

<b>Topic:</b>	Overlay District
<b>Resource Type:</b>	Regulations
<b>State:</b>	Idaho
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	County of Blaine
<b>Year (adopted, written, etc.):</b>	1999
<b>Community Type - applicable to:</b>	Urban; Suburban; Rural
<b>Title:</b>	County of Blaine Wildlife & Scenic Highway Overlay Districts
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### ***Abstract***

Although Blaine County, Idaho, has a small population (the largest city is Hailey, pop. 6000), its municipal code includes several environmental protections, including two overlay districts. The wildlife overlay district is designed to protect migratory routes of the major species in the county, particularly elk, deer, and antelope, by restricting residential development and requiring residents to work closely with the Idaho Department of Fish and Game. The scenic highway overlay district was written in part to prevent wildlife from being trapped by fences and development along the highway. It is also designed to protect the natural aesthetics of the area, particularly scenic views, by preventing development within a set distance on either side of Highway 75.

### ***Resource***

#### **CHAPTER 20 WILDLIFE OVERLAY DISTRICT (W)**

##### **9-20-1: PURPOSE:**

It is recognized that critical wildlife habitats, migration corridors and winter ranges have been identified by the Idaho Fish and Game Department, the Bureau of Land Management and the Forest Service. These areas have in turn been recorded on the Wildlife Overlay District map for the County. The Wildlife Overlay District is hereby established to protect these identifiable areas in order to increase the chances of survival for the County's remaining wildlife populations. (Ord. 77-5, 3-28-77, eff. 4-7-77)

##### **9-20-2: DEVELOPABLE DENSITY:**

A. Density: The base density and maximum PUD density bonus shall be the same as that assigned to the underlying district.

B. Bonus: An additional ten percent (10%) of the base density may be awarded as a bonus to encourage transfer from this Overlay District to contiguous land within the same ownership not in a hazard district. (Ord. 77-5, 3-28-77, eff. 4-7-77)

### **9-20-3: RESTRICTIONS:**

A. Residential Development: Residential development shall be permitted only to the extent that it can be clustered, designed and fenced so as not to destroy essential habitat and migratory routes. Road construction shall be limited to roads necessary to serve permitted residential clusters.

B. Dogs: Covenants prohibiting dogs from any residential development, or otherwise restricting dogs by means of kennels or fencing, shall be required before approval. Dogs shall be restricted from wildlife areas during the critical migratory or foraging periods determined by the Fish and Game Department.

C. Impact On Wildlife: A description of measures which will be taken to reduce the impact on wildlife must be submitted with all applications for subdivisions, PUDs or recreational uses.

D. Redefinition Of Boundaries: The inclusion of any land parcel within this overlay district may be appealed to the Commission through the procedure in Section 9-32-3 of this Title, but the burden of proof necessary to redefine the boundaries lies with the applicant. All testimony assembled by the applicant will be given full consideration by the Commission, and used to evaluate the accuracy of the determination by the public agencies.

E. Idaho Fish And Game Department Review: All applications regarding use of the Wildlife Overlay District will be submitted to the Idaho Fish and Game Department for their review. (Ord. 77-5, 3-28-77, eff. 4-7-77)

## **CHAPTER 21**

### **SCENIC HIGHWAY OVERLAY DISTRICT (SHO)**

#### **9-21A-1: INTENT AND PURPOSES:**

A. This Chapter is intended to provide measures to protect visual resources and allied economic interests associated with Scenic Corridor 1 (SC1), as defined in Chapter 2 of this Title, in addition to those measures found in Chapter 21 of this Title, and to assist in providing for safety of passage on Idaho State Highway 75. Prior to the addition of this Chapter, Blaine County has been regulating development within one hundred feet (100') of Highway 75. It is important that current owners and potential purchasers of property that includes land within the Scenic Highway Overlay District recognize the significance of the public policy and land use interests reflected in this Chapter, and the

additional requirements under this Code applicable to that land. Unless a categorical exclusion applies, construction of freestanding walls, earthen berms, fences and sight obscuring screens of trees within the Scenic Highway Overlay District require a site alteration permit, which is a type of special use permit authorized by Idaho Code section 67-6512.

B. Among the references to visual resources in the Blaine County Comprehensive Plan, the following are particularly illustrative of the role of land use planning in protecting these values:

The word aesthetic is used in this Section to define the perception or awareness of one's environment. It pertains to the sensations of sight, sound, taste, smell and touch. The importance placed on aesthetics varies according to individual attitude and sensitivity. There is, however, a longstanding consensus, among experts as well as laymen, that visual scenic quality, clean air, high water quality, absence of noise pollution, and other aspects of the natural environment represent invaluable County resources.

Preservation of these resources is of vital importance to the residents of the County as well as to the recreational economy.

Plan, Historical Background, Social Environment, and Aesthetic Values section, page 7 of the Comprehensive Plan, on file in the office of the County Clerk.

The use of berms as a landscaping device to protect the visual aspects of the Scenic Corridor, or for the benefit of private property owners, has led to unanticipated negative effects. High berms, in a continuous line, with tall trees, lead to ice formation on highways and streets in winter and to impairment of the views from roads. To protect against these problems, ordinances shall be drawn requiring design review for landscaping in Scenic Corridors. Such ordinances shall consider heights, spacing, setbacks, and plantings of berms and the visual effect on view corridors.

Plan, Historical Background, Social Environment, and Aesthetic Values section, page 9 of the Comprehensive Plan, on file in the office of the County Clerk.

The building of fences, walls and earthen structures and the planting of trees have impacts in addition to obscuring views. Accordingly, the following are the purposes to be achieved by regulation of such structures:

€ Preserve natural and natural-like views from Highway 75.

€ Allow reasonable separation of homes from Highway 75 31 .

€ Avoid unnatural levels of drainage onto public roads and adjacent lands.

€ Avoid decrease in highway safety from shading of the highway and resultant icing of the pavement.

€ Avoid decrease in highway safety by preserving sight lines and distant visibility for travel 32 .

€ Avoid excess water usage for irrigation of landscaping of earthen structures in accordance with the County's local public interest water resources policy.

€ Control noxious weeds and erosion on disturbed soil. (Ord. 99-5, 10-12-1999)

### **9-21A-2: ESTABLISHMENT:**

A. District Established: The Scenic Highway Overlay District is hereby established.

1. Application Of Regulations: The regulations of this Overlay District, which will not be designated on the Official Zoning Map, shall apply within the County to all lands within one hundred feet (100') of the right of way of Idaho State Highway 75 on both sides of said State Highway 75 north of the east to west intersection with State Highway 20, excluding lands within the jurisdiction of an incorporated city. (Ord. 99-5, 10-12-1999)

### **9-21A-3: CATEGORICAL EXCLUSIONS, STANDARDS AND PROCEDURES:**

A. General Exclusions: Unless the intent of the landowner or his/her authorized agent is to circumvent the purposes of the Scenic Highway Overlay District regulations, the requirements of this Chapter shall not apply to the following, provided the landowner or agent, before commencing construction of freestanding walls, earthen berms, fences and sight obscuring screens of trees, first obtains a written decision from the Administrator, in consultation with the County Engineer or his/her designated representative, that the construction falls within and meets one of the following categorical exclusions. The fact that construction does fall within a categorical exclusion does not remove such construction from the Scenic Highway Overlay District.

1. Agricultural fences on lands within the R-5, A-10 and A-20 Districts which are customarily and directly related to agricultural purposes.

2. Berms, fencing and landscape improvements that are required as part of a valid conditional use permit, variance or subdivision approved prior to the effective date hereof provided the improvements are consistent with the previously approved plan.

3. Freestanding walls, earthen berms, fences and sight obscuring screens of trees that meet the following design standards:

a. Fences shall be of a post and pole design with a maximum top rail height of forty two inches (42") and with the bottom rail at least sixteen inches (16") off of the ground as measured from natural grade. Fences shall not be located on any portion of a berm or within five feet (5') of the toe of any berm. The openings in fences shall not

be blocked with wire fencing or in any other manner [33](#). Fences shall comply with the provisions of Section 9-29-8 of this Title.

On lots which have a residence within one hundred feet (100') of Highway 75, sight obscuring fences of wood construction no higher than five feet (5') as measured from natural grade may be constructed. On such lots, post and pole design fences may be blocked. Fences on such lots must also be set back at least five feet (5') distant from the toe of any berm [34](#).

b. The toe of earthen berms shall be located no closer than five feet (5') from the property line nearest to the Highway 75 right of way within the Scenic Highway Overlay District [35](#). This setback is to be increased in accordance with subsection A3c of this Section where the natural grade is higher than the center line of Highway 75.

c. Within the first twenty feet (20') of depth of the lot or parcel as measured from the property line nearest the Highway 75 right of way, the slope of earthen berms shall be no greater than three to one (3:1) (run:rise) on the side facing Highway 75. On lots which have a residence within one hundred feet (100') of Highway 75, earthen berms may have a slope no greater than two to one (2:1) (run:rise) within the first twenty feet (20') of the depth of the lot or parcel [36](#).

The peak of earthen berms and the top of freestanding walls shall not exceed the following maximum heights [37](#):

Setback Distance	Maximum Height
From property line to 5 feet	Natural grade
5 feet to 20 feet	4 feet
From 20 feet to 75 feet	5 feet
Greater than 75 feet	6 feet

The height measurements shall be taken from the center line of the highway at the point closest to the berm. The distance measurements shall be taken from the peak of the berm to the Highway 75 right of way at the point closest to the berm.

Where the natural grade is higher than the center line of Highway 75, berms, freestanding walls, and fences must be set back an additional three feet (3') for every one foot (1') in height the natural grade is higher than the center line of Highway 75, and this additional setback shall be added to the distance measurement for calculation of the maximum height designated [38](#). Landowners

are encouraged to build berms that undulate in height and distance from the right of way in order to provide a less monotonous, more pleasing appearance.

d. No additional structures, including fences, shall be placed on top of walls or above the toe of earthen berm structures to which the restrictions in this Chapter apply [39](#).

e. Vegetation on earthen berms, other than trees and shrubs for which standards are provided in subsection A3f of this Section, shall be limited to native or native-compatible drought tolerant grasses, wildflowers and ground cover. Disturbed areas shall be landscaped or revegetated immediately after completion of the site alteration activities, but no later than the end of the first construction season during which the site alteration commences. Earthen structures shall be covered with a depth of topsoil adequate to sustain vegetation, and shall be planted with native or native-compatible drought tolerant grasses, wildflowers or ground cover in a weed free environment prior to the end of the Fall season in the year in which construction of the earthen structure was commenced. The required topsoil is to be included in the height of the berm for the purpose of determining compliance with maximum height limitations. Earthen structures shall be maintained weed free in all phases of construction and after revegetation [40](#). Components of the revegetation plan shall include techniques that will be used to ensure the establishment of the proposed vegetation within a period of three (3) years.

f. Trees and shrubs may only be planted within the lowest two (2) vertical feet of earthen berms. The limitations in this subsection A3f shall apply to all trees and shrubs planted within the District with the exception of naturally growing trees and shrubs along the banks of surface bodies of water. No more than thirty percent (30%) of the width of the lot measured parallel to Highway 75 shall be occupied by trees and shrubs, and no more than twenty five percent (25%) of such trees and shrubs shall be conifers. In order to avoid shading and icing of Highway 75 when they have matured, clusters and screens of trees and shrubs shall be planted at least ten feet (10') from the property line nearest to the Highway 75 right of way, and no conifers may be planted within the first fifty feet (50') from the property line nearest to the Highway 75 right of way [41](#).

g. Earthen structures shall be designed and constructed so that no more than natural runoff of water and sediment leaves the property of the applicant.

h. Applicants are encouraged to consult with the Idaho Department of Transportation to determine what State standards may apply. Applicants must also comply with the safety standards in Section 9-29-8 of this Title.

B. Review Of Categorical Exclusions: The Administrator or his/her designated representative, in consultation with the County Engineer or his/her designated representative, shall review all written requests for determinations of categorical exclusions under subsection A of this Section, and promulgate appropriate forms to be used for such requests. The applicant shall have the burden of demonstrating that the

proposed site alteration falls within and meets the requirements of a categorical exclusion. In addition to completing the application form and providing a drawing or plan and such other information required for evaluation by the Administrator, photographs of the site before and after construction (upon confirmation of compliance with categorical exclusion standards) of fences, walls, berms and planting of vegetation regulated by this Chapter shall be provided to the Administrator by the applicant. The Administrator shall issue a written decision within five (5) business days of receipt of an application for determination of categorical exclusion. The Administrator, prior to issuance of its decision, may request additional information from the applicant, including, without limitation, technical review from the County Engineer, and the failure to provide such requested information within sixty (60) days of request shall be grounds for denial of the request for determination of categorical exclusion. The five (5) business day time period for issuance of the Administrator's decision shall begin to run anew following the date of the Administrator's receipt of additional information from the applicant. Such period shall be tolled during any periods that the Administrator does not have reasonably safe access to the site of the proposed construction. Any person aggrieved by the written decision of the Administrator may seek review of the Administrator's decision before the Board according to the procedures and time requirements of this Section.

- C. Review By The Board: Any person aggrieved by a decision of the Administrator made in interpreting or enforcing this Chapter may request review by the Board of such a decision by filing a request for review with the Board within twenty (20) calendar days of the date of such decision, stating the date and nature of the decision and the grounds for the review. The person seeking review shall lodge all legal and factual material in support of the request for review with the Administrator within twenty (20) calendar days of the date of the Administrator's decision being reviewed. If any of such lodged material had not been submitted to the Administrator prior to the Administrator's decision, the Board may remand the matter to the Administrator for reconsideration in light of the new material.
- D. Hearing By The Board: The Board shall hold a hearing on a request for review of a decision of the Administrator under this Chapter during the next available date after the person requesting review has complied with the requirements of this Section. Review of the Administrator's decision under this Chapter shall be de novo, or a new hearing allowing and requiring presentation of all legal and factual material to be considered as if it were being presented for the first time. The original application and the Administrator's decision shall be considered, and the Administrator may submit a report and testify at the de novo hearing before the Board. Otherwise, prior submissions and testimony shall not be required.
- E. Decision By The Board: The Board shall, within fourteen (14) calendar days after the hearing, enter a written order affirming, reversing or modifying the Administrator's decision. The order shall also contain the reasons for the Board's decision. On its own motion, the Board may, within seven (7) calendar days of issuing a written decision, reconsider that decision.

F. Exception To Written Decision Requirement: Notwithstanding any provision of this Title to the contrary, a written decision of the Administrator shall not be required prior to commencing construction that falls within and meets the agricultural categorical exclusion stated in subsection A1 of this Section. (Ord. 99-5, 10-12-1999)

**9-21A-4: SITE ALTERATION PERMIT STANDARDS AND PROCEDURES:**

A. Form Of Application: Application for a site alteration permit in the Scenic Highway District shall be made on a form furnished by the Administrator. All site alteration permit applications shall include the plans for all proposed freestanding walls, fences, earthen structures and associated vegetation within the Scenic Highway District. Upon receipt of the completed form, together with the information listed below, and following an on-site inspection by the Administrator, the completed application shall be placed on the agenda of the next available regular hearing of the Hearing Examiner or Planning and Zoning Commission, as designated by resolution, and shall meet the requirements for notification in Section 9-25-4 of this Title.

B. Application And Submittal Requirements; Fees: An application for a site alteration permit shall be filed with the Administrator by at least one holder of an interest in the property, or their agent, accompanied by the fee established by resolution of the Board. Fees resulting from review by the County Engineer are the responsibility of the applicant, according to the fee resolution of the Board, and shall be paid prior to public hearing. No application shall be certified as complete unless it includes the following information in sufficient detail for the Hearing Examiner or Planning and Zoning Commission to determine compliance with the design review standards of evaluation in subsection D of this Section:

1. The name, address and phone number of the owner of the land for which the permit is requested and of the person, firm or corporation (contractor) who will physically alter the land, if known.

2. The proposed date that the site alteration will commence and the projected date of completion.

3. A description of the land on which the proposed work is to be done, by lot, block, tract and house and street address, or similar description that will readily identify and definitively locate the proposed site. A vicinity map shall be included.

4. A report including text, designs, and visual representations including simulations which indicate the design and construction of improvements, and also including public safety, revegetation, and other information demonstrating compliance with the design review standards of evaluation.

5. A description of the work to be performed, an estimate of the depth of soil, the type of equipment to be used, the total area of disturbance, and the amount and type of



material to be removed or deposited, all in sufficient detail to evaluate the impact of such activities.

6. A graphic representation of the proposal. This plan shall include property lines and delineate the proposed areas for improvement or alteration, existing and proposed contours, drainage and drainage structures, landscaping and revegetation plans, including a plan for the control of noxious weeds, and retaining walls. Photographs of the site prior to beginning of construction and planting, and after completion of construction and planting.

7. A statement that the proposed areas of disturbance have been staked and are ready for administrative review.

8. A signature by the property owner or his/her authorized agent that the application is certified as true and accurate.

9. Written input from the County Engineer addressing, but not limited to, compliance with road standards, drainage and erosion mitigation.

C. Hearing Examiner Or Commission Review And Action: Either the Hearing Examiner or the Planning and Zoning Commission (Commission), as designated by resolution, shall make decisions based on the standards and evaluation herein. Review of the application and receipt of public input shall be conducted at a scheduled hearing as set forth hereinabove. The hearing examiner or commission may order the hearing to be continued up to thirty one (31) days at the same place, in which case no further published notice shall be required other than that requested by the hearing examiner or commission. Continuation beyond thirty one (31) days shall require further published notice, according to this section. The hearing examiner or commission shall approve, approve with conditions, or deny said application, making appropriate findings to support its decision. The hearing examiner or commission shall enter an order or adopt its written findings of fact and decision within thirty one (31) days after the action is taken by the hearing examiner or commission. The granting of a site alteration permit shall not be considered as establishing a binding precedent to grant other site alteration permits. A site alteration permit is not transferable from one parcel of land to another.

D. Design Review Standards Of Evaluation: The applicant has the burden of demonstrating compliance with this chapter, including each of the following design review standards of evaluation. The hearing examiner or commission shall review and find adequate evidence that the proposed development or site alteration meets all of the following standards:

1. The size of the lot, geographical features of the lot, or a combination thereof require that the maximum height limitations for earthen berms, freestanding walls or fences, or the maximum coverage limitations for sight obscuring screens of trees must exceed the categorical exclusion standards of this chapter in order to allow the landowner reasonable use and enjoyment of the parcel for which the permit is sought.

2. While still allowing reasonable use and enjoyment of the lot, new development shall be designed and sited so as not to impair or obstruct existing mountain and river views from Highway 75 to the maximum extent possible, and will meet the requirements and encouraged practices of the categorical exclusion set forth in subsection 9-21A-3A2 of this chapter to the maximum extent possible using generally accepted engineering practices.

3. Native or native compatible vegetation shall be preserved to the greatest extent possible. Revegetation of disturbed areas shall utilize plant materials harmonious and/or native to the area. The method for control and prevention of noxious weeds shall be demonstrated. Disturbed areas shall be landscaped or revegetated immediately after completion of the site alteration activities, but no later than the end of the first construction season during which the site alteration commences. Components of the revegetation plan shall include techniques that will be used to ensure the establishment of the proposed vegetation within a period of three (3) years <sup>1</sup>.

4. Earthen structures shall be designed and constructed so that no more than natural runoff of water and sediment leaves the property of the applicant.

5. Walls, fences, earthen berms and sight obscuring screens of trees must comply with all applicable regulations and standards of the Idaho department of transportation.

6. If the applicant or landowner with respect to an application for a site alteration permit under this chapter is the state of Idaho, or any agency, board, department, institution, or district thereof, the commission or the board, in addition to all other applicable standards and criteria hereunder, shall take into account the plans and needs of the state, or any agency, board, department, institution or district thereof, as required by Idaho Code section 67-6528.

E. Conditions: The hearing examiner or planning and zoning commission may attach reasonable conditions upon granting a site alteration permit, including, but not limited to:

1. Providing bonding or other sufficient financial guarantee to complete the site alteration; at a minimum, the revegetation of disturbed areas, including weed control, and new vegetation or landscaping for at least three (3) years.

2. Modification of the site alteration.

3. Any other condition for special use permit specified in Idaho Code section 67-6512(d), as amended: a) minimizing adverse impact on other development; b) controlling the sequence and timing of development; c) controlling the duration of development; d) assuring that development is maintained properly; e) designating the exact location and nature of development; f) requiring specific on site or off site public facilities or services; g) requiring more restrictive standards than those generally required in this title; and h) requiring mitigation of effects of the proposed development

upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

F. Expiration Of Permit: Any site alteration permit granted under this chapter after October 20, 1999, shall expire one year following the date of its approval if construction of the site alteration has not been substantially commenced. If good cause for delay in commencement of construction is shown, the administrator may once only extend the period for commencement of construction for a period not exceeding one year, provided application is made for an extension before expiration of the permit. (Ord. 2001-03, 3-19-2001; Ord. 99-5, 10-12-1999)