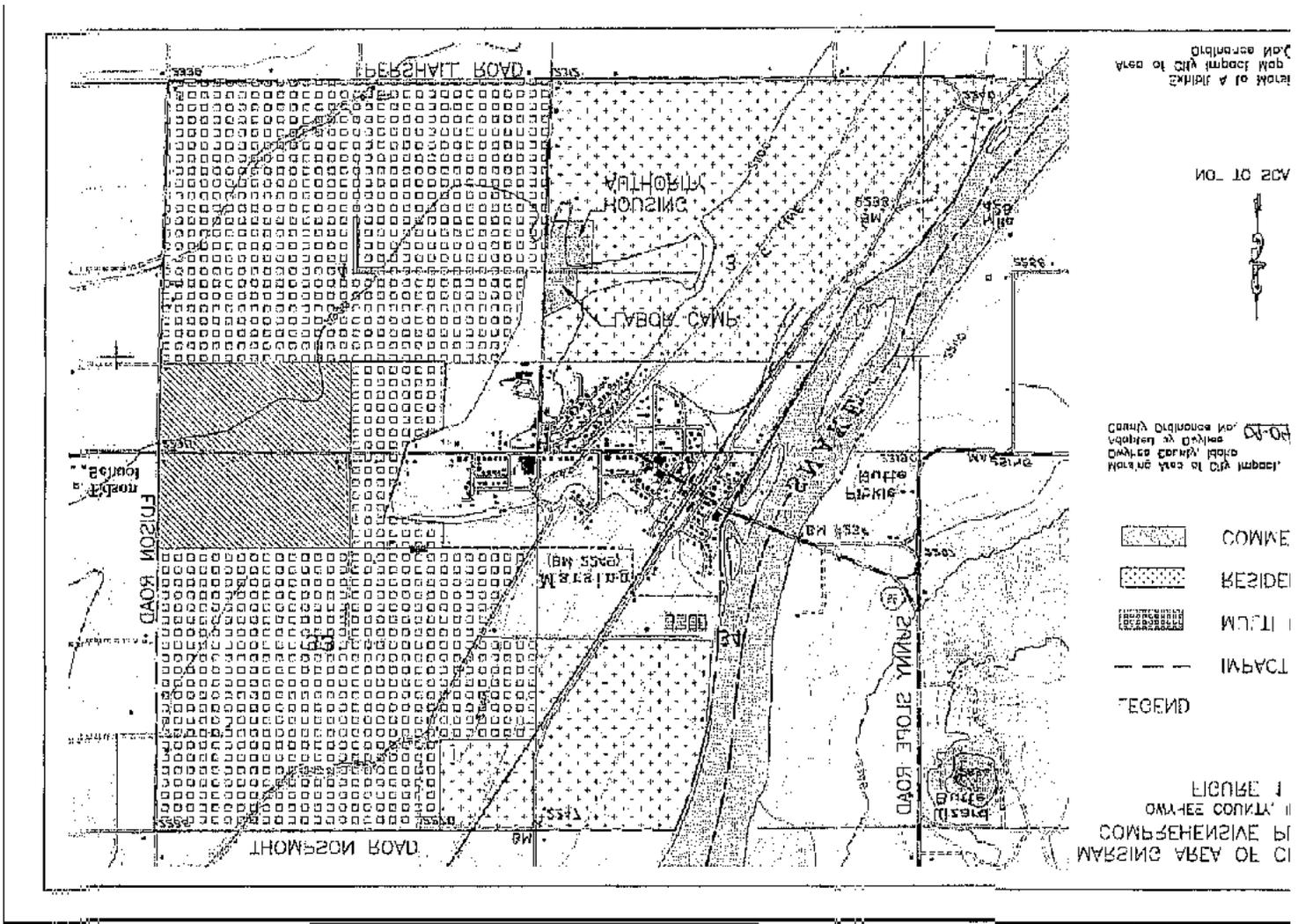
The local planning act of 1975 requires that each county and each city in the state of Idaho shall identify by ordinance an area of city impact within the unincorporated area of the county and shall, in accordance with the notice and hearing procedures provided in Idaho Code section 67-6509, adopt by ordinance a map identifying that area of city impact. The purpose of this article is to adopt the Marsing, Idaho, area of city impact map. This article is enacted pursuant to Idaho Code sections 67-6526, 31-714, 31-801, and 31-828; and the Idaho constitution, article 12, section 2, as amended or subsequently modified. (Ord. 09-04, 8-4-2009)

8-2A-3: GENERAL CITY IMPACT AREA DESCRIPTION:

The Marsing area of city impact is generally described as that geographic area bounded by Thompson Road on the north as if Thompson Road were extended to the Snake River, Edison Road on the west, Pershall Road on the south as if Pershall Road were extended to the Snake River, and the Snake River on the east. (Ord. 09-04, 8-4-2009)

8-2A-4: MARSING AREA OF CITY IMPACT AREA MAP:

A map, not drawn to scale, describing the Marsing area of city impact is as follows:



(Ord. 09-04, 8-4-2009)

8-2A-5: RENEGOTIATIONS:

In accordance with Idaho Code section 67-6526(d), the city of Marsing or the county may request, in writing, negotiations of any provisions of this article at any time. Within thirty (30) days of receipt of such request by either party, a meeting between the two (2) jurisdictions shall occur. While renegotiation is occurring, all provisions of this article shall remain in effect until the article is amended or a substitute ordinance is adopted by the city of Marsing and the county, in accordance with the notice and hearing procedures provided in Idaho Code, title 67, chapter 65, or until a declaratory judgment from the district court is final. (Ord. 09-04, 8-4-2009)

8-2A-6: USE OF MAP WITH MARSING AREA OF CITY IMPACT ORDINANCE:

This map, as set forth in section 8-2A-4 of this article, is adopted in conjunction with the county's Marsing area of city impact ordinance, [chapter 2](#) of this title, and is intended to be an integral part of this chapter. (Ord. 09-04, 8-4-2009)

ARTICLE B. IMPACT AREA SUBDIVISION REGULATIONS

8-2B-1: PURPOSE AND AUTHORITY:

The underlying purpose and intent of this article is to promote the health, safety, convenience and general welfare of the inhabitants of the Marsing area of city impact in the matter of the subdivision of land and related matters affected by such subdivisions. This chapter is enacted for the further purpose of facilitating the orderly growth and development of the Marsing area of city impact; lessening congestion in the streets; preventing the overcrowding of land; avoiding undue concentration of population; securing economy in municipal and capital expenditures; facilitating adequate provisions for transportation, water, sewer, schools,

parks and other public requirements; stabilizing the value of the property, and increasing the security of home life. This article is enacted pursuant to Idaho Code sections 67-6513, 31-714, 31-801, and 31-828, and the Idaho constitution, article 12, section 2, as amended or subsequently modified. (Ord. 09-06, 8-4-2009)

8-2B-2: PREPARATION, APPROVAL AND RECORDING OF PLAT REQUIRED, SALE BY METES AND BOUNDS:

- A. Failure To Comply: Whosoever, being the owner or agent of the owner of any land located within the Marsing area of city impact, divides said land, then transfers or sells any lots or lands without first preparing a final subdivision plat in conformance with this article, and recording said final plat in the office of the county recorder, shall be guilty of a misdemeanor for each lot so transferred or sold.
- B. Compliance Required; Exceptions: All property divisions shall be submitted for approval by the county planning and zoning commission and shall comply with the provisions of this article, except the following:
1. Administrative division of an original lot, tract, or parcel of land, said lot, parcel or tract of land of record as of August 13th, 1979, into four (4) or less parts. It shall be the responsibility of the applicant to submit to the administrator a deed or other documentation sufficient to document that the parcel being divided was a parcel of record as of August 13, 1979. A resulting parcel, lot or tract created by an administrative split or a division is not considered a new parent parcel. Further partitioning or splits of resulting, nonparent parcels, lots or tracts are subject to the requirements of this article.
 2. A onetime, administrative division of any lot, tract, or parcel of land of record as of the date of adoption hereof into two (2) separate, buildable parcels.
 3. Property line adjustments that establish buildable parcels with boundaries which differ from existing buildable parcels (lot line adjustment).
 4. The lots created by an administrative division or lot line adjustment must be evidenced by a record of survey prepared in conformance with Idaho Code title 55, chapter 19, and lots may be sold using a metes and bounds description without the necessity of recording a final subdivision plat if all of the following conditions are met:
 - a. The proposed division and layout shall have first been approved, in writing, by the county planning and zoning administrator;
 - b. The proposed division is not traversed by the mapped lines of a proposed or existing street or public right of way, as shown on the master plan of the Gem highway district, and does not require the dedication of any land for streets or other public purposes.
 - c. Each lot in the proposed division meets the requirements of [article C of this chapter](#), the Marsing area of impact zoning ordinance for that area being divided. (Ord. 09-06, 8-4-2009)

8-2B-3: DEFINITIONS:

Terms or words used herein shall be interpreted as follows:

A. Construction Of Words:

1. The present tense includes the past or future tense;
2. The singular includes the plural, and the plural includes the singular;
3. The word "shall" is mandatory, "may" is permissive, and the word "should" is preferred; and
4. The masculine shall include the feminine.

B. General Definitions: As used in this article, the following words and terms shall have the meanings ascribed to them as follows:

ADMINISTRATOR: A person appointed by the board of county commissioners to administer this article and related ordinances. Until such person is appointed, the administrator is the board of county commissioners.

ALLEY: A minor street providing secondary access to the back or side of a property otherwise abutting a street.

AUTO WRECKING OR SALVAGE YARD: A lot, or structure or part thereof, used for the collecting, storage and/or sale of material and salvaging of machinery or vehicles for the use or sale of parts thereof.

BLOCK: A piece or parcel of land or group of lots within a subdivision that is entirely surrounded by public streets, streams, railroads, parks or the exterior boundary of the subdivision or a combination thereof.

BOARD OF COUNTY COMMISSIONERS: The governing board of the county.

CERTIFICATE OF COMPLIANCE: A certificate issued by the administrator or designee of the board of county commissioners which certifies that the proposed land use for a building, lot, parcel or other premises is in compliance with this chapter. The certificate must be issued before any building permit

is issued and before a person enters into occupancy. When the proposed land use is pursuant to a conditional use permit, the certificate of compliance is issued only after the applicant is in substantial compliance with the special conditions imposed.

CITY: The city of Marsing, Owyhee County, Idaho.

CITY COUNCIL: The city council of the city of Marsing, Idaho, hereinafter referred to as the "city council"; or the "council".

CITY ENGINEER: The city engineer of the city of Marsing.

CITY OF MARSING STANDARDS: The most current edition of the Idaho standards for public works construction and any supplemental standards that may be adopted by the city of Marsing.

CITY PLANNER: The person employed to handle the planning duties of the city.

COMPREHENSIVE PLAN: The comprehensive plan, or parts thereof, providing for the future growth and development of the Marsing area of city impact and for the general guidelines and coordination of streets and highways, schools and recreation areas, public building sites, and other development. A comprehensive plan may be further defined by Idaho Code.

CONDITIONAL APPROVAL: An affirmative action by planning and zoning commission indicating that approval is given subject to certain specified stipulations.

CONDITIONAL USE: A use permitted within a zoning district only under a conditional use permit issued pursuant to this chapter.

CONDITIONAL USE PERMIT: A permit granted to an applicant who seeks to place a land use in a district where the use is not allowed, said permit to be granted only pursuant to the provisions of this chapter and to contain specific conditions placed pursuant to provisions of this chapter.

CONDOMINIUM: An estate consisting of: 1) an undivided interest in common real property, in an interest or interests in real property, or in any combination thereof, together with 2) a separate interest in real property, in an interest or interests in real property, or in any combination thereof. See Idaho Code section 55-101B.

CONSERVATION: Protection of natural resources and the environment and excludes development of the land.

CONSERVATION EASEMENT: An easement which places limitation on the use of the servient estate for conservation purposes.

COTTAGE INDUSTRY/IN HOME BUSINESS: A business in a home which can be a full or part time occupation which is conducted entirely within a dwelling unit and which does not change the character of the dwelling unit.

CUL-DE-SAC: A street, existing or proposed, that has access from one open end and is terminated by a vehicular turnaround at the other end. Vehicular turnaround geometry shall be in conformance with the requirements of the Marsing rural fire protection district and the highway district with jurisdiction.

DEVELOPMENT AGREEMENT: A written commitment by an applicant or owner of the subject parcel to specifically defined property and details the development, such agreement to be made a condition of rezoning.

DWELLING: Any building or portion thereof which is used as the private residence or sleeping place of one or more human beings, but not including hotels, boarding and rooming houses, motels, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, MULTIPLE-FAMILY: A building occupied as a residence by two (2) or more families living independently of each other but not including motels or hotels, boarding or rooming houses, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, ONE-FAMILY: A detached building designed exclusively for and occupied as a residence by one family.

DWELLING UNIT: In a dwelling or multiple-family dwelling one or more rooms designed for and occupied as a residence by one family; example, an apartment.

EASEMENT: An interest in land conveyed and granted by the landowner to another person, the grantor landowner becoming the owner of the servient estate and the grantee easement owner becoming owner of the dominant estate. Such easement contains the right to control land use of the servient estate by requiring the servient estate owner to change the land use of the servient estate or any portion thereof or by prohibiting the servient estate owner from enlarging, expanding, changing, or altering the land use of the servient estate or any portion thereof.

FINAL APPROVAL: Unconditional approval of the final plat as evidenced by appropriate certifications on the plat; such approval constitutes authorization to record a plat.

FINAL PLAT: A drawing of a proposed subdivision or development, drawn in conformance with Idaho Code title 50, chapter 13, this article, and accurately to scale, which has thereon all measurements, dates, certificates and dedications required for approval and acceptance by the proper agencies and for recording in the office of the county recorder.

KENNEL: Any lot or premises on which four (4) or more animals at least four (4) months of age are harbored for commercial purposes such as boarding, breeding or training of such animals, and where such activity is not accessory to or incidental to an allowed use in the district.

LOT WIDTH: The width of a lot shall be:

1. If the side property lines are parallel, the perpendicular distance between these side lines.
2. If the side property lines are not parallel, the width of the lot shall be the length between side lot lines at right angles to the axis of the lot measured at the required front setback line.

LOTS: A piece or parcel of land separated from other pieces or parcels as shown on a recorded subdivision plat or by metes and bounds description for purposes of sale, lease or separate use.

Corner Lot: A lot abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty five degrees (135°).

Double Frontage Lot: A lot abutting two (2) parallel or approximately parallel streets.

Interior Lot: A lot having but one side abutting on a street.

MAJOR STREET: A street, existing or proposed, which serves or is intended to serve as a major trafficway and is so designated on the master plan. The primary function of a major street is to serve through traffic.

MANUFACTURED HOME: A structure constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one or more sections, which, in the traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 41 USC section 5401 et seq.

MANUFACTURED HOME COURTS OR PARKS: For the purpose of this definition, the term "manufactured home" refers also to "mobile home". A manufactured home court or park exists when there are two (2) or more manufactured homes placed on an acre and where such placement is not for purposes of providing agricultural labor housing.

MASTER PLAN: A plan, labeled "master plan of city of Marsing", including maps or reports or both, which has been approved by the city as required by law.

MINOR STREET: A street, existing or proposed, which is of limited continuity and which serves or is intended to serve the local needs of a neighborhood or as minor access to abutting property.

NONCONFORMING BUILDING: A building or structure or portion thereof built prior to the effective date hereof, or any amendment hereto, and conflicting with the provisions of the ordinance applicable to the district in which it is located. No residence, supporting structure or agricultural building shall become nonconforming as the result of the passage of hereof.

NONCONFORMING USE: The use of a structure or premises conflicting with provisions of this chapter.

OCCUPANCY: Taking possession of and use of property; period during which a person possesses, uses, does business in, and/or resides in a building, structure or premises.

OCCUPY: To take or enter upon possession of a building, structure or premises; to live in, do business in, use a building, structure or premises.

OFF SITE FACILITIES AND UTILITIES: Facilities and utilities installed in, under, upon or over other property outside the legally described perimeter of a subdivision which are required for the proper development of such subdivision and which may be located and designed to serve such other property.

OPEN SPACE: An area substantially open to the sky, which may be on the same lot with a building. The area may include, along with the naturally occurring physical characteristics of the earth, water areas, swimming pools, tennis courts and other areas of recreational, historical or archeological value. Streets and structures for habitation shall not be considered as part of open space.

OPEN SPACE EASEMENT: An easement which places limitations on the use of the servient estate for open space purposes.

ORIGINAL LOT, ORIGINAL TRACT, OR ORIGINAL PARCEL OF LAND: A lot, tract or parcel of land as recorded on any plat recorded on file in the office of the county recorder, and/or any unplatted contiguous parcel of land held in one ownership on record in the office of the county recorder at the effective date hereof; the effective date being August 13, 1979.

OVERSIZED FACILITIES AND UTILITIES: Facilities and utilities which are designed with added capacity, width, depth, etc., with the express purpose of making service available to other properties outside the legally described perimeter of the subdivision.

PARCEL: A contiguous quantity of land owned by, or recorded as the property of, the same person. Parcels purchased on different occasions with separate financing for the purpose of increasing the size of a parcel or tract, which parcels have not been combined into single legal description, are individual parcels.

PARENT PARCEL OR PARENT TRACT: A parcel or tract of contiguous lands under the same ownership that existed on August 13, 1979, or at the date of adoption hereof.

PLANNING AND ZONING COMMISSION: The Owyhee County planning and zoning commission appointed by the board of county commissioners to perform planning and zoning duties as assigned under this chapter.

PRELIMINARY PLAT: A drawing drawn to scale representing a proposal as to a method of subdividing a tract, lot or parcel of land but which does not require the certificates and dedication necessary for the acceptance by the planning and zoning commission.

RECYCLING OR SALVAGE CENTER: A lot, or structure or part thereof, used for the collecting, storage and/or sale of material for recycle or reuse such as, but not limited to, wastepaper, cardboard, rags, wood, scrap metal or discarded material. May include car crushing and materials baling.

SETBACK: The distance from the nearest point of a building or other structure, measured to the front lot line.

STREET: Any street, avenue, boulevard, road, land, parkway, place, viaduct, easement for access or other way which is an existing state, county or municipal roadway; or a street or way shown in a plat heretofore approved pursuant to law or approved by official action; or a street or way in a plat duly filed and recorded within the right of way boundaries, whether improved or unimproved, and may be comprised of pavement, shoulder, curbs, gutters, sidewalks, parking areas and lawns.

Alley: A minor street providing secondary access to the back or side of a property otherwise abutting a street.

Arterial Route: A general term including expressways, major and minor arterial streets, and interstate, state or county highways having regional continuity.

Collector Street: A street that provides for traffic movement within neighborhoods of the city and between major streets and local streets and for direct access to abutting property.

Local Street: A street that provides for direct access to residential, commercial, industrial or other abutting land for local traffic movements and connects to collector and/or arterial streets.

1. **Marginal Access Street:** A street parallel and adjacent to an arterial route and intercepts local streets and controls access to an arterial route.

2. **Cul-De-Sac Street; Cul-De-Sac:** A street, existing or proposed, which has access from one open end and is terminated by a vehicular turnaround at the other end. Vehicular turnaround geometry shall be in conformance with the requirements of the Marsing rural fire protection district and the highway district with jurisdiction.

3. **Loop Street:** A street with both terminal points on the same street of origin.

Private Street: A street that is not accepted for public uses or maintenance which provides vehicular and pedestrian access.

STRUCTURE: Anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, but not including fences or walls used as fences eight feet (8') or less in height, poles, lines, cables or other similar transmitting or distribution facilities of public utilities.

SUBDIVIDER: An individual, corporation or registered partnership owning or controlling any tract, lot or parcel of land to be subdivided or a group of two (2) or more persons owning any tract, lot or parcel of land to be subdivided who have given their power of attorney to one of their group or to another individual to act on their behalf in planning, negotiating for, in representing or executing the purpose of the subdivision.

SUBDIVISION: 1. The division of an original lot, tract, or parcel of land as recorded as of August 13, 1979, into more than four (4) parts, any of which is less than five (5) acres, for the purpose of development; or any land development where four (4) or more home sites of any size will be sold for the purpose of development. "Development" shall include, but not be limited to, improvements for residential, commercial, industrial, or recreational use, including "mobile home parks" as defined in Idaho Code section 55-2003; the dedication of a public street; and the addition to or creation of a cemetery.

2. An "original lot, tract or parcel of land" is defined as a lot, tract or parcel of land as recorded on any plat recorded on file in the office of the county recorder, and/or any unplatted contiguous parcel of land held in one ownership on record in the office of the county recorder at the effective date of hereof; the effective date of this ordinance being August 13, 1979.

3. "Subdivision" shall also mean and include the following:

a. The dividing of land, not an "original parcel" as defined in this section, into three (3) or more tracts, lots, or parcels for transfer of ownership or building development, any part of which, when subdivided, contains less than five (5) acres.

b. The dedicating of any street or alley through or along any tract of land.

c. The placement of more than one manufactured building under the provisions of Idaho Code section 39-4105(14), and/or a commercial coach under the provisions of Idaho Code section 39-4105(13), or a "mobile home", which means a structure similar to a manufactured home, but built to a state mobile home code which existed prior to the federal manufactured housing and safety standards act (HUD code) per acre upon an existing tract of land, although there is not division of the lot, tract or parcel of land.

d. Any dwelling or residence located on a tract of land which does not provide a recorded right of way for ingress and egress to an existing public road; and the use of an easement or right of way by three (3) or more adjacent property owners for ingress and egress to an existing public road.

UTILITIES: Installations or facilities, underground or overhead, furnished for use by the public, including, but not limited to, electricity, gas, steam, communications, water, drainage, irrigation, sewage disposal or flood control, owned and operated by any person, firm, corporation, municipal department or board duly authorized by state or city regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments or boards as applicable herein.

VARIANCE: A modification of the bulk and placement requirements of this chapter as to lot size, lot coverage, width, depth, front yard, side yard, setbacks, parking space, height of buildings, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots, said modification to be allowed only upon a showing by the applicant of undue hardship because of characteristics of the site, and that the modification is not in conflict with public interest.

VICINITY PLAN: Vicinity plan shall be drawn to scale and shall show a representation of the blocks and streets of the proposed subdivision and their relationship to existing and proposed streets and to existing and proposed utilities.

WAIVER: Permission granted to allow a deviation from specific development standards or development requirements of this chapter. A waiver is different from a variance. See subsection [8-2B-5-1G](#) of this article for details. (Ord. 09-06, 8-4-2009)

8-2B-4: PROCEDURE FOR OBTAINING APPROVAL OF SUBDIVISIONS REQUIRING SUBMISSION OF FINAL PLATS:

- A. Information As To Standards And Master Plan Requirement To Be Secured: Any person wishing to subdivide land within the Marsing area of city impact shall secure from the Owyhee County planning and zoning administrator, information pertaining to the required standards and to the Marsing area of city impact plan of streets, parks, drainage, zoning, subdivision of land, and other master plan requirements affecting the land to be subdivided.
- B. Preparation Of Preliminary Plat And Vicinity Plan; Submission To County Planning And Zoning Administrator: The subdivider shall then prepare a preliminary plat and vicinity plan. Fifteen (15) copies of the preliminary plat shall be submitted to the planning and zoning administrator for review and comment by agencies having jurisdiction or having an interest.
1. The preliminary plat shall be submitted on a drawing not smaller than twenty four inches by thirty six inches (24" x 36") and shall include:
 - a. Scale which shall be one of the following: ten (10), twenty (20), thirty (30), forty (40), fifty (50), sixty (60) or one hundred feet (100') to the inch.
 - b. Name of the subdivision and vicinity map drawn to scale. Vicinity map may be submitted separately.
 - c. Name, address, and phone number of subdivider, engineer, and/or surveyor.
 - d. Names of all adjoining subdivisions, property owners and present property lines, including easements, utilities and streets.
 - e. North arrow and date.
 - f. Contour map at a contour interval not less than two feet (2').
 - g. The boundary lines of the tract to be subdivided. The subdivision boundary shall be based on an actual field survey and shall bear the stamp of a professional land surveyor.
 - h. The location, widths and other dimensions of all existing or platted streets and other important features such as railroad lines, watercourses, exceptional topography and buildings within the tract, or within three hundred feet (300') of the tract to be subdivided.
 - i. The location, widths, and other dimensions of all lots, proposed streets, proposed street names, existing utilities, alleys, easements, parks and other open spaces, with proper labeling of spaces to be dedicated to the public.
 - j. Plans and proposed improvements regarding the size and type of proposed sanitary sewers or other sewage disposal facilities, culinary water lines, drainage facilities and other proposed improvements, such as curbs, gutters, and sidewalks, plantings and landscaping, parks, and any grading of individual lots. The plat shall also depict all proposed off site improvements, including water supply and distribution lines, sanitary sewer facilities, stormwater facilities, and streets.
 - k. By note, the existing zoning classification of the tract and adjacent land, and any requested zoning changes.
 - l. By note, the acreage of the tract.
 - m. A statement as to whether or not any variance or waiver will be requested with respect to any provision of this chapter, describing the particular provision and the reasons for the request.
 - n. If plat includes land for which multi-family, commercial or industrial use is proposed, such areas shall be clearly designated together with existing zoning classification and status of zoning change, if any.
 - o. Appropriate information that sufficiently details the proposed development within any special development area, such as slopes greater than ten percent (10%), planned unit development, development within a designated floodplain, or hazardous and unique areas of development.
 - p. If grading or any other construction is to begin prior to final plat approval, a grading plan or information on construction plans shall be submitted and is part of the approval.
 - q. All subdivisions containing more than fifty (50) lots shall provide a traffic impact analysis based on information that reflects current traffic conditions. A traffic impact analysis may be required of any development as deemed necessary by the planning and zoning commission on a case by case basis.
 - r. Statement signed by the subdivider stating that:

The undersigned hereby agrees to install all facilities and utilities in accordance with the Marsing area of city impact subdivision ordinance and the Owyhee County standards.
 - s. The preliminary plat shall have a statement of preliminary approval with a space for approval signature by chairman of the county planning and zoning

commission.

t. Any other data deemed necessary by the county, city or the Marsing area of city impact engineer.

2. In all cases where the subdivider is not an individual, corporation or registered partnership, the preliminary plat, when presented, shall be accompanied by a notarized statement, bearing the signatures of all owners of record of the property to be subdivided, designating a single individual who shall act for and on behalf of the group, as necessary, to execute the purpose of subdividing the property.
3. The county, with consideration of the recommendation from the city of Marsing and other agencies, may approve, approve conditionally, or reject the preliminary plat. Approval of the preliminary plat by the county shall not constitute final plat approval or acceptance of the subdivision by the county.

C. Public Hearing: Upon receipt of the preliminary plat and all required data as provided herein, a public hearing for review of said preliminary plat shall, therefore, be placed on the commission agenda for consideration within forty five (45) days after staff review is complete.

D. Local Property Owner Notification: Written notification by the administrator will be mailed to all property owners within three hundred feet (300') of the external boundaries of the proposed subdivision at least fifteen (15) days prior to the planning and zoning commission meeting at which the preliminary plat is to be considered.

E. Review Of Preliminary Plat:

1. Staff Review: Plans shall be submitted for review to the planning and zoning administrator.

2. Agency Review:

- a. The planning staff shall transmit one copy of the application to each agency that has jurisdiction or an interest in the proposed subdivision for their review and recommendations.
- b. Some of the agencies which receive copies of the preliminary plat may be as follows:
 - (1) City of Marsing;
 - (2) Marsing area of city impact engineer;
 - (3) County assessor;
 - (4) Fire chief, Marsing rural fire protection district;
 - (5) Superintendent of schools;
 - (6) State division of highways, if the subdivision abuts a state highway;
 - (7) Utility companies: gas, power, telephone, cable TV;
 - (8) Other agencies as determined by the county;
 - (9) Irrigation and drainage companies or districts;
 - (10) Highway district having jurisdiction;
 - (11) Southwest district health.

3. Commission Action:

- a. The commission shall review and approve, approve conditionally, disapprove or table the preliminary plat for additional information.
- b. Upon the commission's decision, the plat, together with a complete copy of the commission findings, shall be transmitted to the subdivider. The reason for action taken shall specify:
 - (1) The ordinance and standards used in evaluating the application.
 - (2) The reasons for approval or denial.
 - (3) The actions, if any, that the applicant could take to gain approval of the proposal.
- c. Preliminary plat approval constitutes authorization for the subdivider to proceed with preparation of the final plat and with engineering plans and specifications for necessary improvements.

4. Approval: Approval is valid for twelve (12) months from the date of commission decision.

5. Certification Of Final Plat: Failure to file and obtain the certifications of the acceptance of the final plat by the developer within one year after action by the commission shall cause all approvals of said preliminary plat to be null and void, unless an extension of time is applied for by the subdivider, and granted by the commission.

6. Phase Developments: Application for development of a proposed subdivision in phases may be made if the subdivision is to include fifteen (15) or more lots, parcels or sites.

- a. In the event the development of the preliminary plat is made in successive contiguous phases in an orderly and reasonable manner, and conforms substantially to the approved preliminary plat, such phases, if submitted within successive intervals of one year, may be considered for final plat approval without resubmitting for preliminary plat approval.
- b. Filing of final plats on phase developments may require modification of the conditions as approved by commission. The commission reserves the right to modify and/or add conditions to the final plat(s) to conform with adopted policies, and/or ordinance changes for each phase submitted after one year following the preliminary plat approval.
- c. All items in each phase shall be completed before commission approval will be given for any subsequent phases.

F. Plan And Profile Drawing Of Streets: After the preliminary plat has been approved, the subdivider shall prepare and submit for approval, plan and profile drawings and construction specification of streets, storm drainage facilities, and utilities serving the subdivision. Said drawings showing final street grades and alignment, location, size and grades for all proposed utilities. (Ord. 09-06, 8-4-2009)

8-2B-5: IMPROVEMENTS REQUIRED:

8-2B-5-1: PERFORMANCE BOND PERMITTED IN LIEU OF ACTUAL CONSTRUCTION:

For all subdivisions, improvements shall be installed without cost to the county or city, in accordance with the Marsing area of city impact standards. In lieu of actual construction of the improvements, a bond in the amount of one hundred fifty percent (150%) of the estimated construction cost, or other acceptable form of guarantee, may, upon approval of the commission, be furnished to the county by the subdivider at the time the subdivision final plat is approved by the county as a guarantee that the improvements will be constructed and paid for.

- A. Streets: All streets to be dedicated to the public shall be graded and paved in accordance with Gem highway district standards and as approved by the Marsing area of city impact engineer. No public street shall be paved to a width less than the total paved width required for the specific street by the Gem highway district standards.
- B. Sewer Facilities: If the development will utilize city of Marsing sewer facilities, sanitary sewer mains and laterals shall be installed in accordance with the city of Marsing standards and as approved by the Marsing area of city impact engineer. No sanitary sewer mains shall be installed whose inside nominal diameter is less than eight inches (8") unless approved, in writing, by the Marsing area of city impact engineer. Documentation of serviceability from the city shall be submitted with the preliminary plat.
- C. Water Facilities: If the development will utilize city of Marsing municipal water facilities culinary water mains, laterals and fire hydrants shall be installed in accordance with the city of Marsing standards and as approved by the Marsing area of city impact engineer. No culinary water mains shall be installed whose nominal inside diameter is less than eight inches (8") unless approved, in writing, by the Marsing area of city impact engineer, and in no case shall fire hydrants be connected to a culinary water main whose nominal inside diameter is less than six inches (6"). Fire hydrants shall be installed in accordance with the city of Marsing standards at locations as approved by the Marsing area of city impact engineer and the Marsing rural fire protection district. Documentation of serviceability from the city shall be submitted with the preliminary plat.
- D. Irrigation Water: If irrigation water rights are appurtenant, or irrigation water is available to the parcel, an irrigation system providing irrigation water to the resulting lots must be designed and constructed, said system to be in conformance with South Board of Control standards and policy. A water user's agreement shall be prepared and recorded prior to issuance of a building permit.
- E. Curbs And Gutters, Sidewalks, Driveways And Street Signs: Curbs and gutters, sidewalks, driveways and street signs shall be installed in accordance with the city of Marsing standards and as approved by the Marsing area of city impact engineer, unless a waiver is granted under subsection G of this section.
- F. Easements: Easements shall be granted and provided by the subdivider for the installation of all utilities, including irrigation, as required by the Marsing area of city impact engineer.
- G. Waiver: Whenever a tract to be subdivided is of such unusual size or shape or is surrounded by such developments or unusual conditions that the strict application of these regulations would result in substantial hardship or inequity, the commission may waive or modify such requirements so that the applicant may develop the property in a reasonable manner, provided the commission finds that the quality of the development is not diminished, the public welfare and the interests of the county are protected, the general intent and spirit of these regulations are preserved, and conformity to the Marsing area of city impact comprehensive plan is assured.
 - 1. In requesting any such modification or waiver, the subdivider shall make written request to the administrator.
 - 2. Such request, together with such related data and maps as necessary to fully illustrate the waiver sought, shall be referred by the administrator, in writing,

to the commission with the preliminary plat, allowing a minimum of ten (10) days for review prior to public hearing.

3. The commission shall act upon said request at the same public hearing as considering the preliminary plat.
4. Approval of such waiver and/or modification shall require a majority vote of a quorum of the commission. The commission shall approve, conditionally approve, or disapprove the modification, waiver, or appeal.
5. In granting waivers and/or modifications from these regulations, the commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so waived or modified.
6. Any person, firm, corporation or party aggrieved by the decision and who appeared at the original hearing may appeal the decision of the planning and zoning commission to the board of county commissioners in the same manner and within the same time as other appeals may be taken. (Ord. 09-06, 8-4-2009)

8-2B-5-2: DIVISION OF COST OF IMPROVEMENTS:

- A. **Costs Of Improvements:** Cost of improvements which are required under the provisions of this article, as well as the cost of other improvements which the developer may install, shall be borne entirely by the subdivider.
- B. **Extensions Of Utilities:** Whenever any intervening property (off site) is benefitted by the installation of water or sewer main line extensions, the subdivider may request the city consider an agreement allowing the subdivider to recoup a percentage of said facilities costs through "late comer fees" or other mutually agreed upon means.
 1. **Costs:** Costs for all extensions and/or oversizing, whether within or without the existing city limits, shall be the responsibility of the property owner or his agent.
 2. **Installation:** All sewer system extensions and/or oversizing shall be installed prior to the construction of any new streets and all design and construction of any extensions and/or oversizing of the sewer system shall comply with the official specifications for sewer systems and extensions as adopted by the city.
 3. **Plans:** The plans for all extensions and/or oversizing to the sewer system shall be prepared and signed by a registered professional engineer as per the licensing requirements of Idaho Code. Three (3) copies of the plans shall be filed with the city and two (2) copies of the plans shall be filed with the Idaho department of environmental quality for their review and approval. In approving a plan for extension and/or oversizing to the sewer system, the city reserves the right to impose other requirements such as a special permit fee, right of way limits, sequence of construction, time limits for having existing service disrupted, the filing of a performance bond and other similar measures as may be required to protect the public. No work shall commence on any such extension and/or oversizing until the project has been approved by the city.
 4. **Obligation Of Owner:** After the construction of any sewer system extension and/or oversizing, it shall be the obligation of the owner or his agent to have a registered professional engineer certify to the city and to the Idaho department of environmental quality that the said system extensions and/or oversizing were installed in accordance with the approved plans and specifications on file with the respective agencies. Following certification by the registered professional engineer and acceptance by the city, the entire extension and/or oversizing of the sewer system, including the city sewer service lines, shall become property of the city and it shall be the city's responsibility to maintain and operate the system thereafter.
 5. **Additions After Acceptance By City:** If it is necessary for the city to permit a sewer service connection and/or sewer service line at any time after the extension has been originally accepted by the city, the owner or his agent shall be required to pay the sewer hookup fee as well as the standard permit and inspection fees as may be established by the city for such purposes.
 6. **Definitions:** As used in this section, the following terms shall have these meanings:

EQUIVALENT SINGLE-FAMILY CONNECTION (ESFC): An equivalent single-family connection shall be based upon the sewage flow from a typical residential dwelling and flows per the "ten states standards".

OFF SITE SEWER MAIN: Any gravity sewer main (force mains are not included) which is located beyond the boundary of the development, and has the capability of providing sewer service to property located between the end of the existing sewer system and boundary of the development for which the sewer main is being constructed. Sewer mains located within existing roadways adjacent to the new development boundary are not considered off site sewer extensions unless they are requested by the city specifically to serve adjoining property.

ON SITE OVER DEPTH: Any on site sewer main which is required by the city to be constructed at a depth in excess of that required to provide service to the farthest reach within the development.

ON SITE STUB OUT: Any on site sewer main extension which is required by the city to be constructed to the subdivision boundary for the specific purpose of servicing adjoining property. In order to qualify, the stub out must not service any property within the development or any property owned or planned to be developed by the developer.

OVERSIZED FORCE MAIN: Any on site sewage force main which is required by the city to have an inside diameter greater than four inches (4"), or greater than the size required to handle peak flow calculated for the development it is intended to serve, with a minimum flow velocity of two feet (2') per second, whichever is greater.

OVERSIZED GRAVITY SEWER MAIN: Any on site gravity sewer main which is required by the city to have an inside diameter greater than eight inches (8") in order to provide capacity in excess of the peak flow calculated for the development for which it is intended to serve.

OVERSIZED LIFT STATION: Any on site sewage lift station which is required by the city to have a capacity in excess of eighty (80) gallons per minute, or

in excess of the peak flow calculated for the development it is intended to serve, whichever is greater. Pumping capacity in excess of eighty (80) gallons per minute provided in order to facilitate pumping equipment selection is not considered oversizing.

PEAK FLOW: The required design flow for any development calculated in accordance with the requirements of the recommended standards for wastewater facilities "ten state standards".

7. Methods Of Computing Credits:

- a. Oversized Gravity Sewer Main: Credits for oversized mains shall be based upon the actual materials cost of the oversized main minus the materials cost of an equivalent eight inch (8") diameter main.
- b. Oversized Force Main: Credits for oversized force mains shall be based upon the actual materials cost of the oversized line minus the materials cost of an equivalent length of four inch (4") diameter pipe.
- c. Oversized Lift Station: Credits for oversized lift stations shall be based upon the actual materials cost of the oversized lift station minus the materials cost of lift station equipment sized to meet the peak flow demands of the development.
- d. On Site Stub Out: Credits for on site stub outs shall be based upon the actual construction cost of the main line stub outs.
- e. On Site Over Depth: Credits for on site over depth shall be based upon the actual bid amount for over depth excavation. In order to be eligible for over depth reimbursement, the project must be bid with an item for trench excavation on an incremental basis for depths below eight feet (8') as applicable for the specific project.
- f. Off Site Sewer Main: Credits for off site sewer main shall be based upon the actual construction cost of the sewer main extension prorated on a percent of capacity utilized basis. The capacity of the sewer main extension shall be calculated by the city engineer based upon the total number of acres which may be serviced by the main line. A map shall be prepared which shows the eligible service area of the sewer main which shall serve as the basis for all calculations. The total credit due the developer shall be calculated based upon the following equation:

For purposes of the credit calculation, the total development area shall include all area within the subdivision boundary including road right of way, open area, common area, etc.

8. Eligible Construction Costs: In order for any constructed facilities to be eligible for construction credits, the developer shall conform to the following requirements:

- a. The work for which construction credits are requested shall be specifically agreed to, in writing, prior to the city issuing final plan approval for construction.
- b. All work shall be competitively bid. The bids shall be reviewed and approved by the city prior to award.
- c. The developer shall organize his bidding documents in a manner such that there is an individual bid price for every item for which he is requesting construction credits. Actual construction costs shall be established by multiplying the quantity of work performed by the actual bid price.
- d. The developer shall submit a tabulation of all bids received, along with a copy of the actual contractor's payment summary for all work for which construction credits are requested.
- e. All construction cost change orders shall be reviewed and approved by the city for any work for which construction credits are requested.

9. Credit Agreement: Upon final inspection and acceptance of the sewer facility which is eligible for sewer construction credits, a letter outlining the total dollar amount of credits shall be issued to the developer by the city engineer. The developer shall then execute a credit agreement with the city. The credit agreement shall establish the payment terms.

- a. On Site Oversizing And Stub Outs: For all on site oversizing or stub outs which are constructed at the request of the city, the credit due to the developer will be paid from connection fees collected from his development as they are collected. All connection fees collected shall be placed in a separate account up to the full amount due to the developer. The developer shall receive a quarterly disbursement from the dedicated credit account for up to the full amount of the credit due.
- b. Off Site Extensions:
 - (1) For all off site extensions, which are constructed and paid for by the developer, the city shall establish a "late comers fee" which shall be charged to all property located within the service area boundary, as shown on the service area map which receives benefit from the extension and did not participate in financing the original construction. The fees collected shall be placed into a separate interest bearing account. The developer shall then receive payments from this account on a quarterly basis.
 - (2) Payments shall be made for the principal plus interest until the credit agreement is paid in full, or a period of ten (10) years, whichever is sooner. Interest rate paid shall be established in the credit agreement. The city shall charge a fee for administration of the "late comers" account which shall be established in the credit agreement.
- c. Off Site Oversizing: For all off site oversizing, which is constructed at the request of the city, the credit due to the developer will be paid from connection fees collected from his development as they are collected. All connection fees collected shall be placed in a separate account up to the full amount due to the developer. The developer shall receive a quarterly disbursement from the dedicated credit account for up to the full amount of the credit due.
- d. Method Of Collecting Fees: All fees shall be based upon gross development area and shall be collected by the city at the time a building permit is issued. Fees may be further subdivided for collection purposes on an individual basis as follows:
 - (1) For commercial and/or industrial developments the fees shall be based upon the commercial lot area plus a percentage of any right of way and/or common area as applicable.
 - (2) For residential developments the fees shall be based upon a per equivalent single-family dwelling basis based upon the total fee established on the gross area of the subdivision divided by the number of equivalent single-family dwellings.

(3) Fees will only be collected for development which occurs within the service area shown on the service area map which shall become an exhibit to the credit agreement executed between the developer and city. (Ord. 09-06, 8-4-2009)

8-2B-6: DESIGN REQUIREMENTS:

8-2B-6-1: ROADS AND STREETS:

A. Standards And Specifications:

1. Publicly Owned And Maintained: All new roads to be publicly owned and maintained within a subdivision shall conform to the Gem highway district standards and specifications.
2. Private Roads Within Subdivision: All private roads within a subdivision shall conform to the requirements of this article and city of Marsing standards.
3. Other Facilities And Utilities Within Subdivision: Other facilities and utilities installed within a subdivision shall conform to Owyhee County or the city of Marsing standards, as applicable.

B. Arrangement Of Private Streets: The arrangements of private streets in new subdivisions shall make provision for the continuation of the existing streets in adjoining areas or their proper protection where adjoining land is not subdivided at the same or greater width but, in no case, less than the required minimum width unless variations are deemed necessary by the commission. The street arrangement must be such as to cause no unnecessary hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it where, in the opinion of the commission, it is desirable to provide for street access to adjoining property and to prevent "landlocked" parcels, proposed streets shall be extended by dedication to the boundary of such property (to and through). In no case will a "spite strip" be approved or allowed.

C. Reverse Curves: Street reverse curves shall have a tangent of at least one hundred feet (100') unless, in the opinion of the Marsing area of city impact engineer, such is not necessary.

D. Intersections: All streets shall intersect each other at right angles.

E. Street Grades: Minimum street grades of four tenths of one percent (0.4%) will be required with the maximum grade being seven percent (7%). Where the observance of this standard is impossible, the county shall have the power, upon the recommendation of the Marsing area of city impact engineer, to grant an exception when approved pavement surfaces and adequate leveling areas are installed, or, in the opinion of the county, the best subdivision of the land is thereby secured.

F. Break Or Change In Alignment Of Street Centerline: Any break or change in alignment of a street centerline shall include a connective curve. The radius of the curve for the street centerline shall be not less than three hundred fifty feet (350') for major streets, and one hundred feet (100') for minor streets, unless approved otherwise by the Marsing area of city impact engineer.

G. New Street Names: New street names shall not duplicate those already existing. A street obviously a continuation of another already in existence and named shall bear the same name. Before the street is named, the proposed name must be submitted to and be approved by the county.

H. Cul-De-Sacs: The maximum length of cul-de-sacs shall be five hundred feet (500') and shall require a turnaround at the dead end whose radius shall meet the requirements of Marsing rural fire. Approved drainage facilities shall be installed.

I. Walkways: In blocks over eight hundred feet (800') in length, the subdivider may be required to dedicate, pave, and fence a walkway through the block at approximately the center of the block. Such walkway shall not be less than ten feet (10') in width.

J. Block Width: The width of blocks shall be sufficient to allow two (2) tiers of lots, unless otherwise approved by the county. No lot shall face a street and back onto another street, except in the specific case of lots backing onto a limited access or no access highway.

K. Lot Arrangement: The lot arrangement, design and shape shall be such that lots will provide satisfactory and desirable sites for buildings and be properly related to topography and conform to the requirements set forth herein. Lots, including "flag lots", shall not contain peculiarly shaped elongations solely to provide necessary square footage which would be unusable for normal purposes. Flag lots must have forty feet (40') minimum frontage on a public or private street.

- L. Lot Minimum Requirements: All lots shown on the subdivision plat must conform to the minimum requirements of the zoning ordinance then in effect for the district in which the subdivision is located.

- M. Lot Orientation: Each lot shall face and abut on a street dedicated by the subdivision plat or an existing publicly dedicated street. Side lot lines shall intersect front lot lines at right angles and radially unless otherwise specifically approved by the commission.

- N. Marketable Title: No subdivision shall be accepted and approved for recording until a deed is presented demonstrating marketable title for all property within the legally described perimeter of the subdivision.

- O. Curb And Gutter, Paving, Sidewalks And Utilities: All curb and gutter, paving, sidewalks and utilities shall be extended and installed to the borders of the subdivision in all ordinary circumstances. However, where a street lies within and borders a subdivision, only the curb and gutter and sidewalks which abut lots within the subdivision will be required to be installed.

- P. Meeting With Highway District: Whenever a proposed subdivision is required, and the parcel borders on an existing dedicated street, the subdivider shall be required to meet with the Gem highway district, or their designated representative to determine and negotiate the methods and means required for the improvement of, and the installation of utilities in such street.

- Q. Standard Street Monuments: The subdivider shall be required to install standard street monuments at all street centerline intersections, at the center of all cul-de-sac turnarounds, and at such other major locations as may be required by the Marsing area of city impact engineer. Installation of such monuments shall be a condition of final acceptance of the plat.

- R. New Private Streets: All new private streets shall conform to the width designated below and shall be constructed in a road lot. The private road and road lot shall be owned and maintained by a road users' association or homeowners' association and a road users' agreement detailing said ownership, and maintenance shall be executed and recorded prior to issuance of building permit. In no case, shall the road be constructed in an easement area or other than an individual lot designated solely for the purpose of the private road.

Major streets: (5 foot sidewalks required on both sides of street):	
Property line to property line	50 feet
Back of curb to back of curb	37 feet
Collector streets: (5 foot sidewalks required on both sides of street):	
Property line to property line	50 feet
Back of curb to back of curb	37 feet
Minor streets: (5 foot sidewalks required on both sides of street):	
Property line to property line	50 feet
Back of curb to back of curb	37 feet
Cul-de-sacs: (5 foot sidewalks required on both sides of street):	
Entry road:	
Property line to property line	50 feet
Back of curb to back of curb	37 feet
Turnaround:	
Property line to property line (minimum)	50 feet
Back of curb to back of curb (minimum)	45 feet

(Ord. 09-06, 8-4-2009)

8-2B-6-2: MANUFACTURED HOME SUBDIVISIONS AND MANUFACTURED HOME PARKS:

A. **Manufactured Home Subdivision:** Manufactured homes on individual lots zoned for single-family residential uses shall be subject to the same development standards, including lot size, as a conventional single-family residential dwelling on the same lot.

B. **Manufactured Home Park; Definitions:** For the purposes of this section, the following definitions shall apply:

COMMON PLAY AREA: A play area required to be established to accommodate children less than fourteen (14) years of age and restricted to that use.

MANUFACTURED HOME SPACE: The area that is for lease or rent as a site to place a manufactured home, including an outdoor living area. The manufactured home space shall be delineated on the site plan for the manufactured home park.

SERVICE AREA: The areas necessary for the management of the manufactured home park. Such areas may include: storage and collection areas for trash and garbage, loading and unloading areas other than passenger vehicles, and outdoor storage areas.

C. **Density:** The maximum density is that which can be achieved in accordance with Southwest district health department for approval of on site community water and community wastewater systems. Fire protection and emergency services shall also be considered in calculating density. In no case shall the density of the park exceed eight (8) units per acre.

D. **Use Standards:**

1. **Limited To Manufactured Home Parks:** Manufactured home parks shall accommodate only manufactured homes, not vacation trailers or other recreational vehicles, except when stored within a designated storage area. A manufactured home shall not remain overnight in a park unless it is parked in a manufactured home space. Not more than one manufactured home shall be parked at one time in a manufactured home space.
2. **Expansion Or Alteration:** Manufactured home parks approved in conformance with the regulations of this section may be expanded or altered after approval is obtained from the decision making body. The application, filed by the owner or other party in interest, shall be filed and processed in the same manner as an application for a new manufactured home park.
3. **Design, Construction, Operation, And Maintenance:** Manufactured home parks will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.
4. **Public Facilities And Services:** Manufactured home parks will be served adequately by essential public facilities and services, including roads, police and fire protection, drainage, refuse disposal, water and wastewater disposal. Vehicular approaches must be designed to minimize interference with traffic on surrounding streets and roads.
5. **Screening:** Manufactured home parks will be screened from adjacent areas, other than subdivisions of the same type, by aesthetically acceptable fences, walls, plantings, or other barriers to minimize impact on adjacent properties and impact from adjacent properties.

E. **Manufactured Home Space Design Standards:**

1. **Minimum Area:** No manufactured home space shall contain less than two thousand (2,000) square feet. The gross average areas of all spaces in the park shall not be less than three thousand (3,000) square feet. No drives, common play area, or service area shall be considered as providing any part of the required manufactured home space.
2. **Width And/Or Depth:** No manufactured home space shall be less than thirty feet (30') in width and/or depth.
3. **Boundaries:** The boundaries of each manufactured home space shall have an approved fence, wall, planting, or other permanent marker defining the perimeter of the space.
4. **Outdoor Area:** An outdoor area shall be provided for each manufactured home space. Such outdoor living area shall be a minimum of ten percent (10%) of the individual space but shall be greater than three hundred (300) square feet. The minimum dimension of the area shall not be less than fifteen feet (15').
5. **Roads And Drives:** Roads and drives serving the manufactured home park shall comply with the standards of this chapter and the standards listed below. The roads and drives are subject to review, field inspection, and approval by the Marsing area of city impact engineer.
 - a. **Drives:** Drives shall have rolled concrete curb and gutter sections along both sides and shall extend the length of the drive.
 - b. **Sidewalks:** Sidewalks shall be constructed along at least one side of the drive, without exception.

F. **Park Design Standards:**

1. **Off Street Parking:** Two (2) off street parking spaces shall be provided for each manufactured home space.
2. **Common Play Area:** In parks accommodating children, a common play area shall be provided. The common play area shall be restricted to that use and shall be a minimum of one hundred (100) square feet per manufactured home space, and regardless of the number of spaces, the area shall be at least two thousand five hundred (2,500) square feet.

3. Carports, Cabanas, Awnings: Carports, cabanas, awnings and all other structures, whether herein defined or not, that are attached to the manufactured home shall be considered as a portion of the manufactured home. Such additions and structures shall be in conformance with the Owyhee County building code.
4. Trailer Hitches: Trailer hitches shall not project beyond the manufactured home space.
5. Distance Between Homes: The minimum distance between a manufactured home and:
 - a. Any other manufactured home shall be ten feet (10').
 - b. Any structure shall be ten feet (10').
 - c. Any property line shall be equal to or greater than the required setback in the district, but not less than ten feet (10').
 - d. Any drive or street shall be equal to or greater than the required setback in the district, but not less than ten feet (10').
 - e. Any common drive or walkway shall be five feet (5'). (Ord. 09-06, 8-4-2009)

8-2B-7: DETAILED INSTRUCTIONS FOR SUBMISSION OF FINAL PLAT:

- A. Requirements For Final Plat: The requirements for the final plat, or drawing to be submitted, as above provided, shall consist of a sheet of Mylar, eighteen inches by twenty four inches (18" x 24") in size, and in compliance with all items required under Idaho Code title 50, chapter 13. The actual map drawn shall be made on a scale large enough to clearly show all details, and the workmanship on finish drawings shall be neat, clean cut, and readable, and shall be of such scale that the entire plat or diagrams shall be on one side of the sheet, and no part thereof shall come any nearer any edge of said sheet than one inch (1").
- B. Number Of Copies; Required Information: The subdivider shall furnish eleven (11) black and white prints of the final plat and three (3) sets of construction plans when submitting the original plat; the final drawings or plats shall contain the following information:
 1. Name; Location: A subdivision name and the general location of the subdivision, in bold letters at the top of the sheet.
 2. Scale; Date: A north point and scale of the drawing, and the date.
 3. Boundary Lines: Accurately drawn boundaries, showing the proper bearings and dimensions of all boundary lines of the subdivision and property ties to public survey monuments. These lines should be slightly heavier than street and lot lines.
 4. Proposed Streets; Lots; Blocks: The names, widths, lengths, bearings, and curve data on centerlines of proposed streets and property lines, alleys, easements; also the boundaries, bearings, and dimensions of all portions within the subdivision, as intended to be dedicated to the use of the public; the lines, dimensions, bearings and numbers of all lots, blocks and parts within the subdivision. All lots and blocks are to be numbered consecutively under a definite system approved by the county. All proposed streets shall be named or numbered in a system approved by the county.
 5. Monuments: The location of all monuments as required in section [8-2B-12](#) of this article.
 6. Adjacent Monuments: The description and locations of all monuments set and established by the county or the United States government that are adjacent or near this proposed subdivision.
 7. Letters And Certificates: Standard form letters for the following:
 - a. Description of land to be included in the subdivision.
 - b. Registered professional land surveyor's "certificate of survey".
 - c. Owner's dedication which shall warrant and save the county harmless from any easements or other encumbrances and does hereby dedicate for the perpetual use of the public all parcels of land shown on this plat as intended for public use.
 - d. Notary public's acknowledgment.
 - e. Certification of the sanitary restriction on the plat per Idaho Code section 50-1326.
 - f. County surveyor certificate of approval.
 - g. Owyhee County planning and zoning certificate of approval.
 - h. Owyhee County treasurer certificate.
 - i. Board of county commissioners.
 - j. County recorder certificate of filing.
 8. Dimensions: It is necessary that all dimensions and calculations made by the surveyor shall show proper closures in all boundaries of the subdivision, or otherwise, in completing this survey and no plat will be accepted that shows a plus or minus distance for closure.
 9. Easements: Easements of not less than ten feet (10') on each side of all rear lot lines, ten feet (10') adjacent to roadways, and five feet (5') on side lot lines shall be required where necessary for public utilities.

10. Fees: At the time of submission of an application for a final plat, a fee as established by resolution of the board of county commissioners shall be paid.
11. Submittal To Marsing Area Of City Impact Engineer: The final plat, prepared in accordance with Idaho Code and the provisions set forth herein, shall be submitted by the administrator to the Marsing area of city impact engineer. In the event the final plat does not conform to the approved preliminary plat, the Marsing area of city impact engineer shall so inform the administrator, and the plat shall then be returned to the subdivider for revision or subsequent commission action as a new preliminary plat.
12. Agency Review: The administrator shall transmit copies of the final plat and construction plans for review by departments and agencies or others as may be deemed necessary to ensure compliance with the approved preliminary plat.
13. Commission Action: After approval by the Marsing area of city impact engineer, the plat and nine (9) approved plan sets shall be submitted to the administrator to present to the commission for consideration.
 - a. The commission, following receipt of the final plat, shall consider the plat and any changes from the preliminary plat approved by the commission. If the plat conforms to the requirements of this chapter and Idaho Code, the commission shall approve said plat.
 - b. At the time of approval of the final plat, the commission shall accept the dedications shown thereon and shall, as a condition precedent to the approval of any final plat, require the subdivider to complete the required improvements. The commission may agree to accept a bond, irrevocable letter of credit, cashier's check or other guaranty to ensure completion of street improvements and all other public improvements, in accordance with the preliminary plat application.
14. Board Of County Commissioners Signature: Upon the final plat being approved by the commission, and all additional signatures secured on the back of the plat, the administrator may submit the final plat to the board of county commissioners for signature. The final plat shall not be submitted to the board for final approval until all required improvements are constructed or until a bond, or other guaranty to ensure completion of all required public improvements is in place. No subdivision shall be recorded in the office of the county recorder and no lot included in such subdivision shall be sold or exchanged and no offer shall be made to sell or exchange any such lot unless and until the plat is so approved and recorded.
15. Compliance With State Laws: The subdivider shall at all times comply with the laws of the state of Idaho pertaining to the subdivision plats and developments, and such laws and any subsequent amendments thereto are hereby made a part of this chapter.
16. Filing With County Recorder: The final plat shall be filed with the county recorder within one year after written approval from the board, otherwise, such approval shall become null and void, unless, prior to said expiration date, an extension of time is applied for by the subdivider and granted by the commission. (Ord. 09-06, 8-4-2009)

8-2B-8: ISSUANCE OF BUILDING AND OCCUPANCY PERMITS:

No permit shall be granted for the erection of any building or other structure within a subdivision unless and until the final plat shall have been approved as required and all necessary improvements have been installed and accepted, or a certified check, negotiable guarantee, or other acceptable guarantee in an amount of one hundred fifty percent (150%) of the cost of the improvements has been filed with the county, and an inspection with certification that cleanup has been done. (Ord. 09-06, 8-4-2009)

8-2B-9: AMENDED PLATS:

When changes in a final plat of a subdivision which has been recorded are made, such final plat shall be vacated and an amended final plat shall be filed and recorded in accordance with the requirements of this chapter and state and local laws. (Ord. 09-06, 8-4-2009)

8-2B-10: SCHOOL SITES, PARKS, PLAYGROUNDS:

In subdividing property, consideration shall be given to sites for schools, parks, playgrounds, and other areas for public use, as shown on the master plan or as requested by the city or county. Any provision for such open spaces should be indicated on the preliminary plat in order that it may be determined when and in what manner such areas will be dedicated to, or acquired by, the appropriate agency. (Ord. 09-06, 8-4-2009)

8-2B-11: NO PERMIT OR LICENSE FOR USE IN VIOLATION:

No officer of the county shall grant any permit or license for the use of any building or land if such would be in violation of this chapter. (Ord. 09-06, 8-4-2009)

8-2B-12: MONUMENTS:

Monuments shall be set as required by Idaho Code. (Ord. 09-06, 8-4-2009)

8-2B-13: PENALTIES:

It shall be unlawful and constitute a public offense for any person to violate any of the provisions of this article. Every person convicted of the violation of this article shall be guilty of a misdemeanor and, upon conviction thereof, be subject to penalty as provided in section [1-4-1](#) of this code. Each day the violation continues shall be considered a separate offense. (Ord. 09-06, 8-4-2009; amd. 2010 Code)

ARTICLE C. IMPACT AREA ZONING REGULATIONS**8-2C-1: TITLE, AUTHORIZATION, PURPOSES AND DEFINITIONS:**

A. Title: This article shall be known as the *MARSING AREA OF CITY IMPACT ZONING ORDINANCE*.

B. Authorization: This article is authorized by the Idaho constitution article 12, section 2, Idaho Code sections 31-714, 31-828, 31-4408, and 31-4504 and is mandated by Idaho Code section 67-6526 which states that a separate ordinance providing for application of plans and ordinances to the area of city impact must be established and adopted.

C. Purposes: This article is designed to, and enacted to, protect the public health, safety and welfare by implementing the Marsing area of city impact comprehensive plan, and to accomplish the following purposes:

1. Protect and conserve the historic customs, traditions and way of life unique to the county and the Marsing area of city impact, consistent with a reasonable and orderly rate of growth and development and protection of private property rights;
2. Protect and conserve the economic uses, including agricultural and range uses which form the primary base of the county's economy;
3. Provide for reasonable and sound land development, a safe and healthy environment, and a successful economic climate;
4. Require the coordination by the planning and zoning commission with the county natural resources committee to achieve coordinated planning for the Marsing area of city impact and protection of private property rights which are critical to economic stability of the county and to the maintenance of a healthy environment;
5. Protect and enhance private property rights and property values consistent with the county's responsibility to protect public health, safety and welfare;
6. Minimize infiltration into agricultural land areas of those elements of urban development which will adversely impact agricultural operations;
7. Provide a process for negotiating, developing, and maintaining areas of city impact;
8. Designate land use districts (zoning districts) appropriate for uses that meet the needs of the Marsing area of city impact citizens and landowners by providing for growth compatible with protection of soil, water, air, wildlife and other natural environmental and scientific qualities;
9. Preserve the recreational, archeological, architectural and cultural history of the Marsing area of city impact and its historic resources;
10. Protect and conserve the natural resources in the Marsing area of city impact by considering the impact on such resources of proposed land uses;
11. Maintain, protect, and enhance the Marsing area of city impact transportation system;
12. Provide a means for administering the land use planning process in a manner which can assist school districts to maintain, protect and enhance school facilities and school transportation systems.

D. Definitions: As used in this article, the following words and phrases shall have the meanings ascribed to them as follows:

ACCESSORY BUILDING: A detached subordinate building, the use of which is customarily incidental to that of the main building, or to the main use of the land, and not including those buildings designated herein as agricultural buildings.

ACCESSORY USE: A use customarily incidental to, or subordinate to the main use of the premises.

ACRE: Forty three thousand five hundred sixty (43,560) square feet.

ADMINISTRATIVE DIVISION: Division of an original lot, tract, or parcel of land, said lot, parcel or tract of land of record as of August 13th, 1979, into four (4) or less parts. It shall be the responsibility of the applicant to submit to the administrator a deed or other documentation sufficient to document that the parcel being divided was a parcel of record as of August 13, 1979. Any such division must be accomplished by a record of survey.

ADMINISTRATOR: A person appointed by the board of county commissioners to administer this article and related ordinances. In the absence of such appointed person, the board of county commissioners may act as the administrator.

AGRICULTURAL BUILDING: A structure designed and constructed, or modified, to house farm implements, hay, grain, poultry, livestock or other horticultural products including structures used for processing, treating, packaging, sale or storage of agricultural products and including commercial,

packing, sale or conditioning buildings for farm crops. Also included are structures for the housing of agricultural workers when such workers are employed on the farm unit.

AGRICULTURAL LAND/PURPOSE: That land on which agricultural operation occurs. Agricultural operation includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticulture crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities.

AIRPORT: Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie down areas, land areas set aside as buffer zones or safety overruns, hangars and other necessary buildings.

ALLEY: A minor street providing secondary access to the back or side of a property otherwise abutting a street.

ANIMAL UNIT: See definition of CAFO.

AREA, MINIMUM LOT: The total area within the property lines of the lot, excluding adjacent streets, except as otherwise provided.

ATTACHED ACCESSORY LIVING QUARTERS: An attached structure that is used either as quarters for the ill, elderly or disabled. Accessory living quarters must be incidental and subordinate in size, impact and purpose to a principal dwelling. The attached living quarters must be accessible from inside the primary residence. The accessory living quarters shall not have a separate address or separate utility meters and shall not be rented separately from the main residence, nor used for commercial purposes other than a home occupation. Recreational vehicles shall not be permitted as accessory living quarters in any zoning district.

AUTO WRECKING OR SALVAGE YARD: A lot, or structure or part thereof, used for the collecting, storage and/or sale of material and salvaging of machinery or vehicles for the use or sale of parts thereof.

BOARD OF COUNTY COMMISSIONERS: The governing board of the county.

BOARDING AND ROOMING HOUSES: A building or portion thereof which is used to accommodate, for compensation, boarders or roomers, not including members of the owner's and/or occupant's immediate family. The word "compensation" shall include payment in money, service or other things of value.

BUILDING: A combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy, and shall include a part or parts thereof and all equipment therein normally a part of the structure.

BUILDING CODE: A building code may be any universal construction or safety code adopted by the county.

BUILDING HEIGHT: The vertical distance from the grade to the highest point on the roof surface.

CAFO: 1. May also be referred to as "concentrated animal feeding operation" or "confined animal feeding operation", and means a lot or facility where the following conditions are met:

- a. Animals have been, or will be stabled or confined and fed or maintained for a total of one hundred twenty (120) consecutive days or more in any twelve (12) month period;
- b. Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
- c. The lot or facility is designed to confine or actually does confine as many as or more than the number of animals specified in any of the following categories: three hundred fifty (350) mature dairy cows, whether milked or dry; five hundred (500) veal calves; five hundred (500) cattle other than mature dairy cows or veal calves; one thousand five hundred (1,500) swine, each weighing fifty five (55) pounds or more; five thousand (5,000) swine each weighing less than fifty five (55) pounds; two hundred fifty (250) horses, five thousand (5,000) sheep or lambs; or forty one thousand (41,000) chickens.

2. For the purpose of this definition, two (2) or more concentrated animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

CAFO ADVISORY TEAM: Representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources, who review a site proposed for a CAFO, determine environmental risks and submit a suitability determination to a county.

CAR LOTS AND MACHINERY LOTS: A retail or wholesale area for the sale of motor vehicles and machinery.

CERTIFICATE OF COMPLIANCE: A certificate issued by the administrator or designee of the board of county commissioners which certifies that the proposed land use for a building, lot, parcel or other premises is in compliance with this article. The certificate must be issued before any building permit is issued and before a person enters into occupancy. When the proposed land use is pursuant to a conditional use permit, the certificate of compliance is issued only after the applicant is in substantial compliance with the special conditions imposed.

CITY: The city of Marsing.

CITY COUNCIL: The city council of the city of Marsing, Idaho. Hereinafter referred to as the "city council" or the "council".

CITY OF MARSING STANDARDS: The most current edition of the Idaho standards for public works construction and any supplement standards that may

be adopted by the city of Marsing.

CITY PLANNER: The person employed to handle the planning duties of the city of Marsing.

COMMERCIAL: A business activity concerned with the buying, selling, exchange and/or transportation of goods and services.

CONCENTRATED ANIMAL FEEDING OPERATION: See definition of CAFO.

CONDITIONAL APPROVAL: An affirmative action by the planning and zoning commission indicating that approval is given subject to certain specified stipulations.

CONDITIONAL USE: A use permitted within a zoning district only under a conditional use permit issued pursuant to this article.

CONDITIONAL USE PERMIT: A permit granted to an applicant who seeks to place a land use in a district where the use is not allowed, said permit to be granted only pursuant to the provisions of this article and to contain specific conditions placed pursuant to provisions of this article.

CONFINED ANIMAL FEEDING OPERATION: See definition of CAFO.

CONSERVATION: Protection of natural resources and the environment and excludes development of the land.

CONSERVATION EASEMENT: An easement which places limitation on the use of the servient estate for conservation purposes.

COTTAGE INDUSTRY/IN HOME BUSINESS: A business in a home which can be a full or part time occupation which is conducted entirely within a dwelling unit and which does not change the character of the dwelling unit.

DEVELOPMENT AGREEMENT: A written commitment by an applicant or owner for rezoning of the subject parcel to specifically defined development, such agreement to be made a condition of rezoning.

DWELLING: Any building or portion thereof which is used as the private residence or sleeping place of one or more human beings, but not including hotels, boarding and rooming houses, motels, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, MULTIPLE-FAMILY: A building occupied as a residence by two (2) or more families living independently of each other but not including motels or hotels, boarding or rooming houses, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, SINGLE-FAMILY: A detached building designed exclusively for and occupied as a residence by one family.

DWELLING UNIT: In a dwelling or multiple-family dwelling one or more rooms designed for and occupied as a residence by one family; example, an apartment.

EASEMENT: An interest in land conveyed and granted by the landowner to another person, the grantor landowner becoming the owner of the servient estate and the grantee easement owner becoming owner of the dominant estate. Such easement contains the right to control land use of the servient estate by requiring the servient estate owner to change the land use of the servient estate or any portion thereof or by prohibiting the servient estate owner from enlarging, expanding, changing, or altering the land use of the servient estate or any portion thereof.

ENVIRONMENTAL RISK: That risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report.

GRADE AND OFFICIAL GRADE: Grade (ground level) is the average of the finished ground level at the center of all walls of a building. If walls are within twenty five feet (25') of a sidewalk or curb, ground level shall be measured at the street, curb, sewer or structure considered.

HAZARDOUS WASTE: A waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological), may:

1. Cause or significantly contribute to an increase in deaths or an increase in a serious, irreversible or incapacitating reversible illnesses; or
2. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 USC section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 USC section 2011 et seq.

HAZARDOUS WASTE FACILITY SITE: Any property, structure, or ancillary equipment intended and used for the transportation, treatment, storage or disposal of hazardous wastes.

HAZARDOUS WASTE MANAGEMENT: The systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

HEALTH FACILITIES: Any of the following:

1. Hospital. A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing for not less than twenty four (24) hours in any week of obstetrical or other medical or nursing care for

two (2) or more nonrelated individuals. The term "hospital" includes public health centers in general, tuberculosis, mental, chronic disease and other types of hospitals; and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

2. A facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with said facilities;
3. A facility specially designed for the diagnosis, treatment, education, training or custodial care of the mentally handicapped, including facilities for training specialists and sheltered workshops for the mentally handicapped, but only if such workshops are part of facilities which provide or will provide comprehensive services for the mentally retarded;
4. A facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated or at a statewide facility.

HOTELS AND MOTELS: Any building or portion thereof designed to be commercially used, let or hired out for occupancy by persons on a temporary basis.

ILL, ELDERLY OR DISABLED PERSON: A person in need of special care or supervision; or a care provider for any such person if the person in need of such care is a resident on the site. Accessory living quarters for the ill, elderly or disabled may include cooking facilities. To qualify as an accessory living quarters, the structure must meet the definition of "attached accessory living quarters" as defined in this section.

INDUSTRIAL USE: A business establishment engaged in manufacturing or technically productive enterprises.

KENNEL: Any lot or premises on which four (4) or more animals at least four (4) months of age are harbored for commercial purposes such as boarding, breeding or training of such animals, and where such activity is not accessory to or incidental to an allowed use in the district.

LOT: A piece or parcel of land separated from other pieces or parcels as shown on a recorded subdivision plat or by metes and bounds description for purposes of sale, lease or separate use.

LOT AREA: The area of a lot which does not include public rights of way for roads or streets. However, irrigation ditch rights of way and public utility easements may be included in the lot area.

LOT LINE, FRONT: The property line dividing a lot from a street. On a corner lot, only one street line shall be considered as a front line, and the street frontage on which the primary entrance of the building faces shall be considered the front line.

LOT LINE, REAR: The line opposite the front line.

LOT LINE, SIDE: Any lot line other than the front lot line or rear lot line.

LOT WIDTH: The distance parallel to the front lot line measured between side lot lines through that part of the building or structure where the lot is narrowest.

MAJOR SUBDIVISION: Refers to a subdivision which contains a number of lots greater than ten (10).

MANUFACTURED HOME: A structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one or more sections, which, in the traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except, that such term shall include any structure which meets all the requirements of this definition except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 41 USC section 5401 et seq.

MANUFACTURED HOME COURTS OR PARKS: The term "manufactured home" refers also to "mobile home". A manufactured home court or park exists when there are two (2) or more manufactured homes placed on an acre and where such placement is not for purposes of providing agricultural labor housing.

MARSING AREA OF CITY IMPACT: The area contiguous to, and immediately outside of the Marsing city limits as negotiated and agreed to by the board of county commissioners and the Marsing city council.

MARSING AREA OF CITY IMPACT ENGINEER: The engineer as agreed to by the board of county commissioners and the Marsing city council.

MEMBERSHIP CLUB: An association of persons, whether incorporated or unincorporated, for some common purpose, but not including groups organized primarily to render a service carried on as business.

MINOR SUBDIVISION: Refers to a subdivision which contains a number of lots that is ten (10) or less.

MOBILE HOME: A factory assembled structure or structures generally constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

MODULAR BUILDING: Any building or building component, other than a manufactured or mobile home, which is constructed according to codes and standards adopted by the Idaho division of building safety, which is of closed construction and is entirely or substantially prefabricated or assembled at a

place other than the building site.

MUNICIPAL SOLID WASTE LANDFILL: A discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under 40 CFR 257.2. A municipal solid waste landfill also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill or a lateral expansion. Such a landfill may be publicly or privately owned.

NATURAL RESOURCES COMMITTEE: The committee appointed by the board of county commissioners to serve as an advisory committee to the board regarding matters relevant to the management of federal and state lands located within the county, the relationship of that management to the continuation of the custom, culture and economic stability of the county.

NONAGRICULTURAL ACTIVITIES: Residential, commercial, or industrial property development and use not primarily used for the growing, raising or production of agricultural, horticultural and viticulture crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities.

NONCONFORMING BUILDING: A building or structure or portion thereof built prior to the effective date hereof, or any amendment hereto, and conflicting with the provisions of the ordinance applicable to the district in which it is located. No residence, supporting structure or agricultural building shall become nonconforming as the result of the passage hereof.

NONCONFORMING USE: The use of a structure or premises conflicting with provisions of this article.

OCCUPANCY: Taking possession of and use of property; period during which a person possesses, uses, does business in, and/or resides in a building, structure or premises.

OCCUPY: To take or enter upon possession of a building, structure or premises; to live in, do business in, use a building, structure or premises.

ODOR MANAGEMENT PLAN: A plan prepared by the applicant for a conditional use permit by which the applicant will manage, control and/or mitigate any odor resulting from the proposed use.

OPEN SPACE: An area substantially open to the sky, which may be on the same lot with a building. The area may include, along with the naturally occurring physical characteristics of the earth, water areas, swimming pools, tennis courts and other areas of recreational, historical or archeological value. Streets and structures for habitation shall not be considered as part of open space.

OPEN SPACE EASEMENT: An easement which places limitation on the use of the servient estate for open space purposes.

ORIGINAL PARCEL: As used herein is as defined in section [8-2B-3](#) of this chapter.

PARCEL: A contiguous quantity of land owned by, or recorded as the property of, the same person. Parcels purchased on different occasions with separate financing for the purpose of increasing the size of a parcel or tract, which parcels have not been combined into single legal description, are individual parcels.

PERSON: A single entity, including any association, firm, copartnership or corporation.

PLANNED UNIT DEVELOPMENT: An area of land in which a variety of land uses are provided for under single ownership or control, which may be subjected to conditions of minimum area, permitted uses, ownership, common open space, utilities, density, arrangement of land uses on the site, and permit processing.

PLANNING AND ZONING COMMISSION: The Owyhee County planning and zoning commission appointed by the board of county commissioners to perform planning and zoning duties as assigned under this article.

PUBLIC WATER AND SEWER FACILITIES: Those facilities of a municipality or sanitation district approved by the Southwest district health department and by the Idaho department of environmental quality for general public use.

RECREATION EASEMENT: An easement which places limitation on the use of the servient estate for recreation purposes.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities include, but are not limited to, travel trailer, camping trailer, truck camper, fifth wheel trailer and motor home.

RECREATIONAL VEHICLE PARK: An area for the temporary placing of recreational vehicles for the purpose of temporary lodging.

RECYCLING OR SALVAGE CENTER: A lot, or structure or part thereof, used for the collecting, storage and/or sale of material for recycling or reuse such as, but not limited to, wastepaper, cardboard, rags, wood, scrap metal or discarded material, may include car crushing and materials baling.

SETBACK: The distance from the nearest point of a building or other structure, measured to the front lot line.

STRUCTURE: Anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, but not including fences or walls used as fences eight feet (8') or less in height, poles, lines, cables or other similar transmitting or distribution facilities of public utilities.

SUBDIVISION: As used herein is as defined in section [8-2B-3](#) of this chapter.

SUITABILITY DETERMINATION: That document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

TELECOMMUNICATIONS FACILITIES: All wires, cables, equipment, apparatus or other installments necessary to furnish service, by which there is accomplished or may be accomplished, the sending or receiving of information, data, message writing signals, signals, pictures, and sounds of all kinds, by aid of such wires, cables, equipment, apparatus or other installations, but shall not include the structure in which such telecommunications facilities are housed.

TRACT: A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension.

UTILITIES: Installations or facilities, underground or overhead, furnished for use by the public, including, but not limited to, electricity, gas, steam, communications, water, drainage, irrigation, sewage disposal or flood control, owned and operated by any person, firm, corporation, municipal department or board duly authorized by state or city regulations. Utility or utilities as used herein may also refer to such persons, firms, corporations, departments or boards, as applicable, herein.

VARIANCE: A modification of the bulk and placement requirements of this article as to lot size, lot coverage, width, depth, front yard, side yard, setbacks, parking space, height of buildings, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots, said modification to be allowed only upon a showing by the applicant of undue hardship because of characteristics of the site and that the modification is not in conflict with public interest.

WAIVER: Permission granted to allow a deviation from specific development standards or development requirements of this chapter. A waiver is different from a variance. See subsection [8-2B-5-1G](#) of this chapter for details.

WASTE: Any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

YARD: An open space other than a court, or a lot unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

YARD, BACK: A yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.

YARD, FRONT: A yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.

YARD, SIDE: A yard extending from the front yard to the yard between the side lot line and the nearest line or point of the building or accessory buildings attached thereto.

- E. **Coordination With Natural Resources Committee:** The planning and zoning commission, the administrator, and all planning and zoning staff will cooperate with and coordinate activities with the natural resources committee on all issues, actions, and matters which are relevant to the duties of the natural resources committee as set forth in [title 2, chapter 3](#) of this code. (Ord. 09-07, 8-4-2009; amd. 2010 Code)

8-2C-2: ADMINISTRATION:

A. Administration And Certificate Of Compliance:

1. **Administration:** The county board of commissioners will serve as the chief administrative office for administration of comprehensive planning and zoning activities conducted pursuant to this article and related ordinances in the Marsing area of city impact. The board may appoint or designate an administrator to handle these duties.
2. **Certificate Of Compliance:** The board of commissioners, or its designee, shall be responsible for issuing a certificate of compliance which certifies that a proposed land use is in compliance with this article. If the board's administrator has a question as to whether compliance has been achieved, the question may be directed to the board for assistance and resolution. No building permit may be issued, and no person may enter into occupancy or begin the proposed use, until the certificate has been issued. When the proposed land use is dependent upon a conditional use permit, the certificate will be issued only after the applicant is in substantial compliance with special conditions designed to be satisfied before construction, occupancy or commencement of use.

- B. **Planning And Zoning Commission; Duties:** The planning and zoning commission shall carry out the duties of such commission as prescribed herein and in Idaho Code, title 67, chapter 65. The commission membership shall be set by resolution of the board of county commissioners in compliance with the provisions of Idaho Code section 67-6504.

- C. **Staff:** Staff functions, under the administrative direction of the board of county commissioners, shall be performed by staff designated by the board, by resolution, and the duties of such staff and the procedures by which they will perform their duties shall also be set by resolution.

- D. **Staff To Planning And Zoning Commission:** When staff members designated by the board are assisting the planning and zoning commission in the performance of their duties, they shall operate under the direction of the planning and zoning commission. Staff shall be designated to assist the planning and zoning commission at the request of the commission.

- E. **Planning And Zoning Commission; Procedure And Time Frames:** The planning and zoning commission shall follow the procedures and time frames set forth

in this article when performing its duties.

F. Hearing Officer: The board of commissioners or the planning and zoning commission may appoint a hearing officer to perform the procedural functions set forth in this article with regard to the procedures to be followed by the board and the commission. The hearing officer shall not make findings of fact and conclusions of law, but may assist the board or the commission in the preparation of such findings and conclusions. If no hearing officer is appointed, the chairman or vice chairman of the board or commission shall serve as hearing officer.

G. Hearing Examiner:

1. The board of county commissioners may appoint a hearing examiner to perform the duties as set forth by the Idaho legislature including hearing applications for subdivisions, conditional use permits and variances and requests for zoning district boundary changes in accordance with the comprehensive plan, as well as other duties which may be assigned by the board of commissioners. When the hearing examiner conducts a hearing, the same procedures as required for hearings before the planning and zoning commission and the board of county commissioners shall apply. The hearing examiner's decision to grant or deny the application or request shall specify, in writing, the ordinance and standards used in evaluating the application, the reasons for the decision, and the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the comprehensive plan. The written decision will be filed with the clerk of the board, and copies will be sent to the planning and zoning commission and to the board of county commissioners.
2. Any person aggrieved by the hearing examiner's decision may appeal the decision to the board of county commissioners by filing a written notice of appeal with the clerk of the board within twenty (20) days after the decision is filed with the clerk. The appellate procedures, including payment of fee, shall be the same for appeals from the examiner as from the planning and zoning commission to the board of commissioners.
3. Additionally, either the planning and zoning commission or the board of county commissioners may request that the hearing examiner sit with the planning and zoning commission or board of county commissioners during hearings held by those bodies on applications for conditional use permits, variances or requests for zoning district boundary changes, and at the conclusion of such hearings, the examiner may make a recommendation to the planning and zoning commission or board of county commissioners conducting the hearing. Such recommendation shall specify the ordinance and standards used by the examiner to evaluate the application or request, the reasons for the recommendation, and the actions, if any, the examiner believes the applicant could take to obtain a permit, variance or zoning district boundary change. The planning and zoning commission or the board of county commissioners shall not be bound to follow the recommendation, but may take it into consideration in reaching their decision. Consideration of the recommendation will not relieve the hearing body from its duty to issue a written decision in accordance with this article. (Ord. 09-07, 8-4-2009)

8-2C-3: HEARING PROCEDURES AND TIME LIMITS:

A. Procedures: The following procedures shall be followed by the planning and zoning commission, by a hearing examiner and by the board of county commissioners in matters in which a public hearing is required:

1. Notice: The hearing officer (including the examiner, the chairman or vice chairman serving as hearing officer) shall preside over the public hearing and shall make all procedural decisions which are necessary. Before commencing the hearing, the presiding officer will certify that at least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the request to be heard was published in the newspaper designated by the board of county commissioners for publication of legal notices, and that written notice by United States mail was provided so that at least fifteen (15) days prior to the hearing, property owners of property adjoining the subject land site and others as required by the local land use act were notified of the hearing.
2. Posting Of List Of Procedures; Sign Up Sheets: At least one-half ($\frac{1}{2}$) hour prior to the commencement of the hearing, a list of the procedures to be followed at the hearing shall be posted at the entrance to the hearing room along with sign up sheets for prospective witnesses to sign.
3. Failure To Sign Sign Up Sheet: The hearing officer may refuse to permit any person to testify who has not signed the sign up sheet prior to commencement of the hearing.
4. Statement Of Rules And Procedure: The hearing officer shall open the meeting with a statement of the rules and procedures to be followed during the hearing.
5. Statement Of Issues: The hearing officer shall open each hearing with a statement of the issues before the commission or board in that particular case and relief requested by the applicant.
6. Administration Of Oaths: The hearing officer shall administer the oath or affirmation to the witnesses, except at legislative hearings where public input is solicited.
7. Burden Of Persuasion: The applicant for relief or action by the board or commission shall have the burden of persuasion.
8. Record Of Hearing: The record of the hearing including minutes, documents relating to the provision of notice of the hearing, documents admitted into evidence or offered into evidence and rejected, motions and briefs filed by any party, and the decision of the board or commission shall be filed by the administrator with the clerk of the board of county commissioners to be held as official records of the county.
9. Written Findings, Conclusions And Order: The written findings, conclusions and order or recommendation of the commission, hearing examiner, or board shall be filed with the administrator or clerk of the board of county commissioners to be held as official records of the county, and a copy shall be mailed to the applicant seeking relief or action.

B. Variances And Conditional Use Permits:

1. Application:

a. Form; Required Information: An application for variance or conditional use permit must be completed on a form approved by and provided by the administrator or the board of county commissioners. The application will contain or be accompanied by instructions which shall advise the applicant of the specific elements of information and fact which must be presented, and as to which the applicant has the burden of proof, before the requested relief can be granted. The applicant shall be advised of the requirement that full and complete information must be provided which demonstrates how and why a variance can be granted under the requirements for variance set forth in this article, or how and why a conditional use permit can be granted under the requirements for conditional use permits set forth in this article. Such instructions shall include a list of any use-siting guidelines, use guidelines, or specific studies which the planning and zoning commission or board of commissioners may require for consideration. Such guidelines may be established by the board of commissioners by resolution, or may come from this article or related ordinances.

b. Filing Fee: The application must be filed with the planning and zoning administrator or the person designated by the board, and accompanied by a filing fee as set by the board of commissioners by resolution. It must be signed by the owner of the land site for which a variance or conditional use is proposed, providing that an application may be signed by a designee of the owner, if the application contains a specific description of the relationship of the applicant to the owner and to the proposed use and also a specific authorization of the designee's representation signed by the owner. No application will be accepted for filing if not accompanied by the established filing fee.

2. Time Frames For Presentation Of Application To Commission And Scheduling Of Hearing: The administrator will review and consider the sufficiency of the application, and upon the acceptance by the administrator, the application for variance or conditional use permit will be presented to the planning and zoning commission at the first regularly scheduled meeting of the commission after it is filed. If the application contains information which the administrator believes is sufficient for conduct of a public hearing, the hearing shall be scheduled to be held within one hundred twenty five (125) days of the date presented to the commission. If the administrator finds the application does not contain information complete enough to provide public notice of the proposed use and/or to provide the basis for a meaningful public hearing, then the administrator shall return the application to the party who signed it with written instructions as to the deficiencies in the application which must be cured before a hearing will be scheduled. Such action by the administrator shall not be considered an appealable decision.

3. Resubmission Of Application: If an applicant resubmits an application sent back by the administrator pursuant to the preceding subsection, the administrator shall submit it to the commission at its next regularly scheduled meeting. A fee for resubmission may be set by the board of commissioners by resolution.

4. Consideration Of Resubmitted Application: The commission shall consider resubmitted applications at the first regularly scheduled meeting after the date of resubmission and acceptance by the administrator that the application is sufficient to provide adequate public notice and to hold a meaningful public hearing. If the administrator decides that the application is sufficient, a hearing shall be scheduled to be held within one hundred twenty five (125) days of the date of resubmission by the applicant. If the administrator decides that the application is not sufficient, the application will be denied and such decision shall be considered final unless appealed to the board of commissioners.

C. Time Frames For Hearing And Decision By Planning And Zoning Commission:

1. A hearing held by the commission may be recessed if the commission finds it has not received sufficient evidence from which to determine the issues relevant to the relief being requested. The decision to recess the hearing shall include the date, time and place of the resumed hearing and shall specify any limitations which will be placed on receipt of evidence at the resumed hearing. Upon resumption of the hearing, if the commission finds that the evidence received is still insufficient to serve as the basis for decision of the issues relevant to the relief being requested, a second decision to recess may be issued, again including the date, time and place of the resumed hearing and specification of any limitations which will be placed on receipt of evidence at the second resumption. Notice of the second resumption hearing shall be published in accordance with the hearing requirements set by the local planning act.

2. Upon conclusion of receipt of evidence as to the application, the commission may grant the relief requested only if it is persuaded by the applicant that the relief should be granted under this article and in accordance with the standards established by this article. The commission may make and announce its decision at the conclusion of receipt of evidence, with a written decision to be filed not later than ninety five (95) days from the announcement of decision, or may take the case under advisement, with a written decision to be rendered no later than ninety five (95) days from the date on which the case is taken under advisement.

D. Finality Of Commission Decision: The decision of the planning and zoning commission, or board of county commissioners as to variance or conditional use permit is not final until a written document including findings, conclusions, and order is signed by the planning and zoning commission, or board of county commissioners and recorded by the clerk of the board of county commissioners.

E. Appeals To The Board: A party aggrieved by a final decision of the planning and zoning commission may appeal the decision to the board of county commissioners, providing that the following procedures must be followed:

1. The appeal must be filed, in writing, with the clerk of the board of commissioners, on a form provided by the board, within twenty (20) days after the date on which the planning and zoning commission final decision is filed with the clerk of the board.

2. The notice of appeal must be accompanied by a filing fee in an amount to be set by the board by resolution. The clerk shall not file the notice of appeal until such fee is paid, and if the fee is not paid within the time set for filing an appeal, the planning and zoning commission decision is final.

3. The clerk shall present the notice of appeal to the board of commissioners at its next regularly scheduled meeting after the filing of the notice. The board shall schedule a public hearing to be noticed and conducted in accordance with the local planning act, and with the procedures set for hearings by this article. The hearing shall be scheduled to be conducted within ninety five (95) days from the date the notice of appeal is presented to the board by the clerk of the board. If a notice of appeal was not timely filed, or if the appellate fee is not paid, the clerk shall report such facts to the board at its first regularly scheduled meeting after the appeal time has expired, and the board shall send to the aggrieved party a written statement of the reasons why the board will not consider an appeal.

4. The board shall conduct its appeal hearing in accordance with the procedural provisions for hearings set by this article. After consideration of the planning

and zoning commission decision and its underlying evidence, any evidence offered by the commission or its staff in support of or explanation of the decision, and evidence submitted by the appellant and other witnesses, the board may affirm the commission's decision, modify the commission's decision, reverse the commission's decision, or remand the case to the commission for further consideration under the following standards:

a. Evidence Not Previously Presented To Board:

- (1) If the appellant, or other witnesses, intend on presenting to the board, evidence not presented to the planning and zoning commission during its hearing which would have been relevant and material to the commission's decision, the board shall remand the case to the commission for consideration of the new evidence. Upon remand, the commission shall consider the case on the next hearing date on which there is time available for the hearing. A fee for the remand hearing will be assessed as set by resolution.
- (2) At least twenty one (21) days prior to the date set for the appellate hearing, the appellant shall advise the board, in writing, if he/she intends to offer such evidence, and shall include the written advisement of the nature and summary of the evidence intended to be offered at a preappeal hearing date and time set by the board, the board shall decide whether the evidence would have been relevant and material to the commission's decision. A fee for the prehearing determination will be assessed as set by resolution.

b. Action Of The Board: The board shall give substantial weight to the decision of the planning and zoning commission and shall modify or reverse such decision only if the board is persuaded by the appellant that the decision is contrary to the county comprehensive plan, this article or to any other relevant federal, state or county law.

- (1) The appellant has the burden of persuasion.
- (2) If for any reason, within the discretion of the board, the appeal hearing must be recessed to receive further evidence, the recessed hearing should be resumed on the next public hearing date on which there is time available for resumption of the hearing. The recess order shall specify the date, time and place of the resumed hearing as well as any limitations on receipt of evidence at the resumed hearing. There shall be no more than one recess of an appeal hearing.
- (3) When the evidence is completed at the appeal hearing, the board may take the appeal under advisement and render its decision, in writing, within ninety five (95) days of the date, upon which the case is taken under advisement, or may announce its decision orally and file its written decision within ninety five (95) days of the announcement.

F. Order To Show Cause: At any time while an application for variance or conditional use permit is pending, and any time before a decision of the board of county commissioners, or planning and zoning commission becomes final, if the governing body receives an allegation that the applicant is making unlawful use of the property which is the subject of the application, or that the applicant is using the property in any way inconsistent with the current zoning status, the board of county commissioners, or the planning and zoning commission may enter a show cause order to be served on the applicant to require that the applicant show cause at a hearing on a date certain why the application should not be denied. Said hearing shall be noticed and scheduled in accordance with the provisions of this article as to notice for conditional use permit hearing proceedings. In case of an emergency, endangering public health or safety found to exist by the governing body, the time noticed for said hearing may be shortened to five (5) working days from the time the show cause order is served on the applicant. (Ord. 09-07, 8-4-2009)

8-2C-4: ZONING DISTRICTS:

A. Zoning Districts Adopted:

- 1. In order to implement the Marsing area of city impact comprehensive plan and to accomplish the purpose of this chapter, there are hereby adopted the following zoning districts in the Marsing area of city impact located in the unincorporated area of the county:

District M	Multi-use
District R	Residential
District C	Commercial

- 2. Land use in the districts must be consistent with the provisions of this article regarding the uses allowed and permitted within each district.
- 3. It shall be unlawful for any person to establish or maintain a land use in any of the specified districts except in compliance with the provisions of this article.
- 4. A conditional use permit is required for and prior to creation of an easement which requires the servient estate owner to change or alter the land use of the servient estate or any part thereof in existence on the stated effective date of the easement, or which prohibits the servient estate owner from enlarging, expanding, changing or altering the land use of the servient estate, or any part thereof, in existence on the stated effective date of the easement. This provision is applicable to, but not limited to, easements popularly known as "conservation easements", "recreation easements", "open space easements". Section [8-2C-5](#) of this article shall be applicable to the application for conditional use permit filed pursuant to this section.

B. Map Depicts Zoning Districts:

- 1. The official zoning district maps for the Marsing area of city impact shall be the maps accompanying the Marsing area of city impact comprehensive plan approved on July 28, 2009.
- 2. The official map shall be maintained at the county courthouse or courthouse annex building by the administrator of planning and zoning, and shall be

available for public use during regular business hours established for the county courthouse by the board of county commissioners.

3. The legal descriptions of the zoning districts shall be as stated in the comprehensive plan and as attached to the official maps.
4. Any discrepancy between the legal description of the zoning district and the depiction of the zoning district on the official map shall be governed by the legal description. (Ord. 09-07, 8-4-2009)

8-2C-4-1: M MULTI-USE ZONING DISTRICT:

A. Designation; Design: The zoning district designed for multi-use shall be designated "district M". District M is designed for mixed and varied uses in areas where commercial use should be anticipated, in accordance with the Marsing area of city impact comprehensive plan.

B. Allowed Uses: The following uses are allowed in district M:

Agricultural operations including, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticulture crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities, but excluding "CAFO" as defined in subsection [8-2C-1D](#) of this article and meatpacking plants.

All agricultural uses currently existing prior to or on the effective date hereof.

Boarding and rooming houses.

Churches and church schools.

Colleges and private schools.

Cottage industries and in home businesses.

Dormitories, sorority and fraternity houses.

Horse breeding and training facilities, boarding stables, riding stables, arenas.

Hospitals, rest homes, convalescent homes, and nursing homes.

Preschool age nurseries.

Professional offices.

Public schools.

Public utility mains including public offices but not including repair or storage facilities.

Single-family dwellings, including attached quarters, with a common wall, for a member of the family.

Single-family residential subdivision of four (4) lots or less.

Accessory or incidental uses customarily associated with the above stated uses.

C. Conditional Uses:

1. Uses: The following uses may be permitted in district M under a conditional use permit granted in accordance with the provisions of this article:

Easement as referred to in subsection A4 of this section.

Municipal solid waste sites and municipal waste transfer stations.

Public parks, playgrounds and other recreational areas.

Public utilities repair or storage facilities.

Public utility substations.

Recreational vehicle parks.

Uses not identified in the allowed uses or in the permitted uses may be permitted only through the conditional use permit process.

Uses permitted in district C.

Uses permitted in district R.

2. Conditions Placed On Conditional Uses: Conditions placed on a conditional use permit granted pursuant to this article for any of the permitted uses listed in this subsection must be complied with. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed in this section without obtaining and complying with a conditional use permit.

D. Setback Of Buildings: No building or structure shall be placed within five feet (5') of the property line, or forty feet (40') of a county road or one hundred feet (100') of a state or federal highway.

E. Rights Of Way: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county or the standards of the jurisdiction having authority. (Ord. 09-07, 8-4-2009)

8-2C-4-2: R RESIDENTIAL ZONING DISTRICT:

A. Designation: The zoning district designed for residential uses shall be designated "district R".

B. Design: The R zoning district is designed primarily for residential uses. Subdivisions may be subject to a development agreement.

C. Minimum Lot Size: The minimum lot size in the residential district for those developments utilizing on site septic and individual wells is that upon which Southwest district health will permit placement of water and sewer systems, and that which is determined to have sufficient domestic water supply. Developments utilizing municipal services shall be subject to a development agreement which will identify lot size and configuration, any future annexation into the city, and other applicable details.

D. Allowed Uses: The following uses are allowed in district R:

All agricultural uses currently existing as of the effective date hereof.

Cottage industry/in home business.

Single-family dwellings, including attached quarters, with a common wall, for a member of the family.

Single-family residential subdivisions.

Other uses related to or incidental to the primary use set forth in this subsection.

E. Conditional Uses:

1. Uses: The following uses may be permitted in district R under a conditional use permit granted in accordance with provisions of this article:

Any use not identified in the allowed uses or in the permitted uses may be permitted only through the conditional use permit process.

Boarding and rooming houses.

Churches and church schools.

Colleges and private schools.

Convalescent and nursing homes.

Daycare facilities, preschool nurseries.

Easement as referred to in subsection A4 of this section.

Grocery stores, gasoline stations, recreational facilities and other such service businesses as are beneficial or necessary for the support and service of the residential developments in the district.

Hospitals.

Mobile home parks.

Multi-family dwellings.

Planned unit development.

Playgrounds and other public areas.

Public and semipublic buildings, including, but not limited to, law enforcement, fire, health and safety buildings and uses, government services and other public uses.

Public parks.

Public schools.

Public utility mains and substations.

Any of the above uses may be subject to a development agreement.

2. Lot Area; Structure Requirements: All structures placed on lots or parcels of any size must meet standards, rules and regulations set up by regulatory agencies or the Southwest district health department.

3. Conditions Placed On Conditional Use: Conditions placed on a conditional use permit granted pursuant to this article for any of the permitted uses listed herein must be complied with. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed herein without obtaining and complying with a conditional use permit.

F. Setback Of Buildings: No building or structure shall be placed within five feet (5') of the property line, or within forty feet (40') of a county road or within one hundred feet (100') of a state or federal highway.

G. Rights Of Way: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-07, 8-4-2009)

8-2C-4-3: C COMMERCIAL ZONING DISTRICT:

A. Designation: The zoning district designed for commercial uses shall be designated "district C".

B. Allowed Uses: The following uses are allowed in district C:

Accessory or incidental uses customarily associated with the uses stated in this subsection and subsection C of this section.

Agricultural operations including, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticulture crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities, but excluding "CAFO" as defined in subsection [8-2C-1D](#) of this article and meatpacking plants.

Boarding and rooming houses.

Churches and church schools.

Colleges and private schools.

Commercial businesses and uses not prohibited by federal, state or county law, or any section of this article, excepting CAFOs, meatpacking plants and any industrial business.

Cottage industries and in home businesses.

Dormitories, sorority and fraternity houses.

Horse breeding and training facilities, boarding stables, riding stables, arenas.

Hospitals, rest homes, convalescent homes, and nursing homes.

Preschool age nurseries.

Professional offices.

Public schools.

Public utility mains including public offices but not including repair or storage facilities.

Single-family dwellings, including attached quarters, with a common wall, for a member of the family.

C. Conditional Uses: The following uses are permitted in district C only under a conditional use permit issued pursuant to the provisions of this article:

Any use not identified in the allowed uses or permitted uses sections may be permitted only through the conditional use permit process.

Easement as referred to in subsection [8-2C-4A4](#) of this section.

Planned unit development.

Public and semipublic buildings including, but not limited to, law enforcement, fire, health and safety buildings and uses, government services and other public uses.

D. Setback Of Buildings: No building or structure or any portion thereof except steps and uncovered porches less than ten feet (10') in width, shall be erected within five feet (5') of the property line. If the property adjoins district A, district M or district R, no building or structure or any portion thereof shall be placed within two hundred feet (200') of a property line that adjoins said districts. No building or structure shall be placed within forty feet (40') of a county road, or within one hundred feet (100') of a state or federal highway.

E. Rights Of Way: All street and road rights of way shall be developed in accordance with any minimum standard adopted by the county. (Ord. 09-07, 8-4-2009)

8-2C-5: CONDITIONAL USE PERMITS AND VARIANCES:

8-2C-5-1: CONDITIONAL USE PERMITS:

A. Nature Of Conditional Use Permits:

1. Conditional uses have been identified throughout the designations of districts in this article. As to each permitted use specified in those designations, the applicant requesting such use has the burden of persuading that the use should be permitted, and then must comply with whatever special conditions are placed on any permit granted. A conditional use permit is not transferable from the applicant to another person, or from the site for which the permit is granted to another land site without specific approval of the planning and zoning commission, hearing examiner, or board of county commissioners, whichever granted the final permit.
2. If substantial progress toward development of the use permitted by a conditional use permit has not been accomplished within twenty four (24) months from the date the permit is issued, the permit expires. The applicant must request extension of the life of the permit from the planning and zoning commission, hearing examiner or board of county commissioners from whichever granted the final permit.

B. Exemption As To Site Operations Permitted To October 1991: No application for conditional use permit shall be required for continued operation on, or for expansion of use of, any site which had been established and was being operated under state and/or federal permit or license issued pursuant to state and/or federal law on or before October 3, 1991, the date upon which the Owyhee County land use ordinance became effective.

C. Procedure For Obtaining Conditional Use Permits:

1. Applications for conditional use permits for those uses identified in this article shall be filed with the administrator of the planning and zoning commission on a form prescribed and approved by the administrator or the board. The application must contain full information as required by the application packet and the instructions accompanying the application in order to be considered.
2. An application must be accompanied by a filing fee as adopted from time to time by the board by resolution. If the fee is not paid, the application will not be considered.
3. When a completed application is filed with the administrator, the administrator shall present said application at the next regularly scheduled meeting of the planning and zoning commission. Upon receipt of said completed application and payment of the required filing fee, the administrator shall schedule at least one public hearing on the conditional use permit application at which interested persons shall have an opportunity to be heard. At least fifteen (15) calendar days prior to the hearing, notice of the time and place and a summary of the proposed conditional use permit shall be published in the official newspaper of general circulation within the county. Notice will also be posted at the county courthouse in Murphy, Idaho, and the office of the clerk of court in Homedale, Idaho. The board, administrator, or the commission may also decide to provide additional notice to property owners who may be substantially impacted by the proposed conditional use permit.

D. Issuance Of Conditional Use Permit:

1. The applicant for conditional use permit has the burden of proof with regard to justifying the issuance of the conditional use permit. The planning and zoning commission may direct the administrator to require the applicant to provide reports and testimony relevant to each of the provisions of this subsection and may require the applicant to conduct studies of the social, economic, fiscal and environmental effects of the proposed conditional use.
2. The planning and zoning commission shall review the particular facts and circumstances of each application for a conditional use permit in terms of the following standards, and may issue a conditional use permit only when it finds adequate evidence answering the following questions about the proposed application:

- a. Whether the article permits the use by conditional use permit.
 - b. Whether the intended use is necessary or desirable to the public convenience and welfare.
 - c. Whether the proposed use may create a hazard, nuisance, detriment or other injury to other property in the immediate vicinity or to the health or safety to the citizens of the county in general.
 - d. Whether essential public services, or the general public health or safety, or the general public environment may be negatively impacted by such use or whether there may be a requirement of additional public funding in order to meet the needs created by the requested use.
 - e. Whether adequate sewer, water and drainage facilities, and utility and other service systems are to be provided by the applicant to accommodate said use.
 - f. When a permit is granted with appropriate conditions, bonds and safeguards which are in conformity with this article may be prescribed. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this article.
 - g. Whether the proposed use may have adverse impact on water and water supplies, both surface, aquifer and underground in the county.
 - h. Whether the geological base on which the use is to be placed may or may not support such proposed use.
 - i. Whether the proposed use at the proposed site may endanger human health, animal life and plant life in the surrounding area and/or the county in general.
 - j. Whether the proposed use complements, benefits, and is compatible with the surrounding land uses.
 - k. Whether special conditions could be imposed upon the proposed use which would so minimize any adverse impact as to justify the granting of the conditional use permit.
3. If the planning and zoning commission determines that the conditional use permit should be granted but that special conditions are necessary in order to minimize any adverse impact which might be caused by the proposed use, the commission may apply special conditions designed to minimize that adverse impact including, but not limited to, conditions which perform the following functions:
- a. Minimize adverse impact on the surrounding area and the public health, safety and environment in general.
 - b. Control the sequence and timing of development of the proposed use.
 - c. Control the duration of the development and use of the proposed use.
 - d. Assure that the development is properly maintained.
 - e. Designate the exact location and nature of development.
 - f. Require the provision for on site or off site public facilities or services.
4. When the commission denies a conditional use permit, it shall: a) specify the portions of the ordinance and standards used in evaluating the application, b) the reason for denial, and c) what actions if any that the applicant may take to try to obtain a permit upon submission of a new application.
5. When the commission grants a conditional use permit, it shall specify the portions of the ordinance and standards used in evaluating the application and the reasons for approval.
6. When a permit is granted appropriate conditions, bonds and safeguards which are in conformity with this article may be prescribed. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this article.
- E. Conditional Use Permits Subject To Right To Farm Act: All conditional uses permitted under a conditional use permit must be subjected to the provisions of the right to farm act, and any successor legislative acts designed to protect existing agricultural uses. A special condition must be placed on every conditional use permit requiring the applicant to acknowledge compliance with Idaho Code title 22, chapter 45, or successor acts and compliance with Idaho Code section 67-6529 which protect existing agricultural uses on agricultural lands and requiring the applicant to notify any purchaser of a lot, parcel or tract affected by the conditional use permit of the need to comply with such legislative acts. The conditional use permit may contain a special condition requiring the applicant to place protective language regarding the necessity of complying with Idaho Code, title 22, chapter 45 and Idaho Code section 67-6529 and successor acts in any documents relating to transfer of ownership of any lot, parcel or tract affected by the conditional use permit. A conditional use permit may be conditioned upon the applicant's causing the permit and special conditions to be recorded with the office of the county recorder. No building permit may be issued for any lot, parcel or tract affected by a conditional use permit unless a certificate of compliance, containing reference to this subsection, is issued by the administrator or a designee of the board of county commissioners. (Ord. 09-07, 8-4-2009)

8-2C-5-2: VARIANCES:

Variations shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this article would result in unnecessary hardship. A variance shall not be considered a right or special privilege, but may be granted to an applicant only after the applicant has met the burden of persuasion that failure to grant the variance would impose undue hardship on the applicant because of the characteristics of the use site, and that granting the variance will not be inconsistent with the public interest. (Ord. 09-07, 8-4-2009)

8-2C-5-3: PLANNED UNIT DEVELOPMENTS:

Planned unit developments may be permitted under a conditional use permit. The application for such PUD shall be on a form approved by the administrator or the board and must be filed with the administrator of planning and zoning along with payment of an application fee set by the board. All procedures applicable to applications for conditional use permits shall be applicable to applications for PUDs. A PUD may be permitted which includes a variety of land uses under a single ownership or control, and may be subjected to conditions as to minimum area, permitted uses, ownership, common open space, utilities, density, and arrangements of land uses on a site, permit processing and any other condition which would be permissible under the conditional use permit process. (Ord. 09-07, 8-4-2009)

8-2C-6: ZONING RECLASSIFICATIONS AND COMPREHENSIVE PLAN MODIFICATIONS:**A. Reclassification Or Modification Of Ordinance, Comprehensive Plan Or Districts:**

1. Pursuant to Idaho Code section 67-6526(d) areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate.
2. Any change, modification, or reclassification of ordinances, or of the comprehensive plan may be initiated by the board of county commissioners, the planning and zoning commission, or by application of one or more property owners, purchasers or holders of valid options to purchase property.
3. When the application for change, modification or reclassification is initiated by a property owner, purchaser or holders of valid options to purchase property, the application must be submitted on a form approved by the board of county commissioners and must be filed with the planning and zoning administrator along with an application fee as set by the board of county commissioners. The application must contain full information as required by the application and the instructions accompanying the application in order to be considered. Once the completed application is received, the planning and zoning commission will hold a public hearing and if a favorable recommendation is forwarded to the board, the board will initiate negotiations with the city governing board to renegotiate the ordinance or plan.
4. Any change, modification, or reclassification of zones may be initiated by the board of county commissioners, the planning and zoning commission, or by application of one or more property owners, purchasers or holders of valid options to purchase property. When the application for change, modification or reclassification is initiated by a property owner, purchaser or holders of valid options to purchase property, the application must be submitted on a form approved by the board of county commissioners and must be filed with the planning and zoning administrator along with an application fee as set by the board of county commissioners. The application must contain full information as required by the application and the instructions accompanying the application in order to be considered.

B. Development Agreements¹: Any rezoning granted under this article may be conditioned upon the execution of a written commitment by the applicant for rezoning that the use or development of the property subject to the rezone will be as specifically represented in the application for rezoning and to the planning and zoning commission or hearing examiner or board of commissioners. Such agreements shall be subject to the following provisions:

1. Written commitment will be prepared on a form approved by the board of commissioners.
2. The order granting the rezone shall provide that the written commitment is binding on the owner of any parcel covered by the rezoning, each subsequent owner and each other person acquiring an interest in the parcel. The written commitment shall recite the same binding nature.
3. The written commitment must be recorded with the office of the county recorder prior to issuance of the order to rezone.
4. A written commitment may be modified only by permission of the board of commissioners; an application for such modification on a form approved by the board and payment of a fee set by the board must be filed with the clerk of the board; and then is subject to the processing and hearing requirements set forth in this article for applications for conditional use permits.
5. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of requirements in the commitment after a reasonable time as fixed by the board of commissioners, or upon the failure of the owner of a parcel covered by the zoning designation, each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions. A termination hearing may be held on the board's own motion, or upon request from the planning and zoning commission or hearing examiner, following the hearing process set forth in this article for conditional use permits.
6. Entering into a written commitment shall be considered as a written consent to reverse the rezoning decision upon failure of the conditions imposed by the written commitment.
7. By requiring written commitments as conditions for rezone, the board of commissioners has not obligated the planning and zoning commission or hearing examiner to recommend a rezone or the board to grant the rezone. (Ord. 09-07, 8-4-2009)

8-2C-7: EVALUATION OF IMPACT OF ACTIONS:

Upon the written request of an owner of real property, the following actions are subject to the regulatory taking analysis provided for by Idaho Code section 67-8003: a) denial of a permit for conditional use, subdivision, planned unit development, variance, or b) approval of any such uses with conditions unacceptable to the landowner. (Ord. 09-07, 8-4-2009)

8-2C-8: FEES:

- A. Authorization To Set Fees: The board of county commissioners shall determine the fees to be assessed related to the various actions requested and required under the provisions of this article and related ordinances. The determination shall be made by resolution, and shall be based upon evaluation of actual cost of providing the services necessary to the actions requested and required.
- B. Payment Of Fees And Related Costs: It shall be the responsibility of the applicant requesting an action pursuant to this article or related ordinances to pay the fees established for the process related to the application or request. It shall also be the responsibility of the applicant to pay costs for services such as, but not limited to, engineering and surveying and other professional services related to examination of applications, site plans, plats, and conduct of special studies which may be required by the planning and zoning commission, the hearing examiner and/or the board of county commissioners in the process for considering the application or request. Payment of such fees and costs must be completed prior to a hearing or other action on the application or request. (Ord. 09-07, 8-4-2009)

8-2C-9: NONCONFORMING USES:

- A. Continuation Of Use: A nonconforming use shall be allowed to continue in existence throughout the life of the use as it existed on the effective date hereof.
- B. Enlargement Of Use: Any enlargement of a nonconforming use, either by extending the land or site upon or in which the use exists, or by expanding the use itself, to the extent that it changes the nature of the use is unlawful unless permitted by conditional use permit. CAFO operations that change the type of animal confined, for example, beef to swine, are considered a change in the nature of the use.
- C. Use Commenced Prior To Adoption: To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this article and upon which actual building construction has been carried on diligently; provided, that it is completed and so used within one year after the effective date hereof.
- D. Change To More Appropriate Nonconforming Use: If no structural alterations are made, any nonconforming use of a structure or structure and land may, upon the issuance of a conditional use permit by the planning and zoning commission, be changed to another nonconforming use; provided, that the commission shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change the commission may require appropriate conditions and safeguards in accordance with other provisions of this article.
- E. Superseded By Permitted Use: Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- F. Abandonment Of Use: When a nonconforming use of a structure or structure and land in combination is discontinued or abandoned for more than one year, the board of county commissioners shall take action to comply with Idaho Code section 67-6538 or successor statutory procedures regarding nonuse. The structure, or structures and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- G. Nonconforming Use Created After Effective Date: A nonconforming use which came into existence after the passage hereof shall not be deemed a nonconforming use, but an illegal use and shall be abated.
- H. Conditional Use: Any use which is permitted as a conditional use in a district under the terms of this article shall not be deemed a nonconforming use in such district, but shall, without further action, be considered a conforming use. (Ord. 09-07, 8-4-2009)

8-2C-10: TEMPORARY HARDSHIP PERMIT:

- A. Application: A person may apply for a granting of a temporary hardship permit which will permit temporary dwellings for the benefit of persons who have medical or life problems which create an undue burden on the persons or families. The application shall be made on a form approved by the administrator or the board of county commissioners, and shall be filed with the administrator. The administrator shall then approve, approve with conditions, or deny the application. The burden is on the applicant to demonstrate and prove the hardship, and the permit shall be valid for no more than twelve (12) months. If a longer time period or an extension of the twelve (12) month period is requested, the application shall be processed under the provisions for process and hearing process set for other applications filed under this article.

- B. Siting Of Dwelling: The dwelling authorized under this section may be placed on a lot, parcel or tract where no such dwelling would otherwise be authorized under this article.
- C. Special Conditions: Special conditions may be imposed upon any permit issued under this section designed to specifically limit the use of the temporary use authorized by this section. (Ord. 09-07, 8-4-2009)

8-2C-11: ENFORCEMENT:

- A. Violation: Violation of this article shall constitute a misdemeanor punishable as provided in Idaho Code section 18-113 as it may from time to time be amended and/or retitled. Each day the violation continues shall constitute a separate offense. A fine of one hundred dollars (\$100.00) per day will be assessed per violation.
- B. Notice Of Violation; Additional Remedies: When the planning and zoning administrator or commission finds that violation of this article has occurred or is about to occur, the administrator shall advise the board of commissioners in a written recommendation containing factual findings upon which the recommendation is based. Upon receiving such recommendation from the administrator, or on its own motion after finding that a violation has occurred or is about to occur, the board of commissioners may direct the administrator to send an initial letter advising the party of the violation and the fine associated with the violations. The party will have fourteen (14) days to respond with a solution agreeable to the board. If such solution is not received, the board may issue an order to show cause requiring a public hearing at which the alleged offender will have the opportunity to show cause why he/she is not in violation of this article and/or why enforcement proceedings should not be initiated. If after the order to show cause hearing, the board is of the opinion that a violation has occurred and that enforcement action should be initiated, the board may direct that enforcement action be initiated to abate the violation and/or seek imposition of penalties. A fee may be set by resolution for the order to show cause hearing. (Ord. 09-07, 8-4-2009)

THOMPSON ROAD

BM

EDISON ROAD

Marsino
(BM 2249)

Edison
School

