

## ARTICLE 44

Important note: Items 01-08 of adopted Article 28 relate to county-wide Goal 5 resources and will be further revised and adopted through Periodic Review Task Eight. The remainder of the present Article 28 (section 09 onward) will be repealed when Article 44 is adopted at the County Commission level--along with any necessary changes to the Comprehensive plan and ESEE studies. Article 44 applies only to the Goal 5 Overlay zone for the Wallowa Lake Moraines and needs to be adopted and made effective immediately upon adoption since the current Article 28 provisions are not satisfactory to LUBA, DLCD, or Wallowa County.

## ARTICLE 44

### WALLOWA LAKE MORAINES GOAL 5 RESOURCE OVERLAY

**SECTION 44.010, PURPOSE:** In that area of the Wallowa Lake Moraines identified in the Wallowa County Comprehensive Land Use Plan (WCCLUP) as being of Goal 5 resource importance, the following standards shall apply, in addition to those of the underlying zone. In the Overlay Zone, conflicting uses may be prohibited, limited, or allowed, depending upon the impact on the resource (OAR 660.023.0040 (5)). For the purpose of this article, conflicting uses are considered to be anything which may alter the existing character of this area. Conflicting uses include, but are not limited to: development of residential, non-residential, or commercial structures, roads, agricultural practices and forest practices which are intensive or non-traditional, and other activities which would require any facilities, structural or otherwise, to be developed.

Forest operations regulated by Forest Practices Act (FPA) as administered by the Oregon Department of Forestry (ODF) are not subject to this Article. State Statute (ORS 527.670) requires that the operator, timber owner or landowner notify the State Forester before commencing any FPA forest operation activity. ODF will enter into a Memorandum of Understanding with Wallowa County to provide notification to the County of these operations within the Goal Five boundary. (See Goal V Policy 23, WCCLUP).

The design, siting and construction standards of this article require structures and uses to maintain the scenic integrity of the Moraines and to be visually subordinate to the surrounding scenic landscape. Scenic integrity is determined by the degree of

intactness and wholeness of the landscape character; conversely, scenic integrity can also be a measure of the degree of visible disruption of the landscape character. Please see Definitions in Article 1, Section 1.065. Wallowa County has adopted the following handbook as an authoritative source on landscape character preservation:

LANDSCAPE AESTHETICS: A HANDBOOK FOR SCENERY MANAGEMENT, USDA Forest Service Agriculture Handbook Number 701, December, 1995 (Supersedes AH462, National Forest Landscape Management, Volume 2, Chapter 1, THE VISUAL MANAGEMENT SYSTEM). Hereafter referred to as Aesthetics.

**Prior to development, an applicant shall submit and receive review authority approval of a scenic management plan. The management plan shall be prepared following the procedures described in this article for accomplishing visual subordination in a scenic management plan.**

Accepted farming practices as defined by ORS 930.947(2) and fencing that continues the traditional land use pattern of the property are generally considered visually subordinate to the scenic and historic landscape and are not subject to the provisions of this article.

**The review authority shall consider the effect of a proposal on all Goal V resources. To achieve an overall minimum developmental impact on the resources, the review authority may allow a variance to the standards of this article. Such a variance shall be clearly documented and become part of the record.**

**SECTION 44.015, REVIEW PROCEDURE:** Application for any permit authorized by this ordinance shall be subject to Administrative Review for compliance with the protection standards of this article. If, in the opinion of the Administrative Review authority, the proposed use may be in conflict with the protection standards, the application will be referred to the Public Hearing Review Process.

**SECTION 44.020, SCENIC MANAGEMENT PLAN PROCEDURES:**

01. Any structure or use must be visually subordinate to the scenic resource. Applications must include information in the form of drawings, a site plan, and narrative that are found by the review authority to provide sufficient detail to demonstrate compliance with this article.

Drawings: The drawings shall portray the general landscape of property and design of all proposed buildings and uses. The complexity of these drawings will depend on the intensity of the proposed development and potential impacts on the scenic integrity as seen from identified viewpoints and viewshed.

Site Plans: The site plan shall identify the specific location of all proposed and existing buildings and uses on the subject property, including setbacks from property lines and key features. The site plan shall be mapped accurately, normally to a scale of one(1) inch equals 50 feet. The site map scale may be adjusted, subject to approval by the review authority, depending on the size of the property, location of uses and intensity of the proposed development. The site plan shall include the topography of the property by mapping general contour lines at not more than two foot intervals. Additional or more detailed information, including a detailed architectural drawing or a series of maps, may be required by the review authority in order to demonstrate compliance with this article. I.e, if the property is sufficiently large, the review authority may request a plot map in addition to the site map, to locate the development within the property.

Narrative: The narrative shall provide a word picture which describes the unique character of the existing scenic landscape into which the structure or use will be introduced.

02. Applicant shall propose appropriate strategies for conforming the structure/use to the landscape (according to the landscape aesthetics handbook). Proposals shall include a narrative, color artist's sketches or photographs, and architectural drawings sufficient to satisfy the review committee and review authority that visual subordination goals will be met.

03. A technical review committee, composed of the Wallowa County Natural Resources Technical Advisory Committee, with the addition of engineers and architects qualified to evaluate visual subordination plans, shall review applications deemed complete by the review authority and provide recommendations for action.

04. If the degree of retention of the scenic landscape to be achieved by the applicant meets the minimum standard for the area, then the proposed structure/use shall be permitted by the review authority, provided that the other criteria of the overlay and underlying zones are met.

05. The completed structure/use shall be compared with the approved plan to assure compliance.

#### **SECTION 44.025, REQUIREMENTS AND STRATEGIES FOR ACCOMPLISHING VISUAL SUBORDINATION IN A SCENIC MANAGEMENT PLAN:**

Performance Standards: Visual subordination is to be determined by how well the proposed design, siting, construction and operation of the proposed structure or use achieves all of the following standards.

01. Meets at least the minimum level of scenic integrity preservation established for the area;
- A. Conforms with and emulates, rather than conflicts with, original landscape character and is subordinate rather than dominant;
  - B. Is visually subordinated by the use of color, materials, configuration, line and form, and topography;
  - C. Utilizes low or non-reflective materials, camouflage techniques, and other means to achieve at least the required level of visual subordination. Structures and improvements blend into rather than contrast with surrounding landscapes. Assures that windows and other materials used are low in contrast and reflectivity;
  - D. Existing landforms are retained and structures fit into rather than dominate existing topography;
  - E. Created openings borrow form from the existing natural landscape and utilize appropriate scale, shape, configuration, line, and horizontal or vertical orientation to imitate and blend into the existing landform. Unnatural forms that are too symmetric or uniform are avoided and all structures fit into existing topography.

**General Requirements:** The following apply in addition to other provisions of this article:

01. Existing timber or vegetative plantings alone shall not be sufficient to accomplish visual subordination and any plan submitted must show, to the satisfaction of the review authority, that the structure or use would remain visually subordinate even if the timber screen or vegetative cover were removed by fire or other cause. Planted vegetation is to be compatible with existing vegetation. For example, on the bare east side of the East Moraine, trees would not fit in, and should not be planted. In such areas, only topography and other camouflage techniques, rather than vegetative screening, shall be used to make a structure or use visually subordinate. In other areas, existing trees and vegetation may be an important part of a visual subordination plan, but are not sufficient in themselves. In general, vegetation alone should not be depended upon for visual subordination as vegetative screening is inappropriate to consider in long term, broad scale planning (Aesthetics, sec. 4 p. 50).

02. Exterior lighting shall be directed downward and appropriately sited, shielded, or hooded in a manner that prevents lights from being highly visible from sensitive viewing areas (Map G5-2) and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety

purposes. Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months.

03. New utility service, such as electric, cable TV, and phone lines shall be placed underground unless evidence satisfactory to the review authority is presented that underground placement is not feasible.

04. New utility transmission lines, transportation and communication facilities, docks, floats, and piers and maintenance of existing lines, roads and facilities shall be made visually subordinate to the maximum extent practicable.

**SECTION 44.030, DEFINITION OF AREAS AND PROTECTION LEVELS BY AREA:**

There are four inventoried resources, each with a boundary that is different from the others, given protection by the Goal 5 Overlay: Wildlife Habitat, Scenic, Natural (geologic), and Historical/Cultural. Although the boundaries do not coincide, the protections which follow are interlocking in the sense that each protection helps to preserve not just one resource but several. For example, the restriction against building on the crest or breaking the skyline offers protection to all four resources, and the requirement for a soils report from a licensed geological engineer demonstrating that a site will physically support the proposed use not only prevents landslides and protects the geologic/natural resource, but also protects the scenic resource. The historic resources are mapped and designated as 3C areas and are protected by their inclusion in 3A or 3C designated areas (Map G5-7 Historic Resource Areas--see also maps G5-1 through 8 Goal 5 Appendix WCCLUP).

The Wallowa Lake Unincorporated Community (R-2 and CR-2) is specifically excluded from Protection Status within all the Goal V Resources.

Within the unincorporated community only the criteria of the underlying zones applies.

The Goal V area within the Joseph Urban Growth Boundary (UG-R), the properties within the Wahluna Terrace area zoned R-2 (as of 01/01/96), and the properties zoned R-2 (as of 01/01/96) on the west side of Wallowa Lake are specifically excluded from Protection Status within the scenic resource, but are subject to the design standards of the underlying zone.

The entire surface area of Wallowa Lake is considered to be within the Scenic Resource of the Wallowa Lake Moraines, (p. 111 Appendix, WCCLUP) and thus structures or activities proposed for the surface area are subject to the visual subordination standards of this article and must preserve scenic integrity to the standard of moderate (partial retention). The surface of the lake is also

protected by Wallowa County zoning article 37--Wallowa Lake Float, Dock, and Surface Area.

The Wallowa Lake Moraines Goal 5 Overlay is divided into six basic areas with 3 levels of protection. A minimum level of scenic integrity preservation is specified for each of these protection areas. Structures and uses subject to the visually subordinate requirement of this section must meet at least the following levels of retention of scenic integrity:

**A. 3A PROTECTION AREA (No Conflicting Uses).** Scenic Integrity: Very High (Preservation).

**B. 3C PROTECTION AREA -MORE RESTRICTIVE** (No conditional uses allowed, permitted uses allowed, with restrictions). Scenic Integrity: High (Retention).

**C. 3C PROTECTION AREA - LESS RESTRICTIVE** (Permitted and conditional uses allowed, with restrictions). Scenic Integrity: Moderate (Partial Retention).

**1. 3C EXCEPTION AREA PROTECTIONS** (Permitted and conditional uses allowed, with restrictions,). Scenic Integrity: Moderate (Partial Retention).

**2. 3C EXCEPTION AREA FOR TRAMWAY SKI RUN CONNECTION** (Permitted and conditional uses allowed, with restrictions). Scenic Integrity: Moderate (Partial Retention).

Use of the existing ski run corridor from the upper terminus of the Wallowa Lake Tram to the lower terminus which transits the Goal 5 area in the W ½ of Section 27, W ½ of Section 34, Section 28, SW 1/4 of Section 22, SE ½ of Section 21, and S1/2 of the NE 1/4 of Section 21 for recreational uses and related facilities may be allowed subject to a finding that wildlife habitat will not be compromised, and shall otherwise be subject to all of the applicable requirements of this article.

**D. EAST BANK OF LAKE PROTECTION** (The strip of land between the eastern boundary of the right of way of State Highway 351 and the surface of Wallowa Lake). The scenic protection of the east bank shall mirror the protection level in effect on the east side of State Highway 351:

**a. 3A PROTECTION AREA (No Conflicting Uses).** Scenic Integrity: Very High (Preservation).

**b. 3C PROTECTION AREA -MORE RESTRICTIVE** (No conditional uses allowed, permitted uses allowed, with restrictions). Scenic Integrity: High (Retention).

## **SECTION 44.035, PROGRAMS OF PROTECTION BY AREA**

### **A. ENTIRE GOAL V AREA**

#### **Protection of Historic, Cultural, and Archaeological Resources**

Development proposals for sites involving known or highly probable potential cultural resources including historic or prehistoric sites, buildings, objects, and properties related to American and Native American history, architecture, archaeology and culture, such as settler or Native American artifacts, must include a survey and assessment of the site and resources by authorities judged competent by the review authority, and a management plan, if indicated, responsive to the findings of the assessment, for historic/cultural resource protection.

The Review Authority shall communicate with representatives of the tribes listed at the end of this section with regard to the choice of the assessment authorities.

The review authority may consult with any competent authority to assist in evaluation of an assessment or a management plan for historic/cultural resource protection and to assure that the plan is in compliance with applicable Federal laws and regulations including the American Antiquities Act of 1906 (16 U.S.C. 431-433), National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.) and the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470 aa et seq.) and applicable laws and administrative rules of the State of Oregon including ORS 97.740-760, 358.905-955, and 390.235. The County recognizes that historical and cultural sites are present in the Goal V area, but are not listed in this document to protect the sites. Site lists of Native American sites may be obtained from the tribes, at tribal discretion, listed at the end of this section.

If, in the course of development, such cultural resources are encountered, the developer shall cease development, carry out an assessment, and present to the review authority a plan for development that assures protection of the resource. The review authority shall notify the State Historic Preservation Officer and the tribes representatives, listed below, of the find, and may consult with any competent authority to assist in evaluation of a management plan for historic/cultural resource protection.

If, during any activity, human remains (full or partial) are discovered, all activity shall cease. Local law enforcement officials, the Oregon State Police, local

government, and the Tribal Governments listed below shall be contacted immediately. The County Medical Examiner shall inspect the remains to determine whether they are modern or historic and representatives of Tribal Governments listed below shall be notified prior to the inspection and have an opportunity to monitor the inspection. If the remains are historic, they shall be treated in accordance with the above provisions of law and the procedures set forth in ORS 97.740-760. In the event that the remains are modern, appropriate law enforcement officials shall assume jurisdiction.

Groups that shall be noticed for review of a proposal or contacted in the case of a find include: The Legislative Commission on Indian Services (see ORS 146.505), Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, the Nez Perce National Historical Park, and Nez Perce National Historical Trail Foundation.

### **Wildlife Habitat**

The wildlife habitat resource zone map includes the entire Goal 5 area and is designated as a 3C protection area. With the exception of properties zoned CR-2 and R-2 (as of 01/01/96), all development shall be reviewed by the local office of ODF&W. ODF&W may request the clustering of buildings associated with the development or with buildings on adjacent parcels, to lessen the developmental affect on wildlife.

The programs of protection for those areas designated 3A, 3C more restrictive, 3C less restrictive scenic resource area, or especially sensitive big game habitat, are more rigorous than for those areas outside of those boundaries.

For the areas outside of those boundaries, the following rules apply (Exception-- those areas described in 44.030 (C1) and (C2)):

1. In resource zones there shall be a 100 foot setback for residential use from streams for the purpose of preserving habitat for game birds, fur bearers, fish, and non-game wildlife.
2. There shall be a 100 foot setback for residential use from rookeries and wetland areas identified on the habitat map of the land use plan.

### **B. 3C PROTECTION -- AREA WILDLIFE HABITAT**(more restrictive-East Moraine)

The East Moraine provides habitat for big game animals and a variety of upland game and nongame species. The local office of ODF&W has mapped a portion of the East Moraine as Goal V Deer Habitat. That portion of the Moraine considered Goal V Deer Habitat is defined as follows: The west face of the East Moraine to within 300 feet of Highway 351 and that area within 200 yards



(ground distance) east of the crest beginning at the north end of the Moraine in section 5 and continuing south to the Forest Service boundary. This area should be managed to maximize open space. Development within the 3A protection area will be in conflict with the wildlife resource.

Dwellings and other structures should be sited within 300 feet (ground distance) of Highway 351. Proposals to locate dwellings, other structures, or roads (except for maintenance of existing roads) beyond 300 feet ground distance from the highway are subject to special review for adverse impacts ( see paragraph d, in sections D and F). The review authority may deny the application upon a finding that the proposed site is not consistent with the intent of this section.

**C. 3A PROTECTION AREA (No Conflicting Uses):**

Within that area on the lake side of the East Moraine (the West side of the Eastern Moraine) which has been designated 3A protection status, conflicting uses will not be allowed. Permitted uses will be allowed, with restrictions.

1. No conflicting uses may take place within the 3A protection area. Fencing necessary to continue the traditional land use pattern of the property is permitted.
2. Projects conducted for the purpose of enhancing, improving, or maintaining the existing character of this area may be exempt from the criteria of Section 44.035(C)(1) if the public-hearing review authority finds the project to be consistent with the protection of this area from conflicting uses.

**D. 3C PROTECTION AREA (more restrictive--No conditional uses allowed, permitted uses with restrictions allowed):**

The properties zoned R-2 (as of 01/01/96) on the west side of Wallowa Lake, which have undergone extensive residential development, are excluded from Protection Status within the Natural Resource.

Within those areas on the lake side of the Moraines (the West side of the Eastern Moraine and the East side of the Western Moraine) which have been designated 3C protection status (more restrictive), conflicting uses will be specifically limited to a minimum.

1. Uses may be allowed subject to the requirements of Article 9 Conditional Use Permit, provided that:
  - a. It is a permitted use in the underlying zone.
  - b. The use will be visually subordinate to the retention

level and conform to the design standards of structure height, color, and other considerations required by Article 18, Recreation Residential Zone.

c. Cuts or fills shall not significantly alter the essential integrity of the geologic formation of a moraine or visual character of the area when construction is complete. All topography external to buildings shall be returned to within two feet of pre-existing conditions unless visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard. Cuts and fills of more than two feet shall be rounded on top above the road and filled below so as to make the terrain appear more natural and reseeded. Prior to construction permit approval and subsequent to construction, the applicant shall submit topographic site surveys on two foot intervals as proof of compliance.

d. The minimum lot size for newly created parcels and for new dwellings on existing or new parcels shall be that of the underlying zone. Legally established parcels of less than 160 acres in resource zones may be eligible for a dwelling provided that, in addition to all other criteria of this article, the following criteria are also met:

i. The parcel would have qualified for a dwelling either as a lot of record or under the template or multi-tract test prior to the adoption of this article.

ii. The dwelling and related structures can be made visually subordinate to the retention level.

iii. Within the East Moraine Goal V Deer Habitat Area, the applicant has submitted a plan to mitigate or prevent adverse impact on existing wildlife habitat due to loss of open space and increased human activity, which has been prepared in consultation with the Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local review authority. The plan shall be deemed by the review authority to properly mitigate or prevent loss of wildlife habitat if through enhancement of feed availability, removal of livestock, and other measures, the carrying capacity of the property which is the subject of the application will not be reduced.

Comment by ODFW or other competent authority that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

e. The review authority may require specific siting standards, including but not limited to, a requirement that approved structures must be located

within 200 feet of any other similar structures which are either existing or proposed on that same parcel.

f. Evidence is provided by the applicant that the site on which any development or use proposed is suitable to physically sustain the use. This evidence shall be in the form of a structural design and geological soils report supporting the development submitted and signed by a licensed geological engineer. This requirement may be waived by the review authority when the natural grade of the immediate area where development will be sited and other areas directly affected by the development are less than 20%.

g. Evidence is supplied by the applicant which shows that the proposed development is not located in an area containing a Federal or State sensitive, endangered or threatened listed plant species. If the development is located in a resource zone, and no Federal or State monies are involved or permits required, the owner must develop an inventory of State listed plant species present, and participate in applicable State and local programs to mitigate the impact of the development on the listed species. If Federal or State monies are involved or permits required, the development must also conform to applicable Federal and State regulations.

h. No development will be allowed on the Crest of the Moraines. In addition, any development must be below the skyline as seen from the sensitive view areas (Map G5-2). Therefore, the highest point of any use or structure including, but not limited to, an antenna, satellite dish, and/or chimney shall be at least 20 vertical feet below the line of sight to the skyline from all points in the sensitive view areas. These measurements shall be performed by a licensed surveyor or engineer at the applicant's expense and shall be measured from the edge of the traveled way (in the case of a road) or viewing area nearest the proposed structure from a viewer height of 5 feet above the surface through the proposed structure normal to the moraine skyline. Compliance may be demonstrated by engineered or computer assisted drawings but in the case of a dispute, a performance test utilizing a physical representation of the height of the structure may be required.

A structure or use whose highest point is 60 vertical feet below the crest line of the nearest moraine, measured in a circumference from the highest point of the structure to the crest line of the moraine, shall be considered to have met the requirements of this section.

The applicant may propose and the review authority may approve an alternative plan to protect the scenic resource, skyline, and crest.

i. Excavation for roads shall be subject to the provisions of Article 36 (Salmon Habitat Preservation) and Article 32, (Road Design), shall follow the terrain, shall be visually subordinate to the landscape as viewed from sensitive view areas (Map G5-2), and shall not have cuts or fills that exceed two feet.

However, if less impact may occur by using methods that would violate the above stated cut and fill requirements, the applicant, may propose and the Wallowa County Natural Resources Technical Advisory Committee may recommend other standards which may be approved if visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard.

Prior to construction of a road, a road design which includes quantified grade measurements and an erosion control plan addressing all ground disturbance activities must be reviewed and recommended to the review authority by the Wallowa County Natural Resources Technical Advisory Committee and may be submitted to the public hearing review process at the sole discretion of the Planning Director.

Roads constructed for the purpose of forest practices must comply with the provisions of the State Forest Practices Act (May 1998). Upon notification from the Oregon Department of Forestry, Wallowa County intends to contact the owner and/or individual forest manager for the purpose of informing the land owner about the county's desire to maintain the scenic and geologic integrity of the Moraines. Under the county's scenic management program, the county is willing to work with individual land owners or forest managers to prepare a voluntary plan that achieves a mutually beneficial result.

j. Vegetation for landscaping shall correspond with the surrounding flora and shall only consist of species native to the immediate area or non-native species substantially similar to existing vegetation. Parking, gardens, orchards and other development in conflict with the original landscape shall be visually subordinate if visible from sensitive view areas (Map G5-2).

k. The review authority may require provisions of Article 40, Performance Guarantee, to be satisfied in order to insure compliance with the provisions set forth herein.

### **E. 3C PROTECTION AREA (more restrictive -West Moraine)**

The crest and east face of the Moraine should be managed to maximize open space as mitigation of adverse effect on wildlife habitat. The area along the crest of the Moraine is most important for wintering and resident deer and should not

be developed in any manner. Dwellings should be located within 150 feet (ground distance) of Lake Shore Road. Proposals to locate dwellings beyond 150 feet ground distance from the road are subject to special review for adverse impacts, and the review authority may deny the application upon a finding that the proposed site is not consistent with the intent of this section. The applicant must supply a plan for open space mitigation. The Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local review authority will be solicited for comment on potential conflict. Comment that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

**F. 3C PROTECTION AREA** (Less restrictive--Conditional and permitted uses allowed, with restrictions):

Within those areas on the back side of the Moraines (the East side of the Eastern Moraine and the West side of the Western Moraine which have been designated a 3C protection status (less restrictive), conflicting uses will be specifically limited.

1. Uses may be allowed subject to the requirements of Article 9, Conditional Use Permit, provided that:
  - a. It is a permitted or conditional use in the underlying zone.
  - b. The use will be visually subordinate to the partial retention level and conform to design standards of structure height, color, and other considerations required of Article 18, Recreation Residential Zone.
  - c. Cuts or fills shall not significantly alter the essential integrity of the geologic formation of a moraine or the visual character of the area when construction is complete. All topography shall be returned to within two feet of pre existing conditions unless visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard. Cuts and fills of more than two feet shall be rounded on top above the road and filled below so as to make the terrain appear more natural and reseeded. Prior to construction permit approval and subsequent to construction, the applicant shall submit topographic site surveys on two foot intervals as proof of compliance.
  - d. The minimum lot size for newly created parcels and for new dwellings on existing or new parcels shall be that of the underlying zone. Legally established parcels of less than 160 acres in resource zones may be eligible for a dwelling provided that, in addition to all other criteria of this article, the following criteria are also met:

i. The parcel would have qualified for a dwelling either as a lot of record or under the template or multi-tract test prior to the adoption of this article.

ii. The structure or use can be made visually subordinate to the partial retention level by use of the existing landscape, or by other means acceptable to the review authority.

iii. Within the East Moraine Goal V Deer Habitat Area, the applicant supplies a plan, acceptable to the review authority, for the mitigation of adverse effect on wildlife habitat. The review authority shall solicit the Wallowa County office of the Oregon Department of Fish and Wildlife or other competent local review authority for comment on potential conflict with wildlife habitat.

Comment by ODFW or other competent authority that a plan is not satisfactory may be sufficient cause for rejection of the proposed use if the review authority determines the adverse impacts cannot be adequately mitigated.

e. The review authority may require specific siting standards including but not limited to, a requirement that approved structures must be located in close proximity to existing similar structures which are either existing or proposed on that same parcel, so as to minimize impact on the resource.

f. Evidence is provided by the applicant that the site on which any development or use proposed is suitable to physically sustain the use. This evidence shall be in the form of a structural design and geological soils report supporting the development submitted and signed by a licensed geological engineer. This requirement may be waived by the review authority when the natural grade of the immediate area where development will be sited or other areas directly affected by the development are less than 20%.

g. Evidence is supplied by the applicant which shows that the proposed development is not located in an area containing a Federal or State sensitive, endangered or threatened listed plant species. If the development is located in a resource zone, and no Federal or State monies are involved or permits required, the owner must develop an inventory of State sensitive, endangered or threatened listed plant species present, and participate in applicable State and local programs to mitigate the impact of the development on the sensitive, endangered or threatened listed species. If Federal or State monies are involved or permits required, the development must also conform to applicable Federal and State regulations.

h. No development will be allowed on the Crest of the Moraines. In addition, any development must be below the skyline as seen from the sensitive view areas (Map G5-2). Therefore, the highest point of any use or structure including, but not limited to, an antenna, satellite dish, and/or chimney shall be at least 20 vertical feet below the line of sight to the skyline from all points in the sensitive view areas. These measurements shall be performed by a licensed surveyor or engineer at the applicant's expense and shall be measured from the edge of the traveled way (in the case of a road) or viewing area nearest the proposed structure from a viewer height of 5 feet above the surface through the proposed structure normal to the Moraine skyline. Compliance may be demonstrated by engineered or computer assisted drawings but in the case of a dispute, a performance test utilizing a physical representation of the height of the structure may be required.

A structure or use whose highest point is 60 vertical feet below the crest line of the nearest moraine, measured in a circumference from the highest point of the structure to the crest line of the Moraine, shall be considered to have met the requirements of this section.

The applicant may propose and the review authority may approve an alternative plan to protect the scenic resource, skyline, and crest.

i. Excavation for roads shall be subject to the provisions of Article 36 (Salmon Habitat Preservation) and Article 32 (Road Design), shall follow the terrain, shall be visually subordinate to the landscape as viewed from sensitive view areas (Map G5-2), and shall not have cuts or fills that exceed two feet.

However, if less impact may occur by using methods that would violate the above stated cut and fill requirements, the applicant may propose, and the Wallowa County Natural Resources Technical Advisory Committee may recommend other standards which may be approved if visual subordination and geologic integrity and appearance is determined by the review authority to be enhanced by not meeting a two-foot standard.

Prior to construction of a road, a road design which includes quantified grade measurements and an erosion control plan addressing all ground disturbance activities must be reviewed and recommended to the review authority by the Wallowa County Natural Resources Technical Advisory Committee and may be submitted to the public hearing review process at the sole discretion of the Planning Director.

Roads constructed for the purpose of forest practices must comply with the provisions of the State Forest Practices Act (May 1998). Upon notification from the Oregon Department of Forestry, Wallowa County

intends to contact the owner and/or individual forest manager for the purpose of informing the land owner about the county's desire to maintain the scenic and geologic integrity of the Moraines. Under the county's scenic management program, the county is willing to work with individual land owners or forest managers to prepare a voluntary plan that achieves a mutually beneficial result.

j. Vegetation for landscaping shall correspond with the surrounding flora and shall only consist of species native to the immediate area or non-native species substantially similar to existing vegetation. Parking, gardens, orchards and other development in conflict with the original landscape shall be visually subordinate if visible from sensitive view areas (Map G5-2).

k. The review authority may require provisions of Article 40, Performance Guarantee, to be satisfied in order to ensure compliance with the provisions set forth herein.

l. Wildlife Habitat--3C Protection Area (less restrictive). Dwellings or other structures may not be sited within 200 yards (ground distance) east of the crest of the East Moraine, unless the development meets the criteria of section d above. Development beyond the 200 yard boundary should be clustered per ODF&W request to maximize available open space as mitigation of adverse effect on wildlife habitat.

m. The review authority may consider a development of clustered dwellings provided that all other applicable requirements of this article are met, the average density of dwellings within the development is no more than one per 160 acres, and the resulting open space within the development is preserved by a conservation easement. The conservation easement shall be recorded with the county clerk.