

5-27-2011

Friends of Minidoka v. Jerome County Clerk's Record v. 1 Dckt. 38113

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LAW CLERK
IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

IN THE MATTER OF: THE JEROME
COUNTY BOARD OF COMMISSIONERS;
DECISION DATED SEPTEMBER 23, 2008
APPROVING A LIVESTOCK CONFINEMENT OPERATION PERMIT
FOR DON MCPARLAND, DBA BIG SKY

.....
FRIENDS OF MINIDOKA, DEAN & EDEN DIMOND, HAROLD & CAROLYN
DIMOND, WAYNE SLOAN, guardian of JAMES SLOAN, THE IDAHO RURAL
COUNCIL, INC., IDAHO CONCERNED AREA RESIDENTS FOR THE
ENVIRONMENT, INC., THE JAPANESE AMERICAN CITIZENS LEAGUE, INC.,
THE NATIONAL TRUST FOR HISTORIC PRESERVATION, INC., PRESERVATION
IDAHO, INC.,

Petitioners-Appellants Cross Respondents,
vs.

JEROME COUNTY, JOSEPH DAVIDSON, CHARLES HOWELL, DIANA OBENAUER,
SOUTHVIEW DAIRY, TONY VISSER, WILLIAM DE JONG, RYAN VISSER,
Members of the JEROME COUNTY BOARD OF COMMISSIONERS

Respondent-Respondent on Appeal-Cross Appellants,
and

SOUTH VIEW DAIRY, an Idaho general partnership, TONY VISSER, WILLIAM DE
JONG, and RYAN VISSER, general partners,

Appealed from the District Court of the FIFTH
Judicial District for the State of Idaho, in and
for JEROME County

Hon. ROBERT ELGEE, District Judge

PATRICK D BROWN

X Attorney for Appellant

FILED COPY
MICHAEL J SEIB
Filed this
MAY 27 2011
Supreme Court Court of Appeals
Branch at A's by

X Attorney for Respondent

day of _____, 20

Clerk

Deputy

38113

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF: THE JEROME)
COUNTY BOARD OF COMMISSIONERS;)
DECISION DATED SEPTEMBER 23, 2008)
APPROVING A LIVESTOCK)
CONFINEMENT OPERATION PERMIT)
FOR DON MCFARLAND, DBA BIG SKY)

-----)
FRIENDS OF MINIDOKA, DEAN & EDEN)
DIMOND, HAROLD & CAROLYN)
DIMOND, WAYNE SLOAN, guardian of)
JAMES SLOAN, THE IDAHO RURAL)
COUNCIL, INC., IDAHO CONCERNED)
AREA RESIDENTS FOR THE)
ENVIRONMENT, INC., THE JAPANESE)
AMERICAN CITIZENS LEAGUE, INC.,)
THE NATIONAL TRUST FOR HISTORIC)
PRESERVATION, INC., PRESERVATION)
IDAHO, INC.,)

Petitioners-Appellants-Cross)
Respondents,)

vs.)

JEROME COUNTY, JOSEPH DAVIDSON,)
CHARLES HOWELL, DIANA OBENAUER,)
SOUTHVIEW DAIRY, TONY VISSER,)
WILLIAM DE JONG, RYAN VISSER,)
Members of the JEROME COUNTY BOARD)
OF COMMISSIONERS)

Respondent-Respondent on Appeal-)
Cross Appellants,)

and)

SOUTH VIEW DAIRY, an Idaho general)
partnership, TONY VISSER, WILLIAM DE)
JONG, and RYAN VISSER, general partners,)
-----)

1/23

CLERK'S RECORD ON APPEAL

VOLUME I

Supreme Court Docket No. 38113

Fifth Judicial District
Jerome County

Honorable Robert Elgee
District Judge

Patrick D Brown
104 Lincoln St/PO Box 207
Twin Falls, ID 83303-0207

Attorney for Appellant

Michael J Seib
233 West Main
Jerome, ID 83338

Attorney for Respondents

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Other Claims

Date		Judge
10/21/2008	New Case Filed	John K. Butler
	Filing: R2 Appeal or petition for judicial review, or cross-appeal or cross-petition, from Commission Board/ or body to the District Court Paid by: Richard A Carlson Receipt number: 8009737 Dated: 10/21/2008 Amount: \$88.00 (Check) For: Friends Of Minidoka (plaintiff)	John K. Butler
	Bond Posted for Transcript (Receipt 8009738 Dated 10/21/2008 for 100.00)	John K. Butler
	Petition for judicial review & delcaratory judgment.	John K. Butler
	Motion for limited admission	John K. Butler
	Declaration of Charles M Tebbut in support of motion for limited admission.	John K. Butler
10/24/2008	Order of disqualifcation.	John K. Butler
10/31/2008	Motion of South View Dairy, an Idaho General Partnership, To Intervene	John K. Butler
	Affidavit of William deJong in Support of MOtion of South: View Dairy, an Idaho General Partnership, To Intervene	John K. Butler
	Affidavit of Don McFarland in Support of Motion of South View Dairy, an Idaho General Partnership, To Intervene	John K. Butler
	Memorandum in Support of Motion of South View Dairy, an Idaho General Partnership, To Intervene	John K. Butler
	Filing: J3 - Special Motions Petition For Intervention Paid by: John B. Lothspeich Receipt number: 8010095 Dated: 10/31/2008 Amount: \$51.00 (Check) For: South View Dairy	John K. Butler
11/5/2008	Order of assignment.	John K. Butler
	Change Assigned Judge	Robert Elgee
11/6/2008	Bond Posted for Transcript (Receipt 8010262 Dated 11/6/2008 for 412.40)	John K. Butler
11/13/2008	Stipulation to allow South View Dairy an Idaho General Partnership, to intervene and to file partial recored from prior review.	Robert Elgee
11/25/2008	Order for limited admission of Charles M Tebbutt pursuatnt to Idaho Bar Commission Rule 222.	Robert Elgee
	Order to allow South View Dairy to intervene.	Robert Elgee
	Order to allow South View Dairy to intervenes and to file partial agency recored from prior review.	Robert Elgee
11/26/2008	Bond Posted - Cash (Receipt 8010959 Dated 11/26/2008 for 104.30)	Robert Elgee
	Notice of lodging agency record and transcript.	Robert Elgee
12/3/2008	Bond Converted (Transaction number 8000902 dated 12/3/2008 amount 412.40)	Robert Elgee
	Bond Converted (Transaction number 8000903 dated 12/3/2008 amount 34.95)	Robert Elgee
	Bond Converted (Transaction number 8000904 dated 12/3/2008 amount 69.35)	Robert Elgee
	Bond Converted (Transaction number 8000905 dated 12/3/2008 amount 100.00)	Robert Elgee
12/23/2008	Notice of lodging agency recored and transcript with the court.	Robert Elgee
12/24/2008	Order re: Petition for Judicual Review Pursuant to I.R C P 84	Robert Elgee
	Certificate Of Mailing	Robert Elgee

Other Claims

Date		Judge
1/6/2009	Motion to vacate and reset scheduling order.	Robert Elgee
	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Richard Carlson Receipt number: 9000150 Dated: 1/6/2009 Amount: \$7.00 (Check)	Robert Elgee
1/13/2009	Stipulation to allow petitioners' motion to vacate and reset scheduling order.	Robert Elgee
	Motion to augment and supplement record, and correct transcript.	Robert Elgee
	Memorandum in support of motion to augment and supplement record, and correct transcript.	Robert Elgee
	Affidavit of Richard A. Carlson.	Robert Elgee
1/22/2009	Order allowing petitioners' motion to vacate and reset scheduling order.	Robert Elgee
2/3/2009	Hearing Scheduled (Status 03/30/2009 01:30 PM) pln to initiate in Blaine county	Robert Elgee
	Notice Of Hearing	Robert Elgee
2/4/2009	Motion To Dismiss or in the alternative motion for summary judgment of petitioners declaratory judgment actions.	Robert Elgee
	Memorandum in support of motion to dismiss or in the alternative motion for summary judgment of petitioners declaratory judgment actions.	Robert Elgee
	Affidavit of attorney.	Robert Elgee
2/6/2009	Notice Of Hearing	Robert Elgee
	Respondent's memorandum in opposition to petitioner's motion to augment.	Robert Elgee
2/12/2009	Notice Of Hearing	Robert Elgee
2/13/2009	Hearing Scheduled (Motion to Dismiss 03/16/2009 03:00 PM) Blaine County	Robert Elgee
2/20/2009	Hearing Scheduled (Motion 03/16/2009 03:00 PM) Blaine County mtn to augment	Robert Elgee
	Notice Of Hearing	Robert Elgee
3/6/2009	Petitioners' reply in support of motion to augment the record.	Robert Elgee
	Petitioners' memorandum in opposition to intervenors' motion to dismiss.	Robert Elgee
	Amended petition for review.	Robert Elgee
3/12/2009	Reply memorandum in support of motion to dismiss or in the alternative motion for summary judgment of petitioners' delcaratory judgment actions.	Robert Elgee
3/13/2009	Memorandum in Opposition to Petitioners' Motion to Augment the Record	Robert Elgee
3/16/2009	Hearing result for Motion held on 03/16/2009 03:00 PM: Hearing Held Blaine County mtn to augment	Robert Elgee
	Hearing result for Motion to Dismiss held on 03/16/2009 03:00 PM: Hearing Held Blaine County	Robert Elgee
3/27/2009	Minutes from Blaine County	Robert Elgee
3/30/2009	Hearing result for Status held on 03/30/2009 01:30 PM: Hearing Held pln to initiate in Blaine county	Robert Elgee
3/31/2009	Affidavit of clerk of Jerome County Board of Commissioners.	Robert Elgee
	Minutes from Blaine County.	Robert Elgee

Other Claims

Date		Judge
4/6/2009	Affidavit of Michael J Seib	Robert Elgee
4/8/2009	Jerome County's Objection to Friends' proposed order.	Robert Elgee
4/9/2009	Objection to proposed order regarding petitioners' motion to augment record and correct transcript and submission of relevant ordinances pursuant to the court's prior order	Robert Elgee
4/28/2009	Reply in support of proposed order regarding petitioners' motion to augment record and correct transcript.	Robert Elgee
4/29/2009	Respondent's Memorandum in support of motion to issue scheduling order.	Robert Elgee
	Respondent's Motion for issuance of scheduling order.	Robert Elgee
	Notice Of Hearing on respondent's motion for issuance of scheduling order.	Robert Elgee
	Hearing Scheduled (Motion 06/16/2009 09:00 AM) resp mtn	Robert Elgee
5/6/2009	Notice and agreement re purchase of audio recording of magistrate and/or district court proceedings. (copy has been sent to Blaine county where proceedings were heard).	Robert Elgee
5/22/2009	Notice Of Hearing	Robert Elgee
6/2/2009	Request to obtain approval to video record, broadcast or photograph a court proceeding. KMVT	Robert Elgee
6/5/2009	Order on motion to augment and supplement the record, correct transcript and motion to dismiss.	Robert Elgee
6/12/2009	Affidavit of Michael J. Seib	Robert Elgee
	Response to Court's Order	Robert Elgee
6/15/2009	Respondents and intervenors' withdraw of notice to call up for hearing various matters and proposed order vacating scheduled hearing.	Robert Elgee
6/16/2009	Hearing result for Motion held on 06/16/2009 09:00 AM: Hearing Vacated resp mtn	Robert Elgee
	Order vacating hearing.	Robert Elgee
6/26/2009	Renewed motion to supplement record.	Robert Elgee
	Affidavit of Patrick D Brown in support of renewed motion to augment and supplement record and correct transcript.	Robert Elgee
	Affidavit of Charles M Tebbutt in support of renewed motion to supplement record.	Robert Elgee
7/6/2009	Objection to respondents' and intervenors' production of Jerome County's ordinance and related documents.	Robert Elgee
7/7/2009	Motion requesting court to impose its prior order and deny petitioners; renewed motion to supplement record.	Robert Elgee
	Memorandum in support of motion requesting court to impose its prior order and deny petitioners renewed motion to supplement record.	Robert Elgee
7/8/2009	Intervenors' brief in opposition to petitioners' motion to augment record and response to court's order on motion to augment and supplement the record, correct transcript, and motion to dismiss.	Robert Elgee
7/13/2009	Petitioners' reply in support of renewed motion to supplement record.	Robert Elgee
8/14/2009	Hearing Scheduled (Motion 09/25/2009 11:00 AM) mtn to supplement the record	Robert Elgee

Other Claims

Date		Judge
3/24/2009	Objection to Oral Argument Regarding the Court's Order on Motion to Augment and Supplement the Record, Correct Transcript ,and Motion to Dismiss dated 6-5-09	Robert Elgee
	Notice Of Hearing on respondent's moiton fo rissuance of scheduling order.	Robert Elgee
3/27/2009	Notice of hearing: renewed motion to supplement record.	Robert Elgee
9/3/2009	Continued (Motion 09/29/2009 01:00 PM) mtn to supplement the record	Robert Elgee
9/25/2009	Request to obtain approval to video record broadcast or photgraph a court proceeding--granted-KMVT	Robert Elgee
9/29/2009	Court Minutes Hearing type: Motions Hearing date: 9/29/2009 Time: 1:01 pm Courtroom: Courtroom #2 - District Courtroom Court reporter: Minutes Clerk: Traci Brandebourg Tape Number: Attorney: Patrick Brown Attorney: Richard Carlson Attorney: Charles Tebbutt Attorney: John Lothspeich Attorney: Mike Seib	Robert Elgee
	Hearing result for Motion held on 09/29/2009 01:00 PM: District Court Hearing Held Court Reporter:Sue Israel Number of Transcript Pages for this hearing estimated: mtn to supplement the record	Robert Elgee
11/27/2009	Order regarding petitioner's motion to augment record.	Robert Elgee
	Order regarding petitioners' motion to correct transcript.	Robert Elgee
12/3/2009	Order on peitioner's renewd motion to augment the record and scheduling order.	Robert Elgee
12/16/2009	Motion to augment record with ordinances of Jerome County	Robert Elgee
	Statement in support of motin to augment record with ordinance of Jerome County.	Robert Elgee
12/23/2009	Notice of address change/substitution of counsel.	Robert Elgee
1/5/2010	Bond Posted for Transcript (Receipt 1000066 Dated 1/5/2010 for 541.70)	Robert Elgee
	Stipulation for extension of briefing schedule and for use of certain ordinances.	Robert Elgee
1/7/2010	Notice filing supplemental recored volumes I & II	Robert Elgee
1/8/2010	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Williams, Meservy & Lothspeich, LLP Receipt number: 1000214 Dated: 1/8/2010 Amount: \$502.68 (Check)	Robert Elgee
1/13/2010	Order regarding petitioners' motion to supplement record with ordinances.	Robert Elgee
1/15/2010	Stipulation for second extesnion of briefing schedule.	Robert Elgee
1/20/2010	Petitioners' Memorandum in support of petition for review.	Robert Elgee
	Affidavit of Richard Carlson	Robert Elgee
	Affidavit of Daniel Everhart	Robert Elgee

Other Claims

Date		Judge
1/20/2010	Affidavit of Anthea marie Hartig	Robert Elgee
	Affidavit of Emily Hanako Momohara	Robert Elgee
	Affidavit of Karen Yoshitomi	Robert Elgee
	Affidavit of Alma Hasse	Robert Elgee
2/18/2010	Responden'ts Memorandum in Response	Robert Elgee
	Intervenors' Memorandum in opposition to petition for judcial review.	Robert Elgee
3/5/2010	Peittioners' Reply memorandum in support of petition for review.	Robert Elgee
3/12/2010	Notice Of Hearing	Robert Elgee
	Hearing Scheduled (Hearing Scheduled 04/23/2010 01:30 PM) Oral Argument	Robert Elgee
4/20/2010	Request to obtain approval to video record bradcast or photograph a court proceeding.	Robert Elgee
4/22/2010	Request to obtain approval to video record bradcast or photograph a court proceeding.	Robert Elgee
4/23/2010	Court Minutes Hearing type: Hearing Scheduled / Oral Argument Hearing date: 4/23/2010 Time: 1:30 pm Courtroom: Court reporter: Sue Israel Minutes Clerk: Shelly Creek Tape Number: Attorney: Patrick Brown Attorney: Richard Carlson Attorney: John Lothspeich Attorney: Mike Seib	Robert Elgee
	Request to obtain approval to video record, broadcast or photograph a court proceeding--granted TIMES NEWS	Robert Elgee
	Court Minutes Hearing type: Hearing Scheduled Hearing date: 4/23/2010 Time: 1:16 pm Courtroom: Courtroom #2 - District Courtroom Court reporter: Minutes Clerk: SHELLY CREEK Tape Number:	Robert Elgee
	Hearing result for Hearing Scheduled held on 04/23/2010 01:30 PM: District Court Hearing Held Court Reporter: Sue Israel Number of Transcript Pages for this hearing estimated: Oral Argument	Robert Elgee
	Case Taken Under Advisement	Robert Elgee
8/5/2010	Decision on Judicial Review--denied.	Robert Elgee

Other Claims

Date		Judge
3/5/2010	Civil Disposition entered for: Jerome County Board Of Commissioners, Defendant; DeJong, William, Plaintiff; Dimond, Carolyn, Plaintiff; Dimond, Dean, Plaintiff; Dimond, Eden, Plaintiff; Dimond, Harold, Plaintiff; Friends Of Minidoka, Plaintiff; Idaho Concerned Area Residents for the Environment, Plaintiff; Idaho Rural Counsel, Inc., Plaintiff; Japanese American Citizens League, Inc., Plaintiff; National Trust for Historic Preservation, Inc., Plaintiff; Preservation Idaho, Inc., Plaintiff; Slone, James, Plaintiff; Slone, Wayne, Plaintiff; South View Dairy, Plaintiff; Visser, Ryan, Plaintiff; Visser, Tony, Plaintiff. Filing date: 8/5/2010	Robert Elgee
3/26/2010	Order Dismissing Friends of Minikoka, The Japanese American Citizens League, Inc, The National Trust for Historic Preservation, Inc., and Preservation Idaho , Inc. For Lack of Standing	Robert Elgee
9/13/2010	Notice of appeal. Appealed To The Supreme Court Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Brown, Patrick D. (attorney for Friends Of Minidoka) Receipt number: 1009528 Dated: 10/4/2010 Amount: \$101.00 (Check) For: Friends Of Minidoka (plaintiff)	Robert Elgee Robert Elgee Robert Elgee
10/4/2010	Bond Posted for Transcript (Receipt 1009530 Dated 10/4/2010 for 100.00) Notice of cross-appeal. clerk's certificate of appeal--dated 10-4-10	Robert Elgee Robert Elgee Robert Elgee
11/23/2010	Notice of address change.	Robert Elgee
12/14/2010	Order granting motion for extension of time by clerk of the district court.	Robert Elgee

2008 OCT 21 PM 1 16

Patrick D. Brown
DEPUTY CLERK

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15 Attorney for Petitioners Friends of Minidoka, Wayne Slone, guardian of James Slone, Idaho
16 Concerned Area Residents for the Environment, Inc., the Japanese American Citizens League,
17 Inc., the National Trust for Historic Preservation, Inc., and Preservation Idaho, Inc.

18 Richard A. Carlson, ISB No. 5971
19 P.O. Box 21
20 Filer, ID 83328
21 Telephone and fax: (208) 326-3686

22 Attorney for Dean & Eden Dimond, Harold & Carolyn Dimond, and the Idaho Rural Council, Inc.

23 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
24 STATE OF IDAHO, IN AND FOR JEROME COUNTY

25 In the matter of: The Jerome County Board of)
26 Commissioners' Decision Dated September 23, 2008)
27 Approving A Livestock Confinement Operation)
28 Permit for Don McFarland, dba Big Sky Farms)

Case No: CV 2008-1081

29 Friends of Minidoka, Dean & Eden Dimond, Harold)
30 & Carolyn Dimond, Wayne Slone, guardian of James)
31 Slone, the Idaho Rural Council, Inc., Idaho)
32 Concerned Area Residents for the Environment,)
33 Inc., the Japanese American Citizens League, Inc., the)
34 National Trust for Historic Preservation, Inc., and)
35 Preservation Idaho, Inc.)

**PETITION FOR JUDICIAL
REVIEW & DECLARATORY
JUDGMENT**

36 Petitioners,
37
38

1 v.)
 2)
 3 Jerome County, a Political Sub-Division of the State)
 4 of Idaho, Joseph Davidson, Charles Howell, and)
 Diana Obenauer, Members of the Jerome County)
 Board of Commissioners,)
 Respondents.)

6
 7 **PETITION FOR JUDICIAL REVIEW & DECLARATORY JUDGMENT**

8 To: JEROME COUNTY BOARD OF COMMISSIONERS and JEROME COUNTY:

9 1. Petitioners identified above petition and request judicial review of, and a declaratory
 10 judgment relating to, the Jerome County Board of Commissioners' 9-23-08 Memorandum
 11 Decision which approved, subject to certain conditions, the 5-3-07 Application of Don McFarland
 12 and Big Sky Farms Limited Partnership ("Big Sky") for a Livestock Confinement Operation for
 13 8000 Animal Units on 1204.61 acres located at 1458 U.S. Highway 25, Eden, ID.

14 2. Petitioners have exhausted all available administrative remedies and have the right to
 15 judicial review and to ask for a declaratory judgment under Idaho Code § 67-6521, § 67-5271, et
 16 seq., §10-1201 et seq., and Jerome County Zoning Ordinances.

17 3. Venue is proper under Idaho Code § 67-5272.

18 4. This Petition for Judicial Review and Declaratory Judgment is taken upon issues of equity
 19 and law.

20 5. The Jerome County Board of Commissioners (the "Board") is an agency as defined
 21 by Chapter 52, Title 67, Idaho Code 67-5271 and IRCP 84 (a)(2)(B), which rendered a decision for
 22 which this Petition for Judicial Review is sought.

23 6. The issues Petitioners may assert for review and/or declaration are as follows:

24 A. Whether the decision is in compliance with Jerome County Ordinances and the
 25 Jerome County Comprehensive Plan;

26 B. Whether the Jerome County Zoning Ordinance is valid and enforceable as adopted;

27 C. Whether Jerome County has violated Idaho law through its adoption and

1 implementation of its ordinance;

2 D. Whether there is substantial and competent evidence in the record, as a whole,
3 supporting the decisions of Jerome County and/or the Board of Commissioners;

4 E. Whether the decisions of the Board of Commissioners were in excess of their
5 authority;

6 F. Whether the decisions were made upon unlawful procedures;

7 G. Whether the decisions were arbitrary, capricious and/or an abuse of discretion; and

8 H. Whether the decisions violate Petitioners' due process and equal protection rights
9 under the United States and State of Idaho Constitutions.

10 7. The Board held an electronically recorded public hearing concerning the permit and
11 has had numerous public meetings concerning the permit that were electronically recorded.
12 Michelle Emerson, Clerk of the Board of County Commissioners and Clerk of the District Court,
13 Jerome County is in possession of the audio recording tapes (discs). Her address is: 300 North
14 Lincoln, Room 310, Jerome, ID 83338.

15 8. Audio recordings and transcripts of the permit hearing have already been prepared and
16 filed with the Court in connection with a separate proceeding for Judicial Review in Case No. CV
17 07-1242. Audio recordings and transcripts of Board hearings and meetings concerning the permit
18 that occurred after the District Court's remand of this matter in Case No. CV 07-1242 have been
19 requested.

20 9. Petitioners are individual families or organizations with members residing next to or in
21 close proximity to the real property where the proposed LCO would be situated. Petitioners'
22 substantial rights will be prejudiced if the LCO is permitted and constructed pursuant to the
23 permit.

24 PETITIONER FRIENDS OF MINIDOKA (FOM) is a nonprofit organization based in
25 Twin Falls dedicated to educational, preservation and research pursuits and projects relating to the
26 Minidoka National Historic Site and its development. This includes the history of the WWII
27 Internment as well as contemporary civil liberties issues, site specific histories, such as Idaho

1 agriculture and a Farm-in-a-Day home, and to support the National Park Service in achieving these
2 mutual goals and objectives. FOM emphasizes the preservation, understanding, and appreciation
3 of the natural and cultural resources, and the oral histories related to the Minidoka National
4 Historic Site, as it is a National Park to service all Americans and teach us about our collective
5 history.

6 As part of its mission to assist in the preservation of the Minidoka National Historic Site's
7 cultural resources and national history and its development into a visitor friendly, educational and
8 historically relevant National Park, FOM has commented on the Big Sky CAFO permit
9 application.

10 PETITIONERS DEAN & EDEN DIMOND AND HAROLD & CAROLYN DIMOND
11 own land and reside in close proximity to the proposed CAFO. The Dimonds have provided
12 comments to the Board concerning the Big Sky permit application.

13 PETITIONER JAMES SLOAN, Wayne Slone guardian, owns approximately two acres of
14 real property at 1231 400 South, within one-quarter mile of the applicant's property. Mr. Slone
15 was denied proper notice and the opportunity to provide evidence and comment on the Big Sky
16 permit application.

17 PETITIONER IDAHO RURAL COUNCIL, INC. (IRC) is a non-profit, non-partisan
18 grassroots organization committed to preserving Idaho's family farms, ranches, rural communities
19 and the natural resources that sustain them. Our membership includes farmers, ranchers and
20 concerned citizens who cherish the quality of life in Idaho. IRC's particular interest in this
21 challenge of Big Sky's LCO permit is based on its predictable negative impacts, including to air
22 and water quality, on our members living and farming in the area.

23 PETITIONER IDAHO CONCERNED AREA RESIDENTS FOR THE ENVIRONMENT
24 (ICARE) is an Idaho nonprofit corporation, established in 2006, to advocate on behalf of Idaho
25 citizens. Communities and historic sites in Idaho - and across the country at large - are being
26 severely impacted by industrial scale Concentrated Animal Feeding Operations (CAFOs). ICARE
27 provides public support and advocacy through education and grassroots organizing, and assists

1 local citizens and groups in understanding the public and environmental health threats. ICARE
2 and its members routinely engage local decision making boards, regulatory agencies and the
3 legislature, for regulation and enforcement of environmental laws. In addition, ICARE advocates
4 on behalf of small family farmers and ranchers and is a staunch supporter of sustainable
5 agriculture. ICARE attempted to provide substantial written testimony to the Board, but was
6 denied. ICARE did provide oral testimony on September 25, 2007.

7 PETITIONER JAPANESE AMERICAN CITIZENS LEAGUE, founded in 1929, is the
8 oldest and largest Asian American civil rights organization in the United States. The JACL
9 monitors and responds to issues that enhance or threaten the civil and human rights of all
10 Americans and implements strategies to effect positive social change, particularly to the Asian
11 Pacific American community. JACL has a particular interest in the Minidoka National Historic
12 Site based on the site's unique place in American history. JACL provided comments to the Board
13 on or about September 24, 2007 concerning the Big Sky permit application.

14 PETITIONER NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE
15 UNITED STATES ("National Trust") is a private charitable, educational, non-profit corporation
16 chartered by Congress in 1949 to protect and defend America's historic resources, to further the
17 historic preservation policy of the United States, and to facilitate public participation in the
18 preservation of our nation's heritage. *See* 16 U.S.C. § 468. The National Trust, which is
19 headquartered in Washington, D.C., owns and operates 30 historic sites open to the public and has
20 nine regional and field offices around the country, including the Western Regional Office which is
21 responsive to historic preservation issues in Idaho. The National Trust has approximately 283,000
22 individual members across the country, including more than 600 members in Idaho.

23 In 2007 the National Trust named the Minidoka National Historic Site one of America's 11
24 Most Endangered Historic Places. On September 6, 2007, National Trust Vice President and
25 General Counsel Paul W. Edmondson wrote Jerome County Prosecuting Attorney Mike Seib
26 contending that the Jerome County Board of Commissioners' refusal to consider written public
27 comment on the impacts of a Livestock Confinement Operation to the Minidoka Site violated due

1 process required by the Idaho and U.S. Constitutions. A similar letter was sent to Board Chairman
2 Charlie Howell on June 28, 2007. On September 25, 2007, the Idaho Advisor to the National
3 Trust provided a brief statement of interest on behalf of the National Trust at a hearing before the
4 Jerome County Board of Commissioners regarding the Livestock Confinement Operation near the
5 Minidoka Site.

6 PETITIONER PRESERVATION IDAHO, THE IDAHO HISTORIC PRESERVATION
7 COUNCIL (IHPC), is dedicated to preserving the state's historic and cultural resources through
8 education and advocacy. The Idaho Historic Preservation Council was established in 1972 by a
9 group of Idahoans concerned with the alarming rate at which historic sites and resources in Idaho
10 were being lost. Today, the IHPC – now known commonly as Preservation Idaho, receives the
11 support of hundreds of individuals, corporations and foundations around the state and region as it
12 continues the mission of its founders and advocates heritage education and preservation issues
13 throughout the State of Idaho.

14 On September 24, 2007 the organization presented written and oral testimony to the
15 Jerome County Board of Commissioner requesting that they deny the application to permit a
16 CAFO near the historic site.

17 10. Counsel for Petitioners hereby certify that:

18 A. Service of copies of this Petition has been made upon the Jerome County Board of
19 Commissioners and the applicant (courtesy copy);

20 B. The Jerome County Clerk has been paid the estimated fee for preparation of the
21 transcripts requested by the Petitioners; and

22 C. The Jerome County Clerk has been paid the estimated fee for preparation of the
23 record.

24 **PRAYER FOR RELIEF**

25 Wherefore, Petitioners pray the Court to reverse the decision of the Jerome County Board
26 of Commissioners, declare the Jerome County Zoning Ordinance invalid both on its face and as
27 applied to this case, and declare Idaho Code 67-6529 invalid both on its face and as applied to this

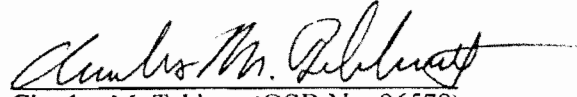
28 PETITION FOR JUDICIAL REVIEW

Page 6

1 case. Petitioners further pray that the Court award them costs and attorney fees, including but not
2 limited to under Idaho Code §12-123 and §12-117.


3 Dated: October 21, 2008.

Respectfully submitted,

4
5
6 


7 Charles M. Tebbutt (OSB No. 96579)
Western Environmental Law Center

8 Attorney for Petitioners

9 

10 Patrick D. Brown
11 Hutchinson & Brown, LLP

12 Attorney for Petitioners Friends of Minidoka,
13 Wayne Slone, guardian of James Slone, Idaho
14 Concerned Area Residents for the
15 Environment, Inc., the Japanese American
16 Citizens League, Inc., the National Trust for
17 Historic Preservation, Inc., and Preservation
18 Idaho, Inc.

19 
20 Richard A. Carlson
21 Idaho State Bar No. 5971

22 Attorney for Dean & Eden Dimond, Harold &
23 Carolyn Dimond, and the Idaho Rural
24 Council, Inc.

Certificate of Service

I hereby certify that on this 21st day of October, 2008, I served true and correct copies of Petition for Judicial Review, Motion for Limited Admission, Declaration of Charles M. Tebbutt and Proposed Order on the persons whose names and addresses appear below by the method indicated:

Michelle Emerson
Jerome County Clerk
300 North Lincoln, Rm. 310
Jerome, ID 83338

HAND DELIVERY
(4 copies for service upon the County, and each of the Board of Commissioners)

John Lothspeich (courtesy copy)
Attorney at Law
153 E. Main St.
Jerome, ID 83338

HAND DELIVERY (courtesy copy)

Attorney for Don McFarland

Michael Seib
Jerome County Prosecuting Attorney
233 West Main. St.
Jerome, ID 83338

HAND DELIVERY (courtesy copy)



Richard A. Carlson
Idaho State Bar No. 5971

2008 NOV 25 PM 4 25

JOHN B. LOTH SPEICH
Idaho State Bar #4221
Fredericksen, Williams, Meservy & Lothspeich, LLP
Attorneys at Law
153 East Main Street
Post Office Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135
Attorneys for Intervener
Z:\Valerie\CLIENTS\Big Sky Farms\McFarland\order_intervene_final.doc

BY *J. Brane*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation of Idaho, Inc.)
)
Petitioners,)
)

CASE NO. CV 2008-1081

ORDER TO ALLOW
SOUTH VIEW DAIRY, an Idaho
General Partnership, TO INTERVENE

Heading continued on next page



vs.)
)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
and Diana Obenauer, Members of the)
Jerome County Board of Commissioners,)
)
Respondents.)

South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
)
Intervener.)

UPON A REVIEW OF the *Motion to Allow South View Dairy, an Idaho General Partnership, to Intervene*, and for good cause appearing herein,

IT IS HEREBY ORDERED, South View Dairy, an Idaho General Partnership, Tony Visser, William DeJong and Ryan Visser, general partners, successors in interest, shall be allowed to intervene and shall be added as parties in the above-entitled matter.

DATED this 19 day of November, 2008.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of Nov., 2008, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below by the method indicated:

John B. Lothspeich	<input type="checkbox"/>	U.S. Mail, postage prepaid
Fredericksen, Williams, Meservy & Lothspeich, LLP	<input checked="" type="checkbox"/>	Via facsimile
PO Box 168	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83383		

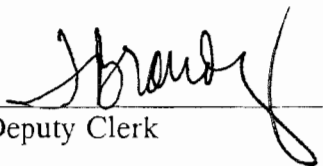
Michelle Emerson	<input type="checkbox"/>	U.S. Mail, postage prepaid
Jerome County Clerk	<input type="checkbox"/>	Via facsimile
300 N. Lincoln, Rm. 310	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83338		

Michael J. Seib	<input type="checkbox"/>	U.S. Mail, postage prepaid
Jerome County Prosecutor	<input type="checkbox"/>	Via facsimile
233 W Main St	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83338		

Charles M. Tebbutt	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Western Environmental Law Center	<input type="checkbox"/>	via facsimile
1216 Lincoln St	<input type="checkbox"/>	Hand delivery
Eugene, Oregon 97401		

Patrick D. Brown	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Hutchinson & Brown, LLP	<input type="checkbox"/>	Via facsimile
PO Box 207	<input type="checkbox"/>	Hand delivery
Twin Falls, Idaho 83301		

Richard A. Carlson	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Attorney at Law	<input type="checkbox"/>	Via facsimile
PO Box 21	<input type="checkbox"/>	Hand delivery
Filer, Idaho 83328		



Deputy Clerk

DISTRICT COURT
FIFTH JUDICIAL DIST
JEROME COUNTY IDAHO

2008 NOV 25 PM 4 25

JOHN B. LOTH SPEICH

Idaho State Bar #4221

Fredericksen, Williams, Meservy & Lothspeich, LLP

Attorneys at Law

153 East Main Street

Post Office Box 168

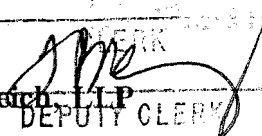
Jerome, Idaho 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

Attorneys for Intervenor

Z:\Valerie\CLIENTS\Big Sky South View\order.intervene.final.doc

BY 
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation of Idaho, Inc.)
)
Petitioners,)
)

CASE NO. CV 2008-1081

ORDER TO ALLOW
SOUTH VIEW DAIRY, an Idaho
General Partnership, TO INTERVENE
AND TO FILE PARTIAL AGENCY
RECORD FROM PRIOR REVIEW

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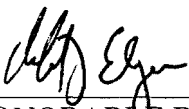
vs.)
)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
and Diana Obenauer, Members of the)
Jerome County Board of Commissioners,)
)
Respondents.)
<hr/>	
)
South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
)
Intervenor.)

UPON A REVIEW OF the *Stipulation to Allow South View Dairy, an Idaho General Partnership, to Intervene and To File Partial Agency Record From Prior Review*, and for good cause appearing therefore,

IT IS HEREBY ORDERED, South View Dairy, an Idaho General Partnership, Tony Visser, William DeJong and Ryan Visser, general partners, and current owners of the subject real property, shall be allowed to intervene and shall be added as a party in the above-entitled matter under the terms set forth in the stipulation;

IT IS FURTHER ORDERED that, in lieu of filing a new copy of the agency record of this case created prior to June 28, 2008, the Court will accept in part the agency record filed in Jerome County Case No. CV 2007-1242 as supplemented with the agency record relevant to this proceeding and as may be further supplemented at the request of the parties.

SO ORDERED this 21 day of November, 2008.


 HONORABLE ROBERT J. ELGEE
 DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of November, 2008, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below by the method indicated:

John B. Lothspeich	<input type="checkbox"/>	U.S. Mail, postage prepaid
Fredericksen, Williams, Meservy & Lothspeich, LLP	<input type="checkbox"/>	Via facsimile
PO Box 168	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83383		

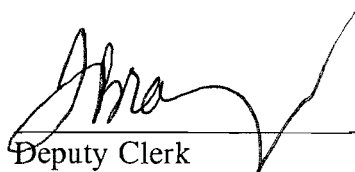
Michelle Emerson	<input type="checkbox"/>	U.S. Mail, postage prepaid
Jerome County Clerk	<input type="checkbox"/>	Via facsimile
300 N. Lincoln, Rm. 310	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83338		

Michael J. Seib	<input type="checkbox"/>	U.S. Mail, postage prepaid
Jerome County Prosecutor	<input type="checkbox"/>	Via facsimile
233 W Main St	<input checked="" type="checkbox"/>	Hand delivery
Jerome, Idaho 83338		

Charles M. Tebbutt	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Western Environmental Law Center	<input type="checkbox"/>	via facsimile
1216 Lincoln St	<input type="checkbox"/>	Hand delivery
Eugene, Oregon 97401		

Patrick D. Brown	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Hutchinson & Brown, LLP	<input type="checkbox"/>	Via facsimile
PO Box 207	<input type="checkbox"/>	Hand delivery
Twin Falls, Idaho 83301		

Richard A. Carlson	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Attorney at Law	<input type="checkbox"/>	Via facsimile
PO Box 21	<input type="checkbox"/>	Hand delivery
Filer, Idaho 83328		



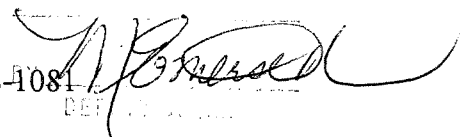
Deputy Clerk

CLERK OF DISTRICT COURT
JEROME, IDAHO 83401
NOV 9 2008

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

FRIENDS OF MINIDOKA, ET AL.,)
)
 Petitioners,)
 _____)
)
 JEROMEM COUNTY BOARD OF)
 COMMISSIONERS,)
)
 Respondents.)
 _____)

Case No. CV2008-1081



NOTICE OF LODGING
AGENCY RECORD AND
TRANSCRIPT

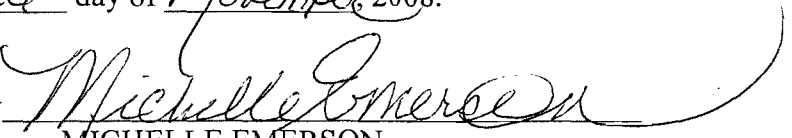
TO: Richard A. Carlson, attorney for petitioners, and Mike Seib, Jerome
County Prosecutor, attorney for respondent:

PLEASE TAKE NOTICE that on the 26 day of November 2008, the
agency record of the proceedings in this action was prepared pursuant to I.R.C.P. 84(f).

YOU ARE FURTHER NOTIFIED that pursuant to I.R.C.P. Rule 84(j), you have
fourteen (14) days in which to pick up your copy of the record and transcripts(s) and lodge any
objections thereto. If no objection is lodged within the prescribed time the record shall be
deemed settled and filed with the District Court.

Pursuant to Rule 84(j), where there are multiple parties, they shall determine by
agreement the manner and time of use of the record by each party, or filing such agreement, such
determination shall be made by the court upon application by any party.

DATED This 26 day of November 2008.

By 
MICHELLE EMERSON
Clerk of the District Court
Clerk of the Board of County Commissioners

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, do hereby certify that on the 26 day of November 2008, a true and correction copy of the foregoing Notice of Lodging Agency Record and Transcript was delivered in the manner indicated to the following:

Richard A. Carlson
Attorney at Law
P.O. Box 21
Filer, ID 83328
Attorney for Petitioners (Dimond et al)
(hand-delivered)

John B. Lothspeich
Attorney at Law
P.O. Box 168
Jerome, ID 83338 (Courtesy Copy)
(mailed, postage paid)

Michael J. Seib
Jerome County Prosecutor
233 West Main Street
Jerome, ID 83338
(hand-delivered)

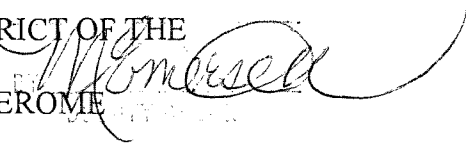
Patrick D. Brown
Attorney at Law
P.O. Box 207
Twin Falls, ID 83303-0207 (Courtesy Copy)
(mailed, postage paid)

Charles M. Tebbutt
Attorney at Law
1216 Lincoln Street
Eugene, OR 97401 (Courtesy Copy)
(mailed, postage paid)

By Michelle Emerson
MICHELLE EMERSON
Clerk of the District Court
Clerk of the Board of County Commissioners

2008 DEC 23 PM 3 53

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME



FRIENDS OF MINIDOKA, ET AL.,)
)
 Petitioners,)
 _____)
 JEROME COUNTY BOARD OF)
 COMMISSIONERS,)
)
 Respondents.)
 _____)
 SOUTH VIEW DAIRY,)
)
 Intervenors.)
 _____)

Case No. CV2008-1081


NOTICE OF LODGING
AGENCY RECORD AND
TRANSCRIPT WITH THE
COURT

TO: The above-named parties and their attorneys of record:

YOU ARE HEREBY NOTIFIED Pursuant to I.R.C.P. 84(k) that the Agency Record and Transcript in the above-named case has been filed with the District Court on the 23rd day of December, 2008.

YOU ARE FURTHER NOTIFIED that the agency's decision to deny the objection and all evidence, exhibits, and written presentations on the objection to the Board of County Commissioners on December 16 and 22, 2008 are included pursuant to I.R.C.P. 84(j).

DATED This 23rd day of December, 2008.

By 
MICHELLE EMERSON
Clerk of the Board of County Commissioners
Clerk of the District Court, Jerome County

CERTIFICATE OF MAILING/DELIVERY

I, the undersigned, do hereby certify that on the 23rd day of December, 2008, a true and correct copy of the foregoing Notice of Lodging Agency Record and Transcript with the Court was delivered in the manner indicated to the following:

Richard A. Carlson
Attorney at Law
P.O. Box 21
Filer, ID 83328
Attorney for Petitioners (Dimond et al)
(mailed, postage paid)

John B. Lothspeich
Attorney at Law
P.O. Box 168
Jerome, ID 83338
(mailed, postage paid)

Michael J. Seib
Jerome County Prosecutor
233 West Main Street
Jerome, ID 83338
(hand-delivered)

Patrick D. Brown
Attorney at Law
P.O. Box 207
Twin Falls, ID 83303-0207
(mailed, postage paid)

Charles M. Tebbutt
Attorney at Law
1216 Lincoln Street
Eugene, OR 97401
(mailed, postage paid)

By 
MICHELLE EMERSON
Clerk of the District Court
Clerk of the Board of County Commissioners

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

BY *[Signature]*

 Attorney for Petitioners

FRIENDS OF MINIDOKA, DEAN & EDEN,)
 DIMOND, HAROLD & CAROLYN DIMOND,)
 WAYNE SLONE, guardian of JAMES SLONE,)
 the IDAHO RURAL COUNCIL, INC., IDAHO)
 CONCERNED AREA RESIDENTS, for the)
 ENVIRONMENT, INC., the JAPANESE AMERICAN)
 CITIZENS LEAGUE, INC., the NATIONAL TRUST)
 for HISTORIC PRESERVATIONS, INC., and)
 PRESERVATION of IDAHO, INC.)

CASE NO. CV-08-1081

ORDER RE: PETITION FOR
 JUDICIAL REVIEW PURSUANT
 TO I.R.C.P. 84

Petitioners,

vs.

JEROME COUNTY, a Political Subdivision)
 of the State of Idaho, JOSEPH DAVIDSON,)
 CHARLES HOWELL and DIANA OBENAUER,)
 MEMBERS OF THE JEROME COUNTY BOARD)
 of COMMISSIONERS,)

Respondents.

SOUTH VIEW DAIRY, an Idaho General)
 Partnership, TONY VISSER, WILLIAM DEJONG,)
 and RYAN VISSER, general partners,)

Intervener,

A Petition for Judicial Review was filed in the above-entitled case on October 21, 2008, by Friends of Minidoka, Wayne Slone, guardian of James Slone, Idaho Concerned Area Residents for the Environment, Inc., the Japanese America Citizens League, Inc., the National Trust for Historic Preservation, Inc., and Preservation Idaho, Inc., Petitioners,

ORDER RE: PETITION FOR JUDICIAL
 REVIEW PURSUANT TO I.R.C.P. 84

represented by Patrick D. Brown, Dean and Eden Dimond, Harold and Carolyn Dimond and the Idaho Rural Council, Inc., Petitioners, represented by Richard A. Carlson and all petitioners also represented by Charles M. Tebbutt. This appeal involves questions of LAW AND FACT, and is taken pursuant to I.C. § 67-6521 and § 67-5201 *et. seq.*

The decision to be reviewed is Jerome County Board of Commissioners' memorandum decision made on September 23, 2008, which approved, subject to certain conditions, the May 3, 2007 application of Don McFarland and Big Sky Farms Limited Partnership ("Big Sky") for a Livestock Confinement Operation for 8000 Animal Units.

WHEREAS, the Petitioners have filed a Petition for Review of the agency action;

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 84:

1. Petitioners must file a statement of issues intended to be asserted on judicial review within 14 days, pursuant to I.R.C.P. 84(d)(5).
2. That the appeal and cross appeal, if any, shall be determined upon the record created before the agency, pursuant to I.R.C.P. 84(e).
3. That the settled transcript of the relevant hearing(s) and the agency record shall be filed with the Court within forty-two (42) days of the date of service of the Petition for Judicial Review, pursuant to I.R.C.P. 84(k).
4. That petitioners' opening brief shall be filed within twenty-one (21) days after the record and transcript(s) have been filed.
5. That respondent's reply brief, or upon cross appeal, shall be filed within twenty-one (21) days after the filing of petitioners' opening brief.
6. That petitioners' rebuttal brief shall be filed within seven (7) days after the respondent's reply brief.
7. That, within thirty (30) days after the filing of all briefs the matter shall

either be submitted to the Court for decision upon written stipulation, or shall be set for Oral Argument before the Court at the request of any party. *The parties must do one or the other.*

That failure to comply with any of the terms of this Order, or any additional requirements of I.R.C.P. 84, shall constitute grounds for dismissal of the appeal or sanctions by the Court. *RJE*

DATED this 22 day of December, 2008.



Robert J. Elgee
District Judge

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing **Order Re: *Petition for Judicial Review Pursuant to I.R.C.P. 84*** to be served upon the following persons in the manner noted below:

Charles M. Tebbutt
Attorney at Law
1216 Lincoln Street
Eugene, OR 97401
(mailed)

John B. Lothspeich
Attorney at Law
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DATED this 24 day of December, 2008.

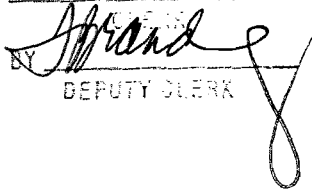


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DISTRICT COURT
FIFTH JUDICIAL DIST
JEROME COUNTY, IDAHO

2009 JUN 13 AM 10 14

BY 
DEPUTY CLERK

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Attorney for Dean & Eden Dimond, Harold & Carolyn Dimond, and the Idaho Rural
Council, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
_____)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)

CASE NO. CV 2008-1081

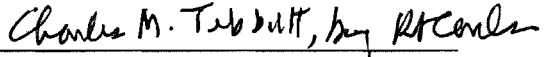
MOTION TO AUGMENT AND
SUPPLEMENT RECORD,
AND CORRECT TRANSCRIPT

Environment, Inc., the Japanese American)
 Citizens League, Inc., the National Trust)
 for Historic Preservation, Inc., and)
 Preservation Idaho, Inc.)
)
 Petitioners,)
 _____)
 vs.)
)
 Jerome County, a Political Subdivision)
 of the State of Idaho, Joseph Davidson,)
 Charles Howell and Diana Obenauer,)
 Members of the Jerome County)
 Board of Commissioners,)
)
 Respondents.)
 _____)
)
 South View Dairy, an Idaho General)
 Partnership, Tony Visser, William)
 DeJong and Ryan Visser,)
 general partners,)
)
 Intervenor.)
 _____)

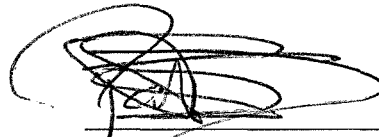
COME NOW the Petitioners by and through their respective counsel, Charles M. Tebbutt of the Western Environmental Law Center, Richard A. Carlson, Attorney at Law, Patrick Brown, of the law firm Hutchinson & Brown, LLP, and move the court for an order augmenting and supplementing the record and correcting the transcripts lodged with the court on December 23, 2008. This motion is made pursuant to I.R.C.P. 84 (l) and Idaho Code 67-5276 and is supported by the Memorandum in Support of Motion to Augment and Supplement Record and Correct Transcripts and by the affidavits that accompany it that are filed herewith.

DATED this 13th day of January, 2009.

Respectfully Submitted:



Charles M. Tebbutt, Pro Hac Vice
Western Environmental Law Center

Attorney for Petitioners



Patrick D. Brown
Hutchinson & Brown, LLP

Attorney for Petitioners Friends of
Minidoka, Wayne Slone, guardian of
James Slone, Idaho Concerned Area
Residents for the Environment,
Inc., the Japanese American Citizens
League, Inc., the National Trust for
Historic Preservation, Inc., and
Preservation Idaho, Inc.


Richard A. Carlson
Idaho State Bar No. 5971

Attorney for Petitioners Dean &
Eden Dimond, Harold & Carolyn
Dimond, and the Idaho Rural
Council, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January, 2009, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below, by hand delivery:

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DISTRICT COURT
 FIFTH JUDICIAL DISTRICT
 JEROME COUNTY, IDAHO

2008 FEB 6 PM 3 13

Michelle Emerson
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

In the matter of:)
)
)
 The Jerome County Board of Commissioners;)
 Decision Dated September 23, 2008)
 Approving A Livestock Confinement)
 Operation Permit for Don McFarland, dba Big)
 Sky Farms,)
 _____)
)
 Friends of Minidoka, Dean & Eden Dimond,)
 Harold & Carolyn Dimond, Wayne Slone,)
 guardian of James Slone, the Idaho Rural)
 Council, Inc., Idaho Concerned Area)
 Residents for the Environment, Inc., the)
 Japanese American Citizens League, Inc., the)
 National Trust for Historic Preservation, Inc.,)
 and Preservation Idaho, Inc.)
)
 Petitioners,)
 _____)
 vs.)
)
 Jerome County, a Political Sub-Division of)
 the State of Idaho, Joseph Davidson, Charles)
 Howell, and Diana Obenauer, Members of the)
 Jerome County Board of Commissioners,)
)
 Respondent.)
 _____)

Case No.: CV 2008-1081

RESPONDENT'S MEMORANDUM
 IN OPPOSITION TO PETITIONER'S
 MOTION TO AUGMENT

Heading continued on next page

South View Dairy, an Idaho General Partnership, Tony Visser, William DeJong and Ryan Visser, general partners, Intervenor.

COMES NOW, Jerome County, the Respondent, by and through the Jerome County Prosecutor, John Horgan, and submits this memorandum in support of its objection to Petitioners’ Motion to Augment Record and Supplement Record, and Correct Transcript. The Petitioners (“Friends”) brings its motion pursuant Idaho Rule of Civil Procedure 84(1) and section 67-5276 of the Idaho Administrative Procedure Act. Neither of these authorities provide Friends with the necessary support it needs to sustain its motion.

First, in regard to Rule 84, it holds in relevant part:

Scope of Rule 84. The procedures and standards of review applicable to judicial review of state agency and local government actions shall be as provided by statute. When judicial review of an action of a state agency or local government is expressly provided by statute but no stated procedure or standard of review is provided in that statute, then Rule 84 provides the procedure for the district Court’s judicial review.

I.R.C.P. 84(a)(1) (emphasis added). The statute allowing for judicial review in this matter is Idaho Code Section 67-6521, which makes applicable the Idaho Administrative Procedures Act (“IDAPA”) found under chapter 52, title 67, Idaho Code. Within IDAPA is section 67-5275, which brings into play 67-5249¹. This section (67-5249), defines what shall be included in the record as:

- (a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
- (b) evidence received or considered;
- (c) a statement of matters officially noticed;
- (d) offers of proof and objections and rulings thereon;

¹ The present matter stemming from an order of the Board as opposed to a rule.

- (e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
- (f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
- (g) any recommended order, preliminary order, final order, or order on reconsideration.

I.C. § 67-5249(2). Because the statutes relevant to judicial review of this matter clearly provide for a governing procedure, Rule 84(l) does not come into play and augmentation/supplementation of the record under that rule cannot be done.

This position is supported by the decision in of *Crown Point Development v. City of Sun Valley*, 144 Idaho 72 (2007), where that court found:

By statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter (*I.C. § 67-5275(1)*) supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code. Idaho Code § 67-5276 allows additional evidence when prior to the hearing date, it is shown to the satisfaction of the court that there were good reasons for failure to present it in the agency hearing or that there were alleged irregularities in procedure before the agency. Thus, generally judicial review is confined to the agency record unless the party requesting the additional evidence complies with one of the two statutory exceptions in I.C. § 67-5276.

Crown Point, at 76 (citations omitted). Thus, the rule is that the record cannot be augmented and there are only two exceptions to the rule. The first exception is made up of three requirements that must be established. The first of these requirements is that the proffered evidence must be shown to be material; second, that it relates to the validity of the agency action; and three, that it is accompanied with a good reason as to why the requestor failed to present the evidence at the original hearing. *I.C. § 67-5276(1)(a)*. The second exception also has three requirements, sharing the first and second from above (that the offered evidence is material and relates to the validity of the agency action), but has a different third requirement; that being it is shown to the satisfaction of the court that there

were alleged irregularities in procedure before the agency that lead to the additional evidence being kept from the record. *I.C. § 67-5276(1)(b)*.

Friends only discusses procedural irregularities in its memorandum, and therefore is presumably proceeding only under the second of the two exceptions. Focusing then on that exception alone, Friends offers only conclusory statements in describing the various evidence it wishes added to the record. It states nothing that would establish the proffered evidence to be material; nothing showing that it relates to the validity of the Board's action; nor does it establish that there was in fact a procedural irregularity before the Board. At best, Friends uses the term, "relevant" only three times in its memorandum. No other descriptive terms are found. Friends does use the phrase, "procedural irregularities" in its claims, but never establishes the actual existence of such irregularities. It simply sets adrift this phrase (procedural irregularities) alone and requiring it to defend and support itself. In fact, Friends' assertions are so bare, that the only understanding one is left with after reading its memorandum is that Friends wants to add a whole bunch of stuff to the record. Whether or not that "stuff" is material, valid or establishes a procedural irregularity as defined by the statute, one has no idea.

Friends categorizes the evidence it wants added into six different groups. The first of these groups consists of several amended versions of the County's ordinance that Friends believes should be in the record. The justification Friends gives for this is because the various amendments are confusing and Friends is not clear as to what ordinance actually controlled the Board's decision. Friends is also unsure if the ordinances were properly adopted.

It is somewhat unclear as how such confusion could arise, as Idaho law is well established in these areas. First, an applicant's rights are determined by the ordinance in existence at the time of filing an application for a zoning permit (*Southfork Coalition v. Board of Commissioners of Bonneville County*, 117 Idaho 857 (1990)). Second, issues of whether zoning ordinances were properly adopted are a legislative matter that is not proper for judicial review (*Burt v. City of Idaho Falls*, 105 Idaho 65 (1983)).

Friends delineates on page four of its memorandum of support the eight specific issues that it asserts for judicial review and declaratory judgment². Absent from this list, and thus not raised as an issue, is a claim that the Board did not specify the ordinances used in evaluating the application as required by section 67-6516. Presumably then, Friends (or anyone else for that matter) should have no trouble, after reasonable inquiry, identifying the ordinances that the Board relied on and tracing that back to see if such were in fact the ordinances in "play" when the application was filed.

In addition to this, Friends' admission that it is unsure of whether there is even an issue here for judicial review hints of a Rule 11.1 violation of the Idaho Appellate Rules. That rule states that the "signature of an attorney or party constitutes a certificate that the attorney or party has read the ... motion, brief or other document; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law ..." (I.A.R. 11.1; emphasis added). Friends statements as to the group one evidence is that it needs to be added because it is confusing and convoluted, yet even if this assertion is true, this still does not provide a basis to augment the record pursuant to 67-5276. Instead, one should make reasonable inquiry to

² See Intervenor's motion and accompanying memorandum filed February 4, 2009, showing the declaratory judgment matter to not be properly before the court.

sort the confusion out and determine if it in fact shows a procedural irregularity occurred. If so, and 67-5276 applies, then bring a motion to augment. If the confusion cannot be sorted out, then the proper remedy would be to seek declaratory judgment, which is the proper mode for challenging legislative matters. What clearly should not be done is to just add several versions of the County's ordinance to the record, making the court sort the confusion out and hoping some irregularity will eventually emerge.

Friends undoubtedly will argue that it was acting in good faith because it did include a declaratory judgment action in its petition for judicial review and that therefore, the group one evidence is a worthwhile issue. The response is the same however, in that again, if Friends had made a reasonable inquiry into the declaratory judgment action, it would have come across the case of *Euclid Avenue Trust v. City of Boise*, 146 Idaho 306 (2008). From *Euclid*, Friends should have then reached the conclusion made by the Intervenor in its memorandum filed February 4, 2009, and saw that it was not proper to include the declaratory judgment action in this matter and that the group one evidence was in fact not a worthwhile matter to be pursued here.

In any event, because the ordinances relied upon by the Board in its decision were clearly identified, one can easily determine whether those ordinances were in fact the ones in effect at the time the application was filed. There is no need to augment the record with various versions of the ordinance; nor does Friends offer any legal basis as to why there is such a need. Friends does not even allege, let alone show, that an ordinance was improperly used as controlling authority in the Board's decision. In other words, Friends does not allege any wrong doing here. It simply wants these ordinances added to the record for the reason stated above – hoping a procedural irregularity will eventually emerge

from their inclusion in the record. This obviously is not a valid basis for augmenting the record as to the documents identified in group one.

The second group contains various documents that certain Petitioners allegedly attempted to be placed into the record before the September 25 and 26, 2007 hearing. It appears that the claim being furthered here is that the mere fact that these documents did not get into the record is proof-positive that a procedural irregularity occurred and that the documents need to be immediately added. This is because this claim is made without even pointing to a governing statute, rule and/or ordinance that was violated by the group two documents not coming into evidence. Without some kind of violation, there can be no procedural irregularity. As before, the words, "procedural irregularity" alone cannot establish Friends' claims as being valid.

Furthermore, all this is for not as Friends completely ignores the fact that there was an original judicial review proceeding in this matter that was held subsequent to the 2007 Board hearing. Therefore, the issue Friends raises now is one that could have been, and should have been, raised at that first judicial review proceeding. *Capps v. Wood*, 117 Idaho 614 (Ct. App.1990) (holding that under the "law of the case" principle, on a second or subsequent appeal the courts generally will not consider errors which arose prior to the first appeal and which might have been raised as issues in the earlier appeal; as this approach discourages piecemeal appeals and is consistent with the broad scope of claim preclusion under the analogous doctrine of res judicata.)

In regard to group three, Friends inches ever closer to establishing its motion was not well grounded in fact and warranted by existing law. Here, it is clear from its memorandum that Friends does not know if the documents requested in group three even

exist, and instead is simply using its present motion as a substitute for a public records request. On page 6 of its memorandum Friends asks that the record be augmented with each and every email and other correspondence that was exchanged between various individuals and that pertained to various subject matters. Friends makes it clear that it is only assuming that this email and correspondence is out there, as it does not identify the specific documents or the context of each. Nor does it explain how these documents are even augmentable under applicable law. Friends also never claims that there was a previous attempt to get this email and other correspondence into the record. Nor does it claim that there was a procedural irregularity that surrounds these documents not getting into the record. From its memorandum, the only possible conclusion is that Friends is on a fishing expedition and/or is attempting to subvert the normal process of obtaining public records by requesting such through its current petition. Either way, Friends should first obtain these documents, review and make reasonable inquiry as to whether they are augmentable under the law, and then after having done so, bring this motion. Not knowing if these emails or other correspondence even exist, Friends is hard pressed to claim it had a belief, well grounded in fact, that the unknown emails and other correspondence could be augmented into the record.

Even with the above said, Friends identifies the proffered documents in the third group as evidence that relates to the “deliberative process of the Respondents outside the official public hearings that are relevant to the November 1, 2007 hearing.” Once again, any validity to the issues raised here is moot because these too are issues that existed prior to the initial judicial review proceeding and should have been raised at that time. *Capps, supra*. It thus becomes unnecessary to augment this record for issues that should have been

raised prior to now. Also, even if all the above is put aside, Friends states only that the “group three” documents give context to the decisions made about the acceptance or denial of public comments. Obviously missing is an allegation that the acceptance or denial of public comment as identified here was actually in error, let alone a citing of the specific statute, rule or ordinance that establishes such error.

The fourth group of documents also is offered to establish issues that should have been raised in the first judicial review hearing and are thus precluded from being raised now. These documents are alleged to relate to efforts by the National Park Service to have the Minidoka National Monument designated as a special use area. By its very nature, this claim screams the question - “Relevance?” This word, as well as any words similar to it, is missing from this paragraph. Once again, Friends tosses out the naked assertion of “procedural irregularity,” but offers nothing of substance however to support it. There is nothing provided that show that the group four documents should legally be added to the record at this time.

The fifth group makes only conclusory assertions as well, alleging that certain petitioners were not notified as required by Jerome County law and were not allowed to submit public comment. To even begin to accept any of this as true, one must first blindly accept the underlying premise that such notice was in fact required, or that public comment was in fact allowed for. This premise is not directly stated, nor is it supported in any manner. Rather, it is implied only as some invisible foundational structure for the barren claim of a due process violation, as there is no ordinance or statute identified as being violated. Friends jumps past the need of establishing the notice and comment requirements

that it implies existed, once again leaving the barren, over-used claims of procedural irregularity and due process violation on their own.

Friends remains consistent to the end when discussing the sixth and final group of evidence. The procedural irregularity claimed here is a failure by the Board to reopen the record after remand. As before, there is an implied premise that the record was required to be reopened. Friends does not point out the authority that requires such reopening. The claim alleged in this final grouping of evidence is also left abandoned in the same condition as the others – totally naked and unsupported.

After reviewing the several claims of procedural irregularity Friends makes against the Board, it is now time to examine the procedural irregularity committed by Friends itself in its present motion. Friends simply wants the court to augment/supplement the record and to then move on to reviewing the underlying issues. This is plainly observed in Friends memorandum where it states that the court may want to reopen the record of the Big Sky application. (*Memo.* pg. 7). Friends is in error here because if the court does in fact find that certain evidence should be added to the record, its not proper that the court might require the record be reopened, but rather that the court shall have the record reopened.

If the court finds to its satisfaction that the three requirements of the second exception of 67-5276 have been met, then under that same code provision, it must remand the matter back to the Board with directions that the Board receive the additional evidence and conduct additional fact-finding. Upon doing so, the Board then, under section 67-5276(2), “may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.” *Id.*

This principle found in 67-5276 is furthered by the holding in *Balser v. Kootenai County Bd. of Com'rs*, 110 Idaho 37 (1986), where it states:

It is by now a well established rule in Idaho that review on appeal is limited to those issues raised before the lower tribunal and that an appellate court will not decide issues presented for the first time on appeal. That this rule is equally applicable to appeals of zoning decisions is made clear by I.C. § 67-6521(d) which states that judicial review of the board's decision is governed by I.C. § 67-5215(b)-(g) which confines the review by the district court to the record. I.C. § 67-5215(f).

Balser, at 40. Also, in *Crown Point, supra*, the court found there that based on its initial decision, it did not need to reach an issue concerning remand under 67-7576, but nevertheless stated the following:

Since we hold that the augmentation of the record was error we do not need to address whether the matter should have been remanded to the City after the augmentation. However, we note that I.C. § 67-5276(2) provides that “[t]he agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.” The trial judge did not comply with this statute.

Crown Point, 144 Idaho at 75, (emphasis added). Clearly, Idaho law (both statutory and case) requires any evidence found missing from the record, must be first given to the Board for it to initially consider. After the Board considers the augmented evidence, it then is automatically part of, and in the record for the later purposes of judicial review if necessary. The first “crack” (if you will) at an issue must be with the governing board that took the action in question. After the board has had an opportunity to review the augmented evidence and make modifications to its original decision if deemed appropriate, then the court proceeds under judicial review if petitioned to do so. The court’s role under judicial review is just that – review. The proper procedure clearly is not for the court to simply *order* the record be augmented/supplemented as Friends asks, with the matter remaining with the court for it to then review the original issues raised. To do this would

allow the court to potentially find, based on the newly augmented record, that the Board's decision was in fact improper, when in truth the Board itself may have come to the same conclusions as the court (realizing its initial decision was in error) if it too was afforded the opportunity to consider the augmented evidence.

CONCLUSION

In order to be successful with its motion, Friends must satisfy the court that the documents it wants augmented into the record are material, validly relates to the Board's action and that there was a procedural irregularity in keeping such evidence from being submitted at the original hearing. This, Friends cannot do as it offers nothing that establishes any of these requirements, let alone all three of them together which is needed under the statute. If the court does satisfy itself that there was a procedural irregularity that prevented certain evidence from coming into the record, then the court must remand the matter back to the Board with instructions that it hear and consider such evidence. After doing so, the Board might then modify its original decision, potentially resolving the original issues raised here and making them moot.

Based on the above, the Respondent respectfully requests that the court deny Friend's motion to augment/supplement the record.

RESPECTFULLY SUBMITTED this 6th day of February 2009.



Michael J. Seib
Jerome County Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February 2009, I served true and correct copies of the *Respondent's Memorandum in Opposition to Petitioner's Motion to Augment* upon the following persons, named below, in the manner indicated:

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
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Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation Idaho, Inc.)

CASE NO. CV 2008-1081
AMENDED PETITION FOR REVIEW

DISTRICT COURT
FIFTH JUDICIAL DISTRICT
JEROME COUNTY, IDAHO
2008 MAR 6 PM 2 56
E. *IBra*
DEPUTY CLERK

Petitioners,)
_____)
vs.)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
Charles Howell and Diana Obenauer,)
Members of the Jerome County)
Board of Commissioners,)
_____)
Respondents.)
_____)
South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
_____)
Intervenors.)

To: JEROME COUNTY BOARD OF COMMISSIONERS and JEROME COUNTY:

1. Petitioners identified above petition and request judicial review of the Jerome County Board of Commissioners' 9-23-08 Memorandum Decision which approved, subject to certain conditions, the 5-3-07 Application of Don McFarland and Big Sky Farms Limited Partnership ("Big Sky") for a Livestock Confinement Operation for 8000 Animal Units on 1204.61 acres located at 1458 U.S. Highway 25, Eden, ID.
2. Petitioners have exhausted all available administrative remedies and have the right to judicial review under Idaho Code § 67-6521, § 67-5271, et seq., and Jerome County Zoning Ordinances.
3. Venue is proper under Idaho Code § 67-5272.
4. This Petition for Judicial Review is taken upon issues of equity and law.
5. The Jerome County Board of Commissioners (the "Board") is an agency as defined by Chapter 52, Title 67, Idaho Code 67-5271 and IRCP 84 (a)(2)(B), which rendered a decision for which this Petition for Judicial Review is sought.

6. The issues Petitioners may assert for review are as follows:

- A. Whether the decision is in compliance with Jerome County Ordinances and the Jerome County Comprehensive Plan;
- B. Whether the Jerome County Zoning Ordinance is valid and enforceable as adopted;
- C. Whether Jerome County has violated Idaho law through its adoption and implementation of its ordinance;
- D. Whether there is substantial and competent evidence in the record, as a whole, supporting the decisions of Jerome County and/or the Board of Commissioners;
- E. Whether the decisions of the Board of Commissioners were in excess of their authority;
- F. Whether the decisions were made upon unlawful procedures;
- G. Whether the decisions were arbitrary, capricious and/or an abuse of discretion; and
- H. Whether the decisions violate Petitioners' due process and equal protection rights under the United States and State of Idaho Constitutions.

7. The Board held an electronically recorded public hearing concerning the permit and has had numerous public meetings concerning the permit that were electronically recorded. Michelle Emerson, Clerk of the Board of County Commissioners and Clerk of the District Court, Jerome County is in possession of the audio recording tapes (discs). Her address is: 300 North Lincoln, Room 310, Jerome, ID 83338.

8. Audio recordings and transcripts of the permit hearing have already been prepared and filed with the Court in connection with a separate proceeding for Judicial Review in Case No. CV 07-1242. Audio recordings and transcripts of Board hearings and meetings concerning the permit that occurred after the District Court's remand of this matter in Case No. CV 07-1242 have been requested.

9. Petitioners are individual families or organizations with members residing next to or in close proximity to the real property where the proposed LCO would be situated. Petitioners' substantial rights will be prejudiced if the LCO is permitted and constructed pursuant to the permit.

PETITIONER FRIENDS OF MINIDOKA (FOM) is a nonprofit organization based in Twin Falls dedicated to educational, preservation and research pursuits and projects relating to the Minidoka National Historic Site and its development. This includes the history of the WWII Internment as well as contemporary civil liberties issues, site specific histories, such as Idaho agriculture and a Farm-in-a-Day home, and to support the National Park Service in achieving these mutual goals and objectives. FOM emphasizes the preservation, understanding, and appreciation of the natural and cultural resources, and the oral histories related to the Minidoka National Historic Site, as it is a National Park to service all Americans and teach us about our collective history.

As part of its mission to assist in the preservation of the Minidoka National Historic Site's cultural resources and national history and its development into a visitor friendly, educational and historically relevant National Park, FOM has commented on the Big Sky CAFO permit application.

PETITIONERS DEAN & EDEN DIMOND AND HAROLD & CAROLYN DIMOND own land and reside in close proximity to the proposed CAFO. The Dimonds have provided comments to the Board concerning the Big Sky permit application.

PETITIONER JAMES SLOAN, Wayne Slone guardian, owns approximately two acres of real property at 1231 400 South, within one-quarter mile of the applicant's property. Mr. Slone was denied proper notice and the opportunity to provide evidence and comment on the Big Sky permit application.

PETITIONER IDAHO RURAL COUNCIL, INC. (IRC) is a non-profit, non-partisan grassroots organization committed to preserving Idaho's family farms, ranches, rural communities and the natural resources that sustain them. Our membership includes farmers, ranchers and

concerned citizens who cherish the quality of life in Idaho. IRC's particular interest in this challenge of Big Sky's LCO permit is based on its predictable negative impacts, including to air and water quality, on our members living and farming in the area.

PETITIONER IDAHO CONCERNED AREA RESIDENTS FOR THE ENVIRONMENT (ICARE) is an Idaho nonprofit corporation, established in 2006, to advocate on behalf of Idaho citizens. Communities and historic sites in Idaho - and across the country at large - are being severely impacted by industrial scale Concentrated Animal Feeding Operations (CAFOs). ICARE provides public support and advocacy through education and grassroots organizing, and assists local citizens and groups in understanding the public and environmental health threats. ICARE and its members routinely engage local decision making boards, regulatory agencies and the legislature, for regulation and enforcement of environmental laws. In addition, ICARE advocates on behalf of small family farmers and ranchers and is a staunch supporter of sustainable agriculture. ICARE attempted to provide substantial written testimony to the Board, but was denied. ICARE did provide oral testimony on September 25, 2007.

PETITIONER JAPANESE AMERICAN CITIZENS LEAGUE, founded in 1929, is the oldest and largest Asian American civil rights organization in the United States. The JAACL monitors and responds to issues that enhance or threaten the civil and human rights of all Americans and implements strategies to effect positive social change, particularly to the Asian Pacific American community. JAACL has a particular interest in the Minidoka National Historic Site based on the site's unique place in American history. JAACL provided comments to the Board on or about September 24, 2007 concerning the Big Sky permit application.

PETITIONER NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES ("National Trust") is a private charitable, educational, non-profit corporation chartered by Congress in 1949 to protect and defend America's historic resources, to further the historic

preservation policy of the United States, and to facilitate public participation in the preservation of our nation's heritage. *See* 16 U.S.C. § 468. The National Trust, which is headquartered in Washington, D.C., owns and operates 30 historic sites open to the public and has nine regional and field offices around the country, including the Western Regional Office which is responsive to historic preservation issues in Idaho. The National Trust has approximately 283,000 individual members across the country, including more than 600 members in Idaho.

In 2007 the National Trust named the Minidoka National Historic Site one of America's 11 Most Endangered Historic Places. On September 6, 2007, National Trust Vice President and General Counsel Paul W. Edmondson wrote Jerome County Prosecuting Attorney Mike Seib contending that the Jerome County Board of Commissioners' refusal to consider written public comment on the impacts of a Livestock Confinement Operation to the Minidoka Site violated due process required by the Idaho and U.S. Constitutions. A similar letter was sent to Board Chairman Charlie Howell on June 28, 2007. On September 25, 2007, the Idaho Advisor to the National Trust provided a brief statement of interest on behalf of the National Trust at a hearing before the Jerome County Board of Commissioners regarding the Livestock Confinement Operation near the Minidoka Site.

PETITIONER PRESERVATION IDAHO, THE IDAHO HISTORIC PRESERVATION COUNCIL (IHPC), is dedicated to preserving the state's historic and cultural resources through education and advocacy. The Idaho Historic Preservation Council was established in 1972 by a group of Idahoans concerned with the alarming rate at which historic sites and resources in Idaho were being lost. Today, the IHPC – now known commonly as Preservation Idaho, receives the support of hundreds of individuals, corporations and foundations around the state and region as it continues the mission of its founders and advocates heritage education and preservation issues throughout the State of Idaho.

On September 24, 2007 the organization presented written and oral testimony to the Jerome County Board of Commissioner requesting that they deny the application to permit a CAFO near the historic site.

10. Counsel for Petitioners hereby certify that:

A. Service of copies of this Petition has been made upon the Jerome County Board of Commissioners and the applicant (courtesy copy);

B. The Jerome County Clerk has been paid the estimated fee for preparation of the transcripts requested by the Petitioners; and

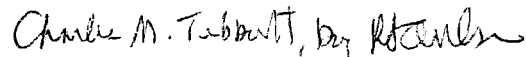
C. The Jerome County Clerk has been paid the estimated fee for preparation of the record.

PRAYER FOR RELIEF

Wherefore, Petitioners pray the Court to reverse the decision of the Jerome County Board of Commissioners. Petitioners further pray that the Court award them costs and attorney fees, including but not limited to under Idaho Code §12-123 and §12-117.

Dated: March 6th, 2009.

Respectfully submitted,



Charles M. Tebbutt, Pro Hac Vice
Western Environmental Law Center

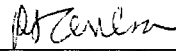
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Wayne Slone, guardian of James Slone, Idaho

Concerned Area Residents for the Environment, Inc., the Japanese American Citizens League, Inc., the National Trust for Historic Preservation, Inc., and Preservation Idaho, Inc.



Richard A. Carlson
Idaho State Bar No. 5971

Attorney for Petitioners Dean & Eden Dimond, Harold & Carolyn Dimond, and the Idaho Rural Council, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2009, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below, by hand delivery:

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Council, Inc.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

DISTRICT COURT
FIFTH JUDICIAL DIST
JEROME COUNTY, IDAHO

2008 MAR 6 PM 2 56

BY J Brande
COURT CLERK

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation Idaho, Inc.)

CASE NO. CV 2008-1081
PETITIONERS' REPLY IN SUPPORT OF
MOTION TO AUGMENT THE RECORD

Petitioners,)
_____)
vs.)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
Charles Howell and Diana Obenauer,)
Members of the Jerome County)
Board of Commissioners,)
_____)
Respondents.)
_____)
South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
_____)
Intervenors.)

The petitioners, by and through counsel, submit this reply memorandum in support of the motion to augment the record.

First, the petitioners acknowledge that I.C. § 67-5276 should be the controlling law on the admissibility of the evidence to be included in the record, not Idaho Rule of Civil Procedure 84(1), in light of Idaho Rule of Civil Procedure 84(a)(1), which only allows for procedures and standards as provided by statutes, and the *Crown Point* case mentioned in respondent’s brief (see pg. 3).

I.C. § 67-5276, provides:

(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.

Thus, the petitioners under I.C. § 67-5276 must establish that the evidence is material, that the evidence relates to the validity of the agency action, and that there are allegations of procedural irregularities for the record to be augmented. The petitioner is not required, at this stage in the process, to establish with certainty that said procedural irregularities actually occurred. Examination of the evidence petitioners are seeking to have augmented on the record will show that the documents fall well within the rationale established by I.C. § 67-5276.

ARGUMENT

The first group of documents petitioners seek to augment on the record, the amended Jerome County Zoning Ordinances (“JCZO”), easily meets the first two criteria established. The ordinance in effect at the time is clearly material as this was used by the Jerome County Board of Commissioners (“Board”) to make its decision. The validity of that decision is derived, in part, from the ordinance. As for procedural irregularities, respondent argues that the petitioners’ motivation in adding these ordinances is simply “hoping that a procedural irregularity will eventually emerge from their inclusion on the record.” Respondent’s Memo at 6. Respondent further argues that the petitioners “should have no trouble, after reasonable inquiry, identifying the ordinances that the Board relied on.” (*Id.* at 5.)

Numerous attempts to obtain copies of the relevant ordinances have proved fruitless. In the affidavit of petitioner Dean Dimond, Mr. Dimond states that he has made numerous unsuccessful attempts with the county clerk to obtain the ordinances from Jerome County authorities and still has not been able to obtain these materials. *See* Affidavit of Dean Dimond in Support of Motion to Augment, Jan. 12, 2009. This inability to access the zoning ordinance which governed the Board’s 2007 decision is indicative of a procedural irregularity and also represents possible violations of I.C. § 67-6509(c)¹ and I.C. § 67-6504(c).²

¹ I.C. § 67-6509(c): “No plan shall be effective unless adopted by resolution by the governing

Because the Board's decision was based on an ordinance that (despite reasonable inquiry) none of the petitioners had access to, they could not (nor can they now) make informed legal objections based on the parameters of the ordinance. Informed public participation at the Board's hearings was rendered impossible, thereby creating a procedural irregularity. Due process of law is not possible when the petitioners did not have access to the law nor can the validity of the Board's decision be established without the enacted ordinance.

The relevant zoning ordinance must be added to the record in order for the petitioners and the Court to properly review the ordinance and its provisions. In addition, any Court engaging in judicial review of the Board's decision must have a copy of the ordinances in effect at the time the decisions were made in order to evaluate the validity of the petitioners' claims and respondents' defenses. Failure to provide the ordinances would hinder the Court's ability to apply the facts to the County law used as the basis for the Board's decision.

Respondent then proffers that the petitioners have violated Rule 11.1 of the Idaho Appellate Rules since "reasonable inquiry" needed to be made into the ordinances enacted at the time of the Board's decision. Since the petitioners have been frustrated in their "reasonable inquiry" to obtain the ordinances by the respondent Jerome County, Rule 11.1 clearly does not apply, and the Court need not consider this baseless accusation made by the respondent. In addition, because of the County's own alleged failure to keep proper records, the ordinances in existence at the time of the

board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. ***A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.***" (Emphasis added) Any amendments made by the Board to the enacted ordinance were not available for Mr. Dimond's review.

² I.C. § 67-6504(c): "Rules, Records, and Meetings -- Written organization papers or bylaws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. ***A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained.***" (Emphasis added) No record of a meeting in which a proposed amendment was considered or resolutions relating to the JCZO have been found by Mr. Dimond despite the legal requirement that Jerome County keep such records.

hearing are not presently available as required by I.C. § 67-6509(c).

As to the second group of documents, a series of letters documenting the concerns of surrounding property owners which were incorrectly barred from the proceedings, the petitioners again meet the standards of I.C. § 67-5276. The documents submitted by both the primary residents, surrounding landowners, and concerned citizens was excluded in violation of I.C. § 67-6529(2) and the due process clause of the Idaho State Constitution.

The documents of the primary residents and surrounding property owners are material to the Board's decision under JCZO 1-6.01 which states:

“This ordinance shall be interpreted in its various particulars to protect equally each citizen from the undue encroachment on his private property to the end that, within the plan established, each citizen shall have the maximum use of his property without placing *undue burden* upon that of his neighbor.” (Emphasis added)

This ordinance was ignored by the Board in both its first and second decisions on the Big Sky Farms Livestock Confinement Operation (“LCO”) permit. Had the Board correctly allowed the written evidence from all the surrounding landowners into the record, this evidence would have provided the Board with information as to whether the proposed Big Sky Farms LCO would place an “undue burden” on the neighboring properties. The Board's glaring and obvious failure to follow its own ordinance and appropriately weigh the evidence of surrounding landowners' “undue burden” as a result of the permit approval also speaks to the validity of the Board's second decision.

As for procedural irregularities, the documents included in the second group include information submitted by ICARE, an Idaho non-profit organization advocating for responsible agricultural practices, which includes primary residents within a one mile radius of the proposed Big Sky farms site. These documents highlight the severe negative impact and dangers to the neighboring properties that the proposed LCO would have. Had this material been admitted to the record, the Board's decision on whether or not the LCO constituted an “undue burden” to the surrounding properties would have been profoundly influenced.

The Board, however, ultimately refused to accept this documentation and in doing so violated I.C. § 67-6529 (2). This statute mandates that primary residents within a one mile radius of the proposed site may provide written comments. ICARE submitted several documents detailing the negative impact and potential “undue burdens” of the proposed LCO. The Board refused to admit this information on the record. *See* Document 19 in petitioners’ “Objection to Record and Transcript”. As ICARE has members who are primary residents (who relied upon this organization to make their comments for them) within the statutorily defined one mile radius of the proposed LCO, the Board unlawfully refused these comments in violation of I.C. § 67-6529. In doing so, the Board effectively denied these residents of their statutory right to comment on the proposed site, a clear violation of the law and a clear instance of “alleged irregularity” in procedure.

Furthermore while I.C. § 67-6529 only mandates the Board *must* accept comments from within the one mile radius, the Board does have discretion within the statute (“this distance may be increased by the board”) to expand the scope of comments. The failure of the Board to recognize I.C. § 67-6529 as a floor, not a ceiling, and exercise this discretion to expand the distance of allowable comments in light of such a controversial permit application indicates yet another procedural irregularity.

Additionally, petitioners contend that barring evidence from the surrounding property owners who were not “primary residents” constitutes a violation of the land owners’ due process rights. The Appellate Court of Idaho has established that due process is an “opportunity to present and to rebut evidence” and is “constitutionally mandated in all cases where zoning authorities are requested to change the land use authorized for a particular parcel of property.” *Gay v. County Commissioners of Bonneville County*, 103 Idaho 626, 629, 651 P.2d 560, 563 (1982). Furthermore, subsequent case law has found that public hearings, like the one conducted by the Board, with limited speaking time do not constitute due process. “Limiting public comment to two minutes is

not consistent with affording an individual a meaningful opportunity to be heard.” *Cowan v. Board of County Commissioners of Fremont County*, 143 Idaho 501, 512, 148 P.3d 1247, 1258 (2006).

Similarly, disallowing written evidence pertinent to the decision is also an irregularity. The Board’s decision to approve the proposed LCO was done without written comments from those property owners who would be most affected, depriving them of their rights to present and rebut evidence under the *Gay* standard. The Board has effectively silenced those who sought to exercise their legal rights in defense of their property rights, and the evidence these landowners attempted to introduce speaks strongly to the “undue burden” that would be placed on their property in violation of JCZO 1-6.01.

While respondent may argue that these concerned landowners were given an opportunity to present and rebut oral evidence at the Board’s hearing regarding the proposed Big Sky Farms LCO, the denial of the written comments constitutes a violation of their due process rights under the standards of *Gay* and *Cowan*.

Respondent argues that this evidence is precluded because of res judicata, citing to the case of *Capps v. Wood*. In *Capps v. Wood*, the plaintiffs tried to appeal an error that *the plaintiffs* had made in an earlier action, and the court denied this, “on a second or subsequent appeal the courts generally will not consider errors which arose prior to the first appeal and which might have been raised as issues in the earlier appeal.” *Capps v. Wood*, 117 Idaho 614 (Ct. App. 1990), 790 P.2d. 395, 399 (1990). Along the same lines, in the instant case, the petitioners’ error should be precluded only *if* they were the party which initiated the judicial review of the agency decision at the first judicial review and failed to raise the issue of augmenting the record and only if the issues were germane to that proceeding. It was Big Sky Farms, however, and *not* the petitioners who appealed the Board’s earlier decision.

The more applicable test of res judicata is found in subsequent case law. The Supreme Court

of Idaho has held that a five factor test will be used to consider whether res judicata bars relitigation of an issue. *Union Pacific Land Resources Corp. v. Shoshone County Assessors*, 140 Idaho 528, 534, 96 P.3d 629, 635 (2004), . These factors include:

1. the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case;
2. the issue decided in the prior litigation was identical to the issue presented in the present action;
3. the issue sought to be precluded was actually decided in the prior litigation;
4. there was a final judgment on the merits in the prior litigation; and
5. the party against whom the issue is asserted was a party or in privity with a party to the prior litigation.

Id.

The petitioners in the current case do not meet at least the first, second, third, and fifth factors for res judicata in the prior judicial review of the Big Sky permit. First and foremost, the petitioners were not parties to the prior judicial review of the permit application nor could they have been as they lacked a cause of action (petitioners had no objection the Board's first decision to deny the permit). It was Big Sky Farms which appealed the Board's initial decision to deny the permit. In the initial judicial review, the court only considered the issue of "whether the Board properly denied the application based on the Comprehensive Plan." *Don McFarland d/b/a Big Sky Farms v. Jerome County*, Case CV-07-1242, Idaho 5th Dist. Court, 4 (2008). The petitioners³ were not parties to the initial judicial review, nor could they have been as they did not seek to challenge the Board's initial permit decision. Since the evidence the petitioners now seek to add to the record did not relate to the county's comprehensive plan, they could not have raised this as an issue as the previous judicial review as it was not material to the proceedings.

Second, the issue of additional evidence from concerned landowners of the properties

³ Dean, Carolyn, Eden, and Harold Dimond did cross petition on the unrelated issue of whether or not the Board's decision that the application was complete constituted a complete statement under I.C. 67-6535 (b), but did not raise the issue of whether the Court should augment additional evidence onto the record.

surrounding the proposed Big Sky Farms LCO being augmented onto the official record was not an issue raised in the initial judicial review. The Court did not decide on the issue of additional evidence because this was not raised as an issue, nor was there a party in privity with the case that could have raised this as an issue. The issues of using the comprehensive plan to deny the permit application in the first judicial review is a separate and distinct issue from that of augmenting evidence to the record. Simply put, the petitioners did not meet the “full and fair opportunity to litigate” factor laid down by the Idaho Supreme Court on the issue of additional evidence. Nor were most of the petitioners parties in the previous litigation or in privity with parties in the previous litigation, thus failing the fifth factor. The evidence issue fails both the second and third factors of res judicata, as it was not decided earlier, and therefore petitioners’ request to have the record augmented does not violated res judicata.

The e-mails requested by petitioner in the third and fifth set of documents pertain to the Board’s decisions on what evidence to include or exclude and its violation of I.C. § 67-6529 (2) and the landowners due process rights. These e-mails show a persistent pattern by the Board of excluding evidence from surrounding landowners despite multiple attempts to exercise their rights to include written evidence on the record, as allowed per the *Gay* ruling. These documents also include the evidence of Jerome County’s failure to properly notify petitioner Wayne Slone, the guardian of minor landowner James Slone, of the proposed LCO and the Board’s decision to deny his right to comment.

Since these exclusions violated both statutory provisions (landowners within the one mile radius mandated by I.C. § 67-6529 were denied the right to comment) and due process provisions, they are evidence of a procedural irregularity. These e-mails are material as they demonstrate the Board’s incorrect and invalid decision to exclude from the record the evidence from the surrounding landowners. The blocking of both the primary residents and the surrounding landowners from

submitting these written comments is material to the Board's decision and the validity of that decision. Any Court engaging in judicial review of the Board's decision to exclude these materials must have access to these e-mails as part of the record to make a proper determination of whether that exclusion was done legally and how it affected the validity of the Board's decision.

The fourth group of documents relate to Minidoka National Historic Site's designation as a special use area. The National Park Service, as part of its role to protect the Minidoka National Historic Site, sought to comment on the negative impacts of the proposed LCO on the Site and sought designation as a special use area in order to preserve the World War II Japanese-American internment camp. Throughout the LCO permitting process groups seeking to protect the Minidoka National Historic Site were denied the opportunity to submit written comments and were frustrated by county officials in efforts to obtain designation as a special "preservation zone." Both the denial of comments and the failure to designate the monument as a "preservation zone" are procedural irregularities.

This is first demonstrated in the January 12, 2007 letter from Neil King, the superintendent of Minidoka National Historic Site. In the letter, Mr. King states that initially Art Brown, the Jerome County Planning and Zoning Administrator, had told Mr. King that the National Park Service would be allowed to comment on the Big Sky LCO. After submitting his materials, Mr. King found that the materials submitted in his capacity as superintendent of Minidoka National Historic Site would not be accepted as part of the record despite the earlier assurances that they would. Mr. King stated that such a sudden and dramatic change in procedure was "Un-American" and Jerome County "in effect, amend[ed] their administrative procedures, without due notification." See Document 10 in petitioners "Objection to Record and Transcript". Mr. King filed an administrative appeal with the county stating these points and advocating for further disclosure of potential harms (including but not limited to odor, flies, pathogens, and other discharges) of the

proposed LCO and arguing that I.C. § 67-6529 merely provided an “optional tool” for managing the public hearings, not a tool for limiting comments from surrounding properties. The National Park Service, by way of Mr. King’s letters, directly challenged I.C. § 67-6529 as arbitrary and capricious, as well as the Board’s refusal to expand the one mile radius even though I.C. § 67-6529 gives them the authority to do so. Like the surrounding landowners, the decision to reject the National Park Service’s comments on the proposed LCO is material to the instant case (relating to the “undue burden” rule), inevitably leads to questioning of the validity of the Board’s decision, and another instance of procedural irregularity.

The documents relating to the National Park Service’s attempts to receive “preservation zone” status from Minidoka are fundamental to the Board’s decision. Such efforts, however were thwarted because of the cryptic and contradictory information given by Mr. Brown.⁴ This establishes a pattern of obtuse answers amounting to procedural irregularity. The documents pertaining to the efforts to designate Minidoka National Historic Site as a “preservation zone” are material to the case and the validity of the Board’s decision because had Jerome County competently guided Mr. King through the process, the Board’s deliberations in approving the LCO permit would be fundamentally changed by the nearby presence of a “preservation zone.” It is unlikely the Board would have approved an LCO permit so close to a “preservation zone.”

The sixth group of documents concerns the necessary reopening of the record after remand from the initial judicial review. This is required by I.C. § 67-5276 (1) (a) which allows inclusion of

⁴ Mr. King: “He [Mr. Brown] told me that we should get a special use permit and that his office would administratively change it to a preservation zone. I first requested to apply immediately—not to go through the special use permit, but to apply for a preservation zone. He [Mr. Brown] denied that and said “No. What you have to do is get a special use permit,” and then, once that’s done, his office would administratively change it to a preservation zone.” *See* Public Hearing Before The Jerome County Commissioners In Re: Big Sky Farms, LP September 25, 2007, R: 33, 8-17. Mr. King further added “[T]his is the first I’ve heard that we would have to go through another formal process to change the preservation zone, and it’s in direct conflict with what Mr. Brown told me.” *See* Public Hearing Before The Jerome County Commissioners In Re: Big Sky Farms, LP September 25, 2007, R: 33, 20-24.

new evidence if “there were good reasons for failure to present it in the proceeding before the agency.” In their July 23, 2008 motion, Dean and Eden Dimond attempted to bring new information to the County Commissioners but were not allowed to do so. Chief amongst these is the discovery of a new historical site on the National Registry of Historic sites within one quarter mile of the Big Sky Farms location. This new site is material to the Board’s decision as it would force the board to adhere to stricter standards in approving the LCO.

The Board adamantly and incorrectly refused any additional evidence on remand even though the court above had specifically stated that it was not merely to rubber stamp the application. The court noted “[T]here is a possibility that the Board could find some other valid basis on which to deny Big Sky’s LCO permit application.” *Don McFarland d/b/a Big Sky Farms v. Jerome County*, Case CV-07-1242, Idaho 5th Dist. Court, 16 (2008). Petitioners were not given an opportunity by the Board to submit additional evidence as to a valid basis to deny Big Sky’s permit application, a clear procedural irregularity.

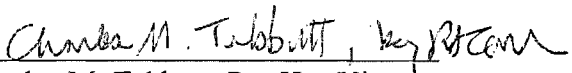
Having demonstrated the need for petitioner’s evidence to be augmented to the record in light of its material nature, its relation to the validity of the Board’s decision, and the bountiful evidence of “alleged procedural irregularities,” the issue of remand comes to bear. According to I.C. § 67-5276 (2) “the agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.” Respondent is correct in stating that the “first crack” is with the Board. On remand, the Board will then have new evidence to consider the effect of the proposed LCO on the surrounding land owners and should properly consider this evidence under 1-6.01 of the JCZO. This court should compel the Board to apply its own ordinance and include 1-6.01 in its considerations, as required by the Jerome County Zoning Ordinance.

CONCLUSION


The documents petitioners seek to augment reach and exceed the statutory threshold established by I.C. § 67-5276. All of the documents are material to the agency's decision, its exclusion puts the validity of the agency's decision in question, and as petitioners have shown, there were numerous procedural irregularities due to the Board's unlawful refusal to accept adequate public comment in violation of the Jerome County Zoning ordinance, statutory provisions, and the surrounding property owner's basic due process rights. The failure to make this evidence part of the record would hinder the Court's ability to make the appropriate decision about remand to the Board as well as deny the landowners their statutory and constitutional rights. We respectfully ask that the Court grant the motion to augment.

Dated: March 6th, 2009.

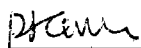
Respectfully submitted,


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Hutchinson & Brown, LLP

Attorney for Petitioners Friends of Minidoka,
Wayne Slone, guardian of James Slone, Idaho
Concerned Area Residents for the
Environment, Inc., the Japanese American
Citizens League, Inc., the National Trust for
Historic Preservation, Inc., and Preservation
Idaho, Inc.


Richard A. Carlson
Idaho State Bar No. 5971

Attorney for Petitioners Dean & Eden Dimond,
Harold & Carolyn Dimond, and the Idaho
Rural Council, Inc.

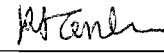
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2009, I served a true and correct copy
of the foregoing document on the persons whose names and addresses appear below, by hand
delivery:

John B. Lothspeich
Fredericksen, Williams, Meservy & Lothspeich, LLP
PO Box 168
Jerome, Idaho 83383

Michelle Emerson
Jerome County Clerk
300 N. Lincoln, Rm. 310
Jerome, Idaho 83338

Michael J. Seib
Jerome County Prosecutor
233 W Main St
Jerome, Idaho 83338



Richard A. Carlson

2008 MAR 13 AM 8 23

JOHN B. LOTH SPEICH
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Attorneys for Intervenor
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BY P. Baguer
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation of Idaho, Inc.)
)
Petitioners,)
)

CASE NO. CV 2008-1081

MEMORANDUM IN
OPPOSITION TO PETITIONERS'
MOTION TO AUGMENT
THE RECORD

Heading continued on next page

ORIGINAL

vs.)
)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
and Diana Obenauer, Members of the)
Jerome County Board of Commissioners,)
)
Respondents.)
<hr/>	
)
South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
)
Intervenor.)

COMES NOW, South View Dairy, an Idaho General Partnership, Tony Visser, William DeJong and Ryan Visser, general partners, successors in interest to Don McFarland, dba Big Sky Farms, the Intervenor in this matter by and through its attorney, John B. Lothspeich, of the law firm Williams, Meservy & Lothspeich, LLP, and submits this memorandum in opposition to Petitioners motion to augment the record.

FACTUAL OVERVIEW

On May 3, 2007, the Intervenor applied for a LCO permit for a site zoned A-1 agricultural in Jerome County.

On September 25 and 26, 2007, in an extraordinary allowance of public comment, the Board held a public hearing regarding Big Sky's permit application. Though typically only those parties, pursuant to Title 67, within a one (1) mile radius of owning property are allowed to testify at such hearings, the Board allowed anyone to come forth and testify in this two day hearing process.

On October 9, 2007, the Board deliberated and denied the permit.

On November 1, 2007, the Board issued a Written Decision denying Big Sky's

application. In the Written Decision the Board determined that Big Sky's application was complete under the Zoning Ordinance, and that the application met and complied with the criteria relevant to the application as set forth in Chapter 13 of the Jerome County Zoning Ordinance. However, the Board denied the application on the basis that the Nutrient Management Plan did not meet criteria set forth in Jerome County's Comprehensive Plan. The Board determined that it was contrary "aims of the Comprehensive Plan".

Upon the first petition for judicial review filed by, at that time Petitioner Don McFarland dba Big Sky Farms, the predecessor in interest to the Intervenor in the instant matter, in a Memorandum Decision on appeal to the District Court, issued by the Honorable G. Richard Bevan, District Judge, June 27, 2008, Jerome County Case No. CV 2007-1242, the Court determined that the Board erred in denying Big Sky's LCO permit. The Court wrote,

"Specifically, by focusing on the Comprehensive Plan, the Board relied on factors that are clearly not part of the criteria for approval under its own Ordinance. The denial of the permit was in many respects arbitrary and without a reasonable basis in law or fact." (Memorandum Decision, June 27, 2008, pg. 20).

Subsequent to Judge Bevan's Decision, upon remand, the agency then applied the correct criteria and granted permit issuance. That Decision resulted in the instant petition for judicial review.

It should be noted, that the only Intervenors/Crosspetitioners at that time were the Dimond family, specifically Dean Dimond, Carolyn Dimond, Eden Dimond and Harold Dimond. A vast three volume Record was prepared and submitted upon the first petition for judicial review without augmentation.

IRCP Rule 84(e), Method and Scope of Review, states in pertinent part,

"When judicial review was authorized by statute, and statute or law does not provide the procedure or standard, judicial review of agency action shall be based upon the record created before

the agency.”

The record created before the agency was settled in the previous case and ruled upon by Judge Bevan.

Upon remand, additional deliberations were completed by the Jerome County Board of Commissioners pursuant to the Court’s ruling. Only those deliberations and records regarding same and the decision approving permit issuance are appropriate under these facts. The Petitioners did not seek augmentation of the record in the prior proceeding.

IRCP 84(l), Augmentation of Record-Additional Evidence Presented to the District Court-Remand to Agency to take Additional Evidence, states,

“Any party desiring to augment the transcript or record with additional materials presented to the agency may move to the district court within twenty-one (21) days of filing of the settled transcript and record in the same manner and pursuant to the same procedure for augmentation of the record in appeals to the Supreme Court.”

At no time, did the Petitioners, seek to augment the record within twenty-one (21) days of the settled transcript and record in the case before Judge Bevan, Jerome County Case No. CV 2007-1242.

The Intervenor contends that the mere fact that the Petitioners did not seek to augment the record before Judge Bevan in the first petition for judicial review would prohibit them from seeking to augment the record now in a subsequent petition for judicial review.

Though the Court did remand the matter to the Board for additional findings, the doctrine of the law of the case is an appropriate basis for the Court to deny augmentation under these facts.

Under the law the case doctrine, on a second or subsequent appeal, the courts will not generally consider errors which arose prior to the first appeal which might have been raised as issues in the earlier appeal. (Capps v. Wood, 117 Idaho 614, 790 P.2d 395, Ct.App.

(1990)). The law of the case doctrine mandates that the rule of law necessary to the Supreme Court's decision on prior appeal must be adhered to throughout the case of subsequent progress, both in the trial court and upon subsequent appeal. (Union Pacific Corp. v. Idaho State Tax Commission, 139 Idaho 572, 83 P.3d 116 (2004)).

In Urrutia v. Blaine County, 134 Idaho 353, 2 P.3d 738 (2000), the court did indicate that the law of case doctrine does not apply where the district court remanded the case for further findings and, therefore, was not a final and binding adjudication of the issues presented. However, in Insurance Associates Corporation v. Hansen, 116 Idaho 948, 782 P.2d 1230 (1989), the court ruled that the trial court's findings in the original decision were the law of the case upon remand, where the court of appeals had concluded, in connection with the remand, that the findings were not clearly erroneous and should not be set aside. In this matter, Judge Bevan's Decision, regarding the record relied upon, should be the law of the case even though his Memorandum Decision upon the first petition for judicial review is not binding upon this Court. This is further supported by an application and review of Idaho Code §67-5276(a), which states,

“If, before the date of hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that additional evidence is material, relates to the validity of the agency action, and that;

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional fact finding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.”

There is no good reason why material sought to be augmented was not presented before the District Court in a prior petition for judicial review.

In addition, this rings hollow Petitioners contention that there was, pursuant to

subsection (b) of 67-5276, alleged irregularities in procedure before the agency, where it was not raised in the prior proceeding.

In its argument, the Petitioner claims that the Amended Jerome County Zoning Ordinances should be considered. The only Ordinance that is applicable is the Ordinance in effect at the time of the filing of the application. It is well settled law that an applicant's rights are determined by the ordinance in effect at the time of filing the application for the land use. (Ready to Pour, Inc. v. McCoy, 95 Idaho 510, 511 P.2d 792 (1973); Southfork Coalition v. Board of Commissioners of Bonneville County, 117 Idaho 857, 792 P.2d 882 (1990); Payette River Property Owners Association v. Board of Commissioners of Valley County, 132 Idaho 551, 976 P.2d 477 (1999); Canal/Norcrest/Columbus Action Committee, v. City of Boise, 136 Idaho 666, 39 P.3d 606 (2001); Chisholm v. Twin Falls County, 139 Idaho 131, 75 P.3d 185 (2003)). Jerome County Zoning Ordinance Chapter 13, Livestock Confinement Operations, was the standards and criteria used by the agency under the present facts. The Petitioners seek to have this Court consider Amended Jerome County Zoning Ordinances subsequent to the application filing. Though those are matters of public record, they are wholly immaterial and irrelevant for this proceeding.

Petitioners seek also to have a second group of documents, a series of letters documenting the concerns of surrounding property owners which they claim were incorrectly barred from the proceedings meets the standards of Idaho Code §67-5276.

At the hearing in this matter, over the course of two days, any individual could address the Board in an oral statement and submit evidence in writing. The proposed documents were never sought to be augmented in the first petition for judicial review. More than adequate opportunity for individuals was provided pursuant to law to address their concerns as neighbors.

An additional group of documents sought to be augmented is information submitted by ICARE, Executive Director, Alma Hasse who testified at the hearing before the agency.

She was also subsequently ejected from the hearing for not complying with the agency's demands for conforming her actions to proper conduct. The documents that are sought to be augmented are wholly immaterial to the instant application and even to Jerome County in particular. Proper and ample opportunity was provided for Ms. Hasse to highlight what she claims as severe negative impacts and dangers to neighboring properties. The claim of "undue burden" to surrounding properties of Petitioners that had this material been admitted to the record, the Board's Decision on whether the LCO constituted an undue burden to surrounding properties would have been profoundly influenced is incorrect. That contention was a resounding theme throughout the testimony of Ms. Hasse and others in opposition to the LCO permit throughout the hearing process. More than adequate argument was submitted of what was claimed as undue burdens to surrounding properties by many individuals who testified. The Board correctly refused to accept this documentation pursuant to law. There was no violation of Idaho Code §67-6529(2). In fact, ICARE's standing as a party in this process is highly questionable.

Idaho Code §67-6535(c) states in pertinent part,

"Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to remedy of a reversal of a decision."

Ms. Hasse and others involved on behalf of Petitioners lack the standing pursuant to law to claim a violation of fundamental rights and certainly, in turn, to augment the record with what they're claiming as additional evidence to support their position.

Petitioners note that Idaho Code §67-6525, Mandates of Boards, must accept comments from within the one (1) mile radius. That was more than adequately complied with, with the extraordinary two days of hearings. The one (1) mile radius was expanded by Jerome County in this case.

Petitioners contend that barring evidence from surrounding property owners who are not primary residents constitutes a violation of a land owners due process rights.

All neighbors and others had an opportunity to address the Board both in writing and orally. That was accomplished. The agency in this case far exceeded the mandates of the Local Land Use Planning Act and constitutional proscriptions in allowing public comment, mostly in opposition to this application.

Petitioners contend that they should not be precluded from augmenting the record since they were not a party that initiated the first judicial review of the agency decision. Regardless, that record was settled and established long ago and the Court's initial ruling upon judicial review was based upon the record created before the agency pursuant to IRCP 84(E)(1).

The emails requested by Petitioners to be augmented in the third and fifth set of documents are wholly irrelevant. It was not evidence produced at the hearing. The claim that the emails present a persistent pattern by the Board of excluding evidence from surrounding land owners is inconsistent with the Board's prior ruling denying permit issuance upon erroneous grounds.

The documents relating to the Minidoka National Historic Site's designation as special use area was addressed Neil King, an agent of the government expressing his concerns as to permit issuance and its claimed negative affects upon the site. This testimony was considered by the Board in a review of the facts and applying the facts to the relevant criteria of its governing zoning ordinance from the outset of these proceedings. This additional evidence was never sought to be augmented at the time of the first petition for judicial review.

Presently, the existing record is the appropriate record. The record was settled long ago in the first petition for judicial review decided by Judge Bevan.

Upon remand, the agency record of the transcript of meetings and deliberations is appropriate for the Court to review but nothing else. At some point, the Court has to determine the record completed. Petitioners are attempting to leap frog Judge Bevan's initial petition for judicial review entirely by augmenting the record with wholly new information

that was never presented at the hearing and never sought augmentation at the first judicial review hearing. It must not be allowed. There is no just good reason for it to having been not sought to be augmented in the prior proceeding.

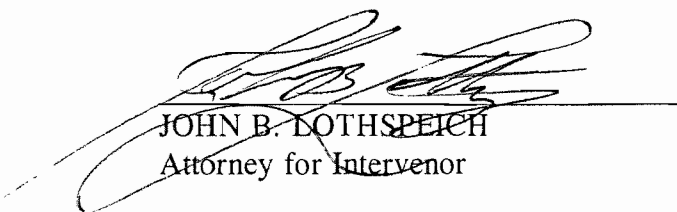
CONCLUSION

The documents Petitioners seek to augment fail to meet the statutory threshold pursuant to Idaho Code §67-5276. More than ample opportunity for any individual was presented in an extraordinary two day hearing to present written and oral testimony before the Board. The documents sought to be admitted are not material to the agency's decision and many addressed matters wholly outside of Jerome County.

The Petitioners should have sought to augment the record in the prior proceeding as they deemed it necessary.

For these reasons, the Intervenor requests the Court deny Petitioners motion to augment in all respects.

RESPECTFULLY SUBMITTED this 12 day of March, 2009.



JOHN B. LOTH SPEICH
Attorney for Intervenor

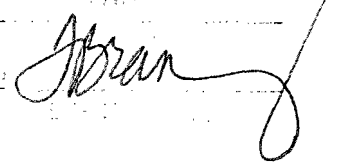
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of March, 2009, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below by the method indicated:

Honorable Robert J. Elgee 201 2 nd Avenue S, Suite 106 Hailey, Idaho 83333	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Via facsimile (208) 788-5512 <input type="checkbox"/> Hand delivery
Michael J. Seib, Chief Deputy Jerome County Prosecutor 233 W Main St Jerome, Idaho 83338	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input checked="" type="checkbox"/> Hand delivery
Charles M. Tebbutt Western Environmental Law Center 1216 Lincoln St Eugene, Oregon 97401	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> via facsimile <input type="checkbox"/> Hand delivery
Patrick D. Brown Hutchinson & Brown, LLP PO Box 207 Twin Falls, Idaho 83301	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Hand delivery
Richard A. Carlson Attorney at Law PO Box 21 Filer, Idaho 83328	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Hand delivery


JOHN B. LOTHSP Eich

2008 APR 9 07 4 33



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Attorneys for Intervenor

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEROME COUNTY

In the Matter of:)
)
The Jerome County Board of)
Commissioners' Decision Dated)
September 23, 2008 Approving A)
Livestock Confinement Operation Permit)
for Don McFarland, dba Big Sky Farms,)
)
Friends of Minidoka, Dean & Eden)
Dimond, Harold & Carolyn Dimond,)
Wayne Slone, guardian of James Slone,)
the Idaho Rural Council, Inc., Idaho)
Concerned Area Residents for the)
Environment, Inc., the Japanese American)
Citizens League, Inc., the National Trust)
for Historic Preservation, Inc., and)
Preservation of Idaho, Inc.)
)
Petitioners,)
)

CASE NO. CV 2008-1081

**OBJECTION TO PROPOSED
ORDER REGARDING
PETITIONERS' MOTION TO
AUGMENT RECORD AND
CORRECT TRANSCRIPT AND
SUBMISSION OF RELEVANT
ORDINANCES PURSUANT TO
THE COURTS' PRIOR ORDER**

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ORIGINAL

vs.)
)
Jerome County, a Political Subdivision)
of the State of Idaho, Joseph Davidson,)
and Diana Obenauer, Members of the)
Jerome County Board of Commissioners,)
)
Respondents.)
<hr/>	
)
South View Dairy, an Idaho General)
Partnership, Tony Visser, William)
DeJong and Ryan Visser,)
general partners,)
)
Intervenor.)

COMES NOW, South View Dairy, an Idaho General Partnership, Tony Visser, William DeJong and Ryan Visser, general partners, successors in interest to Don McFarland, dba Big Sky Farms, the Intervenor in this matter by and through its attorney, John B. Lothspeich, of the law firm Williams, Meservy & Lothspeich, LLP, and joins in the objection filed by the Respondent, Jerome County, dated April, 8, 2009, in all respects without reiterating same below. In addition, the Intervenor objects as follows:

Objection to subsection (2), wherein, it states that Petitioners may, “if they object to the accuracy of the ordinance(s), conduct discovery on the certification of the ordinance(s)”, this was not ordered by the Court in either the March 16, 2009 hearing before the Court in Blaine County or the March 30, 2009, telephonic status conference held with the Court and counsel to the Intervenor’s Counsel’s recollection.

Filed concurrently with this objection as **Exhibit “A”** is the Certification of the Clerk of Jerome County Board of Commissioners that the attached exhibits are true and correct

copies of Chapters 13 and 23 of the Jerome County Zoning Ordinances as they were on May 3, 2007.

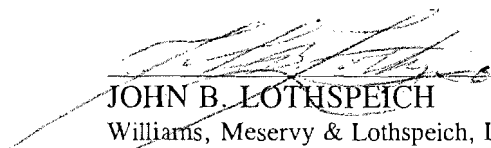
Filed concurrently as Exhibit "B" is the Affidavit of the Clerk of Jerome County Board of Commissioners, which sets forth any amendments or corrections to the ordinances prior to and subsequent to May 3, 2007 and all required publication notices; as Exhibit "C" is the Affidavit of the Clerk/Auditor/Recorder of Jerome County, which sets forth the specific duties of the Clerk regarding this matter; and as Exhibit "D" is the Supplemental Affidavit of Clerk/Auditor/Recorder of Jerome County which sets forth a correction stating which specific ordinances were the only ordinances of record as of May 3, 2007, regarding the county zoning ordinances:

- (a) relevant to the public hearings conducted on September 25 and 26, 2007, and the Decision of the Board of County Commissioners on November 1, 2007, concerning Big Sky Farms Livestock Confinement Operation (LCO) application filed on May 3, 2007; and
- (b) any amendments of modifications to the Jerome County Zoning Ordinances relevant to the decision of the Board of County Commissioners dated September 23, 2008, on remand from the Decision of Judge Bevan from Jerome County case no. CV 2007-1242, dated June 27, 2008, on the same LCO application.

At the March 30, 2009 status conference hearing, it was agreed that the attorney for the Intervenor would prepare the relevant order regarding the above. Counsel was awaiting the final installment of the documents prepared by the Clerk/Auditor/Recorder which was received on March 31, 2009. Counsel for the Intervenor was unable to immediately dispatch an order to the Court by way of being committed to a court trial before Judge John K. Butler in Jerome County in Sudik v. DeVries, Jerome County case no. CV 2008-207 on April 1-3, 2009.

Counsel for the Intervenor objects to the inclusion of the language in subsection (2) of the proposed order as set forth herein.

RESPECTFULLY SUBMITTED this 7th day of April, 2009.



JOHN B. LOTH SPEICH
Williams, Meservy & Lothspeich, LLP
Attorney for Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of April, 2009, I served a true and correct copy of the foregoing document on the persons whose names and addresses appear below by the method indicated:

Michael J. Seib, Chief Deputy Jerome County Prosecutor 233 W Main St Jerome, Idaho 83338	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input checked="" type="checkbox"/> Hand delivery
---	--

Michelle Emerson Jerome County Clerk 300 N. Lincoln, Rm. 310 Jerome, Idaho 83338	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input checked="" type="checkbox"/> Hand delivery
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Charles M. Tebbutt Western Environmental Law Center 1216 Lincoln St Eugene, Oregon 97401	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> via facsimile <input type="checkbox"/> Hand delivery
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Patrick D. Brown Hutchinson & Brown, LLP PO Box 207 Twin Falls, Idaho 83301	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Hand delivery
--	--

Richard A. Carlson Attorney at Law PO Box 21 Filer, Idaho 83328	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Via facsimile <input type="checkbox"/> Hand delivery
--	--



JOHN B. LOTHSPREICH

EXHIBIT A

CERTIFICATION

The undersigned hereby certifies as Clerk of the Jerome County Board of Commissioners that the attached or foregoing exhibits are true and correct copies of certain records, specifically Chapters 13 and 23 of the Jerome County Zoning Ordinance as they were on May 3, 2007, with such records being made by the regularly conducted business activity of the Jerome County Board of Commissioners and its administrative assistants, and kept as part of the regular practice and business activity of the Jerome County Board of Commissioners.

The undersigned further certifies that she is the custodian of such records or otherwise qualified to have access to such records and to make this certification.

DATED this 27 day of March 2009.

Michelle Emerson

 Michelle Emerson
 Clerk of the Jerome County Board of Commissioners



State of Idaho)
) ss
 County of Jerome)

On this 27 day of March, 2009, before me, the undersigned, a Notary Public, personally appeared Michelle Emerson, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he or she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.

Tracee McKim

 NOTARY PUBLIC for Idaho
 Residing at: Jerome
 Commission Expires: 5/19/2014

CHAPTER 13

LIVESTOCK CONFINEMENT OPERATIONS (Amended 8-28-03)

13-1. GENERAL.

13-1.01 The specific provisions of this Chapter control when other portions of the JCZO are inconsistent with provisions of this Chapter.

13-1.02 Any action by Jerome County pursuant to this Chapter does not insure that the applicant is in compliance with any other provisions of applicable local, State, and/or Federal laws, rules, and/or regulations.

13-1.03 The provisions of this Chapter are minimum standards, and any more restrictive standards required by other applicable local, State, and/or Federal laws, rules, and/or regulations must be complied with.

13-2. APPLICABILITY.

13-2.01 REQUIREMENTS.

Any and all livestock operations are subject to the following requirements:

- a) A Waste Distribution Plan for all waste from a livestock operation. Discharge of waste from a property owned or controlled by any livestock operator is prohibited. This applies to any livestock operation, regardless of size or type. Animal waste products, including sprinkled waste, shall not leave the property of the operator, unless the operator has agreed with another party to disperse animal waste products on that person's property. Liquid waste treatment lagoon, separators and holding ponds and such dispersal shall meet all local, State and Federal guidelines.
- b) A Nutrient Management Plan and Waste System Design for solid and liquid waste approved by the appropriate State agency regulating solid and liquid waste.
- c) Odor management and pest control shall utilize current best management practices.
- d) All new operations or the expanding portion of an existing operation shall be required to use shielded or directional lighting.
- e) Waste storage on property not a part of the LCO, i.e. leased or rented property, is required to follow setbacks stated in 13-4.04.

13-2.02 PASTURED ANIMALS.

Pastured animals are not considered to be a confined livestock operation and, therefore, they do not need a permit, nor are they regulated as to the number of animals that an owner can have on his property. Pasture is defined as land where crops, vegetation, or forage

growth are sustained in the normal growing season.

13-2.03 OPERATIONS REQUIRING A PERMIT.

Livestock operations requiring a permit include all operations in Jerome County, which meet the definition of a Livestock Confinement Operation (LCO). A LCO is defined as a use of real property which may produce crops, vegetation or forage grown outside of the LCO animal confinement site and includes the animal confinement site (other than fish production facilities) where the following conditions exist: (Amended 3-25-2004)

- a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and,
- b. Crops, vegetation, or forage growth are not sustained in the normal growing season on the animal confinement site in the normal growing season. (Amended 3-25-2004)
- c. There are more than 75 confined animal units on one parcel or lot.
- d. There are more than 2 confined animal units per acre.

13-2.04 ANIMAL UNITS.

One animal unit is the unit of measure for any LCO and is defined as 1,000 pounds of livestock. The weight of any type of livestock is determined by tables of weights typical for that type of livestock. The Administrator shall grandfather all existing Livestock Confinement Operation Permits that were approved by Jerome County before August 28, 2003 when Jerome County changed its designation of an animal unit from 1.4 to 1000 pounds of confined animals. (Amended 4-27-2006)

13-2.05 ZONES.

In A-1 zones, for all new and existing operations:

- a. More than 2.0 animal units per acre requires a permit.
- b. More than 75 animal units total requires a permit. In all other zones new LCO operations are not allowed.

13-2.06 EXISTING LCO'S WITHOUT A LCO PERMIT.

- a. All existing LCO's of greater than 75 animal units or more than 2.0 animal units per acre in existence without a LCO Permit shall be required to have a Livestock Siting Permit.
- b. Such LCO's shall be granted a Livestock Siting Permit without a fee upon filing a completed Livestock Siting Permit Application with the Planning and Zoning Administrator.

- c. Such LCO's shall file a completed application no later than 60 days after notification by the Planning & Zoning Administrator of the requirements of 13-2.03.

13-2.07 EXPANSION OR MODIFICATION OF AN EXISTING LCO, STRUCTURES AND PROPERTY. (Amended 1-13-05)

- a. Expansion of an existing LCO holding a LCO or a Livestock Siting Permit will require the LCO owner to apply for a new LCO Permit as outlined in Section 13-5. Expansion is defined, for the purposes of this Chapter, as an increase in animal units.
- b. A modification or expansion of structures as to location or otherwise with no increase in animal units of a LCO with an existing permit requires a Livestock Structure Expansion Siting Permit for corrals, lagoons and wells. (Amended 3-25-2004; 1-13-05)
- c. An expansion of property area only, with no increase in animal units or change of structures, will only require the submission of the property legal description and approval by the Administrator. (Amended 1-13-05)
- d. Changes of structure(s) in an existing LCO, mandated by new Federal or State regulations, shall be permitted provided there is no erosion of existing setbacks. (Amended 1-13-05)
- e. A proposed site subject to a public hearing according to I.C. 67-6529 (2) is defined by the Board of Jerome County Commissioners to not include modifications or expansions to the property area or structures to an existing site which do not substantially alter the existing LCO Animal Confinement Site Plan on file with the Administrator. (Added 1-13-05)
- f. The reduction of property area only, maintaining a maximum of ten animal units per acre and all existing structure(s) shall meet the minimum setback requirements of the Jerome County Zoning Ordinance and shall apply for Property Line Reduction Permit that shall only require approval by the Administrator. (Added 10/6/2005)

13-3. PERMITTED LOCATIONS.

13-3.01 NEW LCO'S.

New LCO's shall be allowed only in Agricultural A-1 Zone, and only after compliance with the provisions of this Chapter and the JCZO.

13-3.02 MAXIMUM ANIMAL UNIT DENSITY FOR LCO'S.

The maximum density of animal units for any LCO shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated.

13-4. REQUIRED SETBACKS FOR NEW OR MODIFIED LCO. (Amended 1-13-05)

13-4.01 PUBLIC ROADS AND/OR HIGHWAYS.

All structures and animal confinement areas shall be a minimum of 20 feet from the public road right-of-way.

13-4.02 WELLS. (Amended 9-9-04)

- A. All water wells shall be a minimum of 300 feet from any liquid or solid waste storage facility and a minimum of 50 feet from all animal confinement areas.
- B. If all of the following conditions are met, water wells may be a minimum of one hundred (100) feet from any liquid or solid waste storage facility and twenty (20) feet from all animal confinement areas: 1. Liquid waste storage facility is lined and approved by the appropriate agency having regulatory authority; 2. A solid berm, or comparable structure, two feet in height is installed around the wellhead to prevent runoff from contaminating the well; 3. A backflow valve is installed on the well to prevent any contaminants from reaching the water source; 4. An annular seal between the well casing and borehole is installed and approved pursuant to applicable Idaho Department of Water Resources requirements; 5. Any other condition(s) required by the County if site or other factors warrant.

13-4.03 ANIMAL CONFINEMENT AREAS.

Animal confinement areas shall be 300 feet from any residence not associated with the LCO, if the residence is in existence or under construction at the time the LCO application is filed. All LCO corrals or feed yards shall be 50 feet away from the water's edge of any canal, lateral or ditch, which might return to the Snake River. (See Performance Standards Chapter 6-5.01 q).

13-4.04 PROPERTY LINES. (Amended 1-13-05)

- a. Any modification of a LCO must result in all property of the LCO being contiguous. See Chapter 2, Contiguous Properties. (Added 1-13-05)
- b. Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be a minimum of 50 feet away from the water's edge of any canal, lateral or ditch which might return to the Snake River, and 300 feet from any LCO property line. (Amended 1-13-05)
- c. Manure stored off site must comply with Performance Standards in the Jerome County Zoning Ordinance, Chapter 6-5.01 r. 4. (Amended 1-13-05)
- d. Composting shall be a minimum of 300 feet from any residence not associated with the LCO. It shall be a minimum of 50 feet from any highway district right-of-way and 50 feet minimum away from water's edge of any canal, lateral or ditch which might return to the Snake River, and 50 feet from any adjoining neighbor's property line. (Amended 1-13-05)

13-4.05 LOCATIONS NEAR BOUNDARIES BETWEEN A-1 AND A-2 ZONES.

Animal confinement areas, liquid waste treatment lagoons, separators, liquid and/or solid

waste storage facilities, and feed storage areas (excluding dry hay and straw storage which shall meet a 300 foot setback requirement) shall be a minimum of 1,000 feet from the boundary between zones A-1 and A-2.

13-4.06 SETBACKS APPLY EQUALLY.

All distance requirements noted in 13-4.01 through 13-4.05 shall apply equally to new LCO construction or new residence construction. For example 13-4.03 requires animal confinement areas to be a minimum of 300 feet from existing residences. This requirement also means that new residences (construction begun after permit application for a LCO) must be located a minimum of 300 feet from the animal confinement areas shown on the LCO site plan as approved by Jerome County.

13-5. PROCEDURE FOR LCO AND SITING PERMIT APPLICATION.

13-5.01 PERMIT. (Amended 1-13-05)

All permit applications as required in this Chapter shall be filed with the Administrator by the owner, or by someone with the owner's written permission, of the real property for which the LCO is proposed.

13-5.02 LCO PERMIT APPLICATION. (Amended 1-13-05)

LCO Permit application forms shall be available at the Jerome County Planning & Zoning Administrator's Office, Jerome, Idaho. Completed applications for LCO's will be filed with the Administrator. The Administrator shall forward a copy of the application to the Department of Agriculture Siting Team. The LCO Permit application shall include the following items:

- a. The name, complete address and telephone number of the applicant(s).
- b. The legal description of the real property upon which the LCO will be constructed and operated, along with common directions from the intersection of Main and Lincoln in Jerome, Idaho.
- c. A full description of the present use of the property, including the present zoning of the property.
- d. A full written description of the LCO.
- e. A parcel map of all the property of the proposed livestock confinement operation with the site location of the animal confinement site outlined on the parcel map. Vicinity map with the LCO site location. (If available, a detailed sketch of the site location on an aerial photograph with the following:) (Amended 3-25-2004)
 1. Private and community domestic water wells, irrigation wells, and existing monitoring wells, existing injection wells as documented by the IDWR; irrigation canals and laterals, rivers, designated wetlands, streams, springs, and reservoirs

adjoining residences and public thoroughfares which are within a one (1) mile radius of the proposed facility. (Amended 3-25-2004; 4-27-2006)

- f. A complete site plan of the LCO animal confinement site, minimum size 18" x 24". Minimum site plan drawing scale shall be 1" = 100'. The site plan shall include, but not be limited to, location of all structures, feed storage areas, animal confinement areas, waste storage areas, rock outcroppings, sink holes, traffic access, area lighting fixtures of the proposed facility and public thoroughfares, and shall also include all setback measurements. (Amended 3-25-2004; 4-27-2006)
- g. FEMA Flood Zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant. This is obtainable from the Planning & Zoning Administrator's office. (Amended 3-25-2004)
- h. A waste system design for solid and/or liquid waste approved by the appropriate State agency regulating solid and/or liquid waste. (Amended 3-25-2004)
- i. A sketch of how the natural drainage would go around the corral area and not through it. An engineering drawing is not required. (Amended 3-25-2004)
- j. A characterization of the proposed facility and any land application site(s) owned or operated by the applicant that, if available, includes the following information: (Amended 3-25-2004)
 1. Annual precipitation as contained in the Idaho Waste Management Guidelines; and
 2. Soil characteristics from NRCS.
 - i. Topographical map.
 - ii. Soils map.
 - iii. Soils profile.
 3. Hydrogeological factors from IDWR, ISDA and USGS including:
 - i. Depth to first water-yielding zone and first encountered water.
 - ii. Direction of ground-water movement and gradient.
 - iii. Sources and estimates of recharge.
 - iv. Seasonal variations in water level and recharge characteristics.
 - v. Susceptibility to contamination.
 - vi. Ground water/surface water relationships.

4. Water quality data from IDEQ, ISDA, IDWR and USGS, including:

- i. Microorganisms (bacteria or single-cell.
 - ii. Nutrients.
 - iii. Pharmaceuticals and organic compounds.
- k. Written comment on and approval of the site plans and site assessment by Department of Agriculture CAFO SITE ADVISORY TEAM is required. (Amended 9-9-04)
- l. Site assessment comments are required from the appropriate Highway District, Irrigation Delivery Department, South Central Health District, Department of Agriculture, Department of Water Resources, and/or other agencies designated by the Planning & Zoning Administrator. The Applicant is required to submit these comments with his application. The Board of County Commissioners may place conditions on the Livestock Confinement Operation Permit as requested by the agencies. (Amended 3-25-2004; 9-9-04; 4-27-2006)
- m. A non-refundable fee, in an amount to be determined by resolution of the Board shall accompany each application or re-application for a LCO Use Permit. The Board may waive or adjust fee at their discretion. (Amended 3- 25-2004; 9-9-04; 11-9-2006)

13-5.03 LIVESTOCK SITING PERMIT APPLICATION.

The Livestock Siting Permit Application shall include the following items:

- a. The name, complete address and telephone number of the applicant.
- b. Legal description of property and common address.
- c. Acres of land, existing use, zoning district, type of LCO, quantity of animal units and species of animal.
- d. Full description of the LCO with a complete LCO Animal Confinement Site Plan. (Amended 3-25-2004)

13-5.04 LCO STRUCTURE SITING PERMIT APPLICATION. (Added 3-25-2004)
(Amended 1-13-05)

- a. The name, complete address and telephone number of the applicant.
- b. Legal description of the property and common address.
- c. Acres of land, type of structure and zoning district.

- d. A LCO animal confinement site including the dimension, size, setbacks or alterations and the location of the existing and new proposed structure(s) on the lot, including all feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic accesses, public thoroughfares and building heights. A topographical map of the parcel shall be submitted. (If a LCO or Siting Permit is on file, then the applicant only needs to up-date the existing file with the new information.)

13-5.05 TIME LIMITATIONS. (Amended 3-25-2004)

Once granted, a LCO permit remains with the property described in the application. If the applicant fails to begin construction within 2 years of permit issuance, or fails to have a LCO Occupancy Permit within 5 years of LCO permit issuance, with the exception of legitimate legal delay, the LCO permit is no longer valid and an application must be resubmitted. If the LCO remains out of operation for a period of more than 10 years, the LCO permit is no longer valid and an application must be resubmitted.

13-5.06 EXISTING PERMIT TRANSFERS. (Amended 3-25-2004)

The holder of the existing permit may transfer a Livestock Siting Permit or LCO Permit to a new owner or operator upon written notification to the Planning & Zoning Administrator. The Administrator shall place the transfer document in the existing LCO Permit file.

13-5.07 AMENDING THE LIVESTOCK SITING PERMIT AND LCO PERMIT. (Amended 3-25-2004)

If the type of animal or animal species is changed from the existing Livestock Siting Permit or LCO Permit, then amended permits are required. The procedure for amending the permits includes the following:

- a) The siting team is required to visit the site and provide written comment and approval.
- b) The applicant shall comply with the requirements of 13-5.02 e.

13-5.08 REDUCTION OF PROPERTY LINE OF AN EXISTING SITING PERMIT OR LCO PERMIT. (Added 9-9-04)

- a. Reduction of property area shall require the owner of the Livestock Confinement Operation to apply for a LCO Property Line Reduction Permit.
- b. The existing Livestock Confinement Operation shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated.
- c. All structure setbacks shall comply with the requirements of Chapter 13-4 of this Ordinance.

13-5.09 PROPERTY LINE REDUCTION PERMIT APPLICATION. (Added 9-9-04)

The Property Line Reduction Permit Application shall include the following items:

- a. The name, complete address and telephone number of the applicant.
- b. Legal description of the new property line reduction.

- c. Acres of land and zoning district.
- d. Site plan showing that all structure setbacks comply with the requirements of Chapter 13-4 of this Ordinance.

13-6. LCO PERMIT APPROVAL AND APPEAL PROCEDURE.

13-6.01 PUBLIC NOTIFICATION.

The Planning & Zoning Administrator shall cause a Notice of the filing of an application for a LCO Permit to be published in a newspaper of general circulation in Jerome County, Idaho. The Administrator shall also send the notice by mail to all property owners within one mile of the boundaries of the contiguous property owned by the applicant of the proposed LCO pursuant to Idaho Code 67-6529. The property owner shall be responsible to forward Notice of Hearing to all primary residents on the property. The applicant for the LCO Permit, in addition to the application fee, shall pay all costs of publication and notice.

13-6.02 PUBLIC COMMENT.

The application shall be available for public inspection for a period of 15 days after publication in the newspaper, including weekends and holidays, during regular business hours, at the Planning & Zoning Administrator's office. Any primary resident, in accordance with Idaho Code 67-6529, may submit written comments and/or objections to the Administrator within 15 days after publication of the notice in the newspaper. The Administrator shall evaluate the written comments and submit those comments to be part of the record for the Hearing before the Board of County Commissioners.

13-6.03 PERMIT DECISION.

One Public Hearing shall be heard before the Board of County Commissioners. A permit to construct shall be issued or denied by the Board of County Commissioners.

13-6.04 APPEAL.

There is no appeal of this decision provided for in Chapter 19 of the Jerome County Zoning Ordinance. An affected person, aggrieved by the decision of the Board of County Commissioners, may, seek judicial review under the procedure provided by Idaho Code or as the section may be amended.

13-6.05 AMENDMENTS DURING CONSTRUCTION.

New LCO's shall be constructed according to the site plans submitted to the Planning & Zoning Administrator. The Administrator may approve amendments submitted by the applicant during the construction process to the site plan as long as the amended changes and/or material changes do not change the set back requirements in Chapter 13 of the Jerome County Zoning Ordinance.

13-6.06 OCCUPANCY PERMIT.

The Occupancy Permit shall be issued and operation of the LCO may commence upon receipt by the Planning & Zoning Administrator of all the following:

- a. Certification by the applicant that the LCO has been constructed according to the site plans submitted to the Planning & Zoning Administrator, including any changes to those plans that were approved by the Administrator.
- b. A final approval letter from the appropriate State agency certifying that the waste system as constructed is approved.
- c. A letter or other certification from the Department of Water Resources that the applicant has water rights sufficient to operate the facility with the number of animal units permitted under the LCO Permit.
- d. A letter of approval for Nutrient Management Plan from appropriate agency, if required.

13-6.07 OPERATION.

LCO's shall be operated in accordance with the LCO Permit submitted in the application.

13-7. VIOLATION.

Any LCO owner, who has not filed a LCO Permit or Livestock Siting Permit with the Planning & Zoning Administrator within 60 days of written notification from the Administrator that this is required, shall be in violation of the Jerome County Zoning Ordinance. The owner may not continue operation and must apply for a LCO Permit.

13-7.02 Failure of the owner of an existing LCO to make application for a Livestock Siting Permit or LCO permit as required by this Chapter shall constitute a violation of the JCZO and the owner may not continue operation of the LCO without a LCO or Siting Permit obtained in accordance with this Chapter.

CHAPTER 23

PROCEDURAL REQUIREMENTS FOR MEETINGS AND HEARINGS

23-1. PURPOSE.

23-1.01 The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the Planning Commission. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended. (Amended 8-31-2006; 11-9-2006)

23-1.02 The purpose of this Chapter is to establish a Planning Commission to establish orderly procedures for conducting formal business of a Legislative Hearing. (Added 8-31-2006)

23-1.03 The purpose of the Chapter is to establish a Zoning Commission to establish orderly procedures for conducting formal business of a Quasi-Judicial Hearing. (Added 8-31-2006)

23-2. BY-LAWS.

23-2.01 The Planning Commission and Zoning Commission shall approve their Bylaws and make a recommendation of approval to the Board. The Bylaws of the Planning Commission and Zoning Commission shall be in effect and are hereby made part of this ordinance after the adoption of the Bylaws by the Board. All amendments to the Bylaws which are approved and adopted by the Board shall become effective upon adoption. (Amended 6-5-03; 8-31-2006; 11-9-2006)

23-3. RULES OF PROCEDURE.

23-3.01 The Chairman of the meeting shall rule on all questions of procedure and the admission of evidence in accordance with this Chapter of this Ordinance, the Bylaws of the Planning Commission and Zoning Commission, or Robert's Rules of Order as currently stated. (Amended 11-9-2006)

23-4. ORDER OF BUSINESS. (Amended 8-31-2006)

23-4.01 The Order of Business at regular meetings of the Planning Commission and Zoning Commission shall be: (Amended 11-9-2006)

- a. Call to order.
- b. Reading of minutes of prior meeting and the taking of appropriate action.

- c. Consideration of old business and the taking of appropriate action.
- d. Consideration of new business and the taking of appropriate action.
- e. Reports concerning current activities of the Planning and Zoning Administrator and/or Building Official. (Amended 1-12-98)

23-5. RECORD OF MEETING.

- 23-5.01 An accurate record of all business transacted at meetings and hearings of the Planning Commission and Zoning Commission shall be kept through the use of recording equipment and/or through the presence of a clerk/stenographer. A formal meeting of the Planning or Zoning Commission shall not proceed unless it is being properly recorded. (Amended 8-31-2006; 11-9-2006)
- 23-5.02 The Planning Commission shall meet with the Zoning Commission when any new proposals for legislative changes to the Jerome County Zoning Ordinance, Comprehensive Plan and Land Use Map are considered and before the Planning Commission conducts any hearing on proposed legislative changes. (Added 8-31-2006)
- 25-5.03 The Zoning Commission shall meet with or seek input on all new changes to the Comprehensive Future Land Use Map with the Planning Commission when any new submitted proposals are before the Zoning Commission. (Added 8-31-2006)

23-6. THE CHAIRMAN.

- 23-6.01 The Chairman of the Planning Commission or Zoning Commission, or his proper surrogate as provided in the Bylaws of the Planning Commission or Zoning Commission, shall conduct the meeting in a manner which assures that all parties to a petition for action by the Planning Commission or Zoning Commission, whether protagonist or antagonist, receive adequate opportunity to be heard, under the concept of due process. The Chairman shall require that all who give testimony keep their remarks pertinent to the matter under consideration. The Chairman shall have power to place a reasonable limit on the time allotted for each witness to testify. (Amended 8-31-2006; 11-9-2006)
- 23-6.02 The Chairman shall admit as evidence all testimony that is relevant to the matter before the Planning Commission or Zoning Commission insofar as the evidence proves, disproves, is material, or is germane to the matter under consideration. (Amended 8-31-2006; 11-9-2006)

23-7. PRESENTATION OF EVIDENCE.

23-7.01 All documentary evidence, whether delivered by e-mail, fax, mail, hand delivery or otherwise shall be submitted seven days prior to the scheduled Planning Commission or Zoning Commission Hearings. The only exception is that a person present at the scheduled hearing shall be allowed to present a one-sided document no larger than 8 1/2" x 11" that is sufficiently legible, handwritten or typed in type size not less than 12 point or pica in any standard font provided the type may not be smaller than 12-point standard Times New Roman when they present their testimony at the scheduled Planning or Zoning Hearing. The documents referred to in this section shall be surrendered to the Planning Commission or Zoning Commission and shall become a part of the permanent record of the testimony given in the matter under consideration. This section does not apply to staff of the Planning Commission or Zoning Commission. (Amended 10/6/2005; 4-27-2006; 8-31-2006; 11-9-2006)

23-7.02 Evidence shall be given in an orderly manner as follows:

- a. Testimony by the petitioner (allow 5 minutes), the one who is seeking an action by the Planning Commission or Zoning Commission. The petitioner, at the conclusion of this testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). (Amended 1-22-04; 8-31-2006; 11-9-2006)
- b. Testimony by the Planning and Zoning Administrator. The Administrator, at the conclusion of his/her testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission (no time limit). (Amended 1-22-04; 8-31-2006; 11-9-2006)
- c. Testimony by witnesses in support of the petition (2 minutes). Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). (Amended 1-22-04; 8-31-2006; 11-9-2006)
- d. Testimony by witnesses who oppose the petition (allow 5 minutes) for principal opposer and (2 minutes) for all others. Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). (Amended 1-22-04; 8-31-2006; 11-9-2006)
- e. Rebuttal testimony by the petitioner. At the conclusion of his/her rebuttal, the petitioner may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the

Planning Commission or Zoning Commission (no time limit). (Amended 1-22-04; 8-31-2006; 11-9-2006)

- f. As a final action in receiving testimony, the Chairman of the Planning Commission or Zoning Commission may call for testimony from Staff, consultants and advisors to the Planning Commission or Zoning Commission or any other persons deemed necessary by the Planning Commission or Zoning Commission. Such witness(es) shall be subject to questioning by the Chairman of the Planning Commission or Zoning Commission and by members of the Planning Commission or Zoning Commission. (no time limit) (Amended 6-5-03; 1-22-04; 8-31-2006; 11-9-2006)

23-7.03 BURDEN OF PROOF.

The burden of proving that the Planning Commission or Zoning Commission favorably toward the petition under consideration rests solely upon the petitioner. (Amended 8-31-2006; 11-9-2006)

23-8. DECISION.

The Planning Commission or Zoning Commission, or the Board, as the case may be, shall render a decision within one hundred eighty (180) days after the date of the Hearing. The decision shall be in writing. The presiding officer shall sign it and it shall state the specific Findings of Fact and Conclusions of Law which support the decision. The criteria, standards, regulations, and recommendations found in the Comprehensive Plan and in such other Ordinances and Regulations of Jerome County that are used by the Planning Commission or Zoning Commission in making its decision shall be identified, and the manner in which they affect the final decision shall be stated. (Amended 10/6/2005; 4-27-2006; 8-31-2006; 11-9-2006)

EXHIBIT B

JOHN HORGAN
 Office of the Jerome County Prosecutor
 Jerome County Judicial Annex
 233 West Main
 Jerome, Idaho 83338
 TEL: (208) 644-2630
 FAX: (208) 644-2639
 ISB No. 3068

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

In the matter of:)
)
)
 The Jerome County Board of Commissioners;)
 Decision Dated September 23, 2008)
 Approving A Livestock Confinement)
 Operation Permit for Don McFarland, dba Big)
 Sky Farms,)
 _____)
)
 Friends of Minidoka, Dean & Eden Dimond,)
 Harold & Carolyn Dimond, Wayne Slone,)
 guardian of James Slone, the Idaho Rural)
 Council, Inc., Idaho Concerned Area)
 Residents for the Environment, Inc., the)
 Japanese American Citizens League, Inc., the)
 National Trust for Historic Preservation, Inc.,)
 and Preservation Idaho, Inc.)
)
 Petitioners,)
 _____)
 vs.)
)
 Jerome County, a Political Sub-Division of)
 the State of Idaho, Joseph Davidson, Charles)
 Howell, and Diana Obenauer, Members of the)
 Jerome County Board of Commissioners,)
)
 Respondent.)
 _____)

Case No.: CV 2008-1081

AFFIDAVIT OF CLERK/AUDITOR/
 RECORDER OF JEROME COUNTY

Heading continued on next page

South View Dairy, an Idaho General)
Partnership, Tony Visser, William DeJong)
and Ryan Visser, general partners,)
)
Intervenor.)
_____)


STATE OF IDAHO)
 : ss.
County of Jerome)

Michelle Emerson, being first duly sworn upon oath, deposes and says as follows:

1. I am the Jerome County Clerk/Auditor/Recorder of Jerome County.
2. As the County Auditor, I am the custodian of all records lodged with my office.
3. Among the records kept by my office are all the ordinances passed by the Jerome County Board of Commissioners.
4. The various attached exhibits contain several ordinances that show amendments, both prior and subsequent to May 3, 2007, to Chapter 13 of the Jerome County Zoning Ordinance.
5. Specifically, Exhibit 1 is Chapter 13 of the Jerome County Zoning as recorded in my office in August of 2003.
6. Exhibit 1-A is an Affidavit of Publication for the document shown in Exhibit 1.
7. Exhibit 2 contains Ordinances 2004-02; 2004-03; 2005-1; 2005-07; 2006-04; and 2006-10, which all contain amendments made to various sections of Chapter 13, subsequent to the 2003 date of Exhibit 1, but prior to May 3, 2007.

8. Also included in Exhibit 2 is a corresponding Affidavit of Publication for each of the Ordinances shown in Exhibit 2.
9. Exhibit 3 contains Ordinances 2007-6; 2008-4 (not published and thus never in effect); and Corrected Ordinance 2008-4, dated September 22, 2008, which are the ordinances on record to present that have amended Chapter 13 subsequent to May 3, 2007.
10. Also included in Exhibit 3 is a corresponding Affidavit of Publication for each of the Ordinances shown in Exhibit 3.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Michelle Emerson

SUBSCRIBED AND SWORN to before me this 30 day of March 2009.

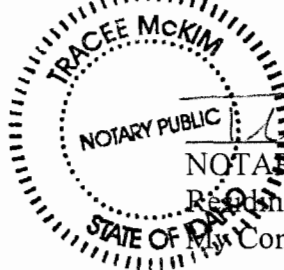

Tracee McKim
NOTARY PUBLIC for Idaho
Residing at Jerome, therein
My Commission Expires: 5/19/2014

EXHIBIT 1

Instrument # 2035129

JEROME COUNTY, JEROME, IDAHO
2003-09-22 10:48:46 No. of Pages: 16
Recorded for: JEROME COUNTY COMMISSIONERS
CHERYL WATTS Fee: 0.00
Ex-Officio Recorder Deputy *C. Bench*

ORDINANCE NO 2003 - 09

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT, CHAPTER 2, DEFINITION OF TERMS, CHAPTER 5, REGULATIONS WITHIN ZONES, CHART 5-1, CHAPTER 6, PERFORMANCE STANDARDS, 6-5.01 r. 4, and CHAPTER 13, LIVESTOCK CONFINEMENT OPERATIONS

CHAPTER 2, DEFINITION OF TERMS

Animal Feeding Operation (AFO). A small facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period, and the facility does not produce any crops, vegetation or forage growth and does not require a permit to confine animals if:

1. It has 75 or less confined animal units on one parcel or lot.
2. It has 2 or less confined animal units per acre.

Animal Unit. An animal unit is the unit of measure for any LCO and is defined as 1000 pounds of livestock. The weight of any type of livestock is determined by tables of weights typical for that type of livestock.

Contiguous Real Property. Parcels that share a common boundary are contiguous property, without regard to canals, roads or railroads.

Composting, Agricultural. A LCO operator that uses composting as part of his LCO can compost on any property in A-1 Zone that the LCO operator owns.

Livestock Confinement Operation (LCO). A large facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period, and the facility does not produce any crops, vegetation or forage growth and does require a permit to confine animals if:

1. It has more than 75 confined animal units on one parcel or lot.
2. It has more than 2 confined animal units per acre.

CHAPTER 5, REGULATIONS WITHIN ZONES CHART 5-1

Delete L-LCO Permit required and change to read L- LCO Permit required with Hearing before the Board of County Commissioners as mandated by Idaho Code 67-6529.

CHAPTER 6, PERFORMANCE STANDARDS 6-5.01 r. 4.

Composting and solid animal waste storage facilities shall be 50 feet away from water's edge of any canal or lateral ditches and 300 feet from any property line.

CHAPTER 13

Ex. 1

LIVESTOCK CONFINEMENT OPERATIONS

13-1. GENERAL.

- 13-1.01 The specific provisions of this Chapter control when other portions of the JCZO are inconsistent with provisions of this Chapter.
- 13-1.02 Any action by Jerome County pursuant to this Chapter does not insure that the applicant is in compliance with any other provisions of applicable local, State, and/or Federal laws, rules, and/or regulations.
- 13-1.03 The provisions of this Chapter are minimum standards, and any more restrictive standards required by other applicable local, State, and/or Federal laws, rules, and/or regulations must be complied with.

13-2. APPLICABILITY.

13-2.01 REQUIREMENTS

Any and all livestock operations are subject to the following requirements:

- a) A Waste Distribution Plan for all waste from a livestock operation. Discharge of waste from a property owned or controlled by any livestock operator is prohibited. This applies to any livestock operation, regardless of size or type. Animal waste products, including sprinkled waste, shall not leave the property of the operator, unless the operator has agreed with another party to disperse animal waste products on that person's property. Liquid waste treatment lagoon, separators and holding ponds and such dispersal shall meet all local State and Federal guidelines.
- b) A Nutrient Management Plan and Waste System Design for solid and liquid waste approved by the appropriate State agency regulating solid and liquid waste.
- c) Odor management and pest control shall utilize current best management practices.
- d) All new operations or the expanding portion of an existing operation shall be required to use shielded or directional lighting.
- e) Waste storage on property not a part of the LCO, i.e. leased or rented property, is required to follow setbacks stated in 13-4.04.

13-2.02 PASTURED ANIMALS

Pastured animals are not considered to be a confined livestock operation and, therefore, they do not need a permit, nor are they regulated as to the number of animals that an owner can have on his property. Pasture is defined as land where crops, vegetation, or forage growth are sustained in the normal growing season.

13-2.03 OPERATIONS REQUIRING A PERMIT

Livestock operations requiring a permit include all operations in Jerome County, which meet the definition of a Livestock Confinement Operation (LCO).

An LCO is defined as a use of real property (other than fish production facilities) where the following conditions exist:

- a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and,
- b. Crops, vegetation, or forage growth are not sustained in the normal growing season.
- c. There are more than 75 confined animal units on one parcel or lot.
- d. There are more than 2 confined animal units per acre.

13-2.04 ANIMAL UNITS

One animal unit is the unit of measure for any LCO and is defined as 1000 pounds of livestock. The weight of any type of livestock is determined by tables of weights typical for that type of livestock.

13-2.05 ZONES

In A-1 zones, for all new and existing operations:

- a. More than 2.0 animal units per acre requires a permit.
- b. More than 75 animal units total requires a permit.

in all other zones new LCO operations are not allowed.

13-2.06 EXISTING LCO'S WITHOUT AN LCO PERMIT

- a. All existing LCO's of greater than 75 animal units or more than 2.0 animal units per acre in existence without a LCO Permit shall be required to have a Livestock Siting Permit.
- b. Such LCO's shall be granted a Livestock Siting Permit without a fee upon filing a completed Livestock Siting Permit Application with the Planning and Zoning Administrator.
- c. Such LCO's shall file a completed application no later than 60 days after notification by the Planning & Zoning Administrator of the requirements of 13-2.03.

13-2.07 EXPANSION OF AN EXISTING LCO, STRUCTURES AND PROPERTY

- a. Expansion of an existing LCO holding a LCO or a Livestock Siting Permit will require the LCO owner to apply for a new LCO Permit as outlined in Section 13-5.. Expansion is defined, for the purposes of this Chapter, as an increased in animal units.

- b. An expansion of structures only with no increase in animal units of an LCO with an existing permit requires an LCO Structure Siting Permit for corrals and lagoons. A zoning or building permit is required for other structures.
- c. An expansion of property area only, with no increase in animal units or change of structures, will only require the approval of the Planning & Zoning Administrator.
- d. Changes of structure(s) in an existing CAFO, mandated by new Federal or State regulations, shall be permitted provided there is no erosion of existing setbacks.

13-3. PERMITTED LOCATIONS.

13-3.01 NEW LCO'S

New LCO's shall be allowed only in Agricultural A-1 zone, and only after compliance with the provisions of this Chapter and the JCZO.

13-3.02 MAXIMUM ANIMAL UNIT DENSITY FOR LCO'S

The maximum density of animal units for any LCO shall not exceed ten (10) Animal Units per acre on the contiguous real property on which the LCO is operated.

13-4. REQUIRED SETBACKS FOR A NEW LCO OR EXPANSION OF EXISTING LCO

13-4.01 PUBLIC ROADS AND/OR HIGHWAYS

All structures and animal confinement areas shall be a minimum of 20 feet from the public road right-of-way.

13-4.02 WELLS

All potable water wells shall be a minimum of 300 feet from any liquid or solid waste storage facility and a minimum of 50 feet from all animal confinement areas.

13-4.03 ANIMAL CONFINEMENT AREAS

Animal confinement areas shall be 300 feet from any residence not associated with the LCO, if the residence is in existence or under construction at the time the LCO application is filed.

All LCO corrals or feed yards shall be 50 feet away from the water's edge of any canal, lateral or ditch, which might return to the Snake River. (See Performance Standards Chapter 6-5.01 q).

13-4.04 PROPERTY LINES

Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be a minimum of 50 feet away from the water's

edge of any canal, lateral or ditch which might return to the Snake River, and 300 feet from any LCO property line.

For manure stored off site, see Chapter 6 – Performance Standards in the Jerome County Planning & Zoning Ordinance.

Composting shall be a minimum of 300 feet from any residence not associated with the LCO. It shall be a minimum of 50 feet from any highway district right-of-way and 50 feet minimum away from water's edge of any canal, lateral or ditch which might return to the Snake River, and 50 feet from any adjoining neighbor's property line.

13-4.05 LOCATIONS NEAR BOUNDARIES BETWEEN A-1 AND A-2 ZONES
Animal confinement areas, liquid waste treatment lagoons, separators, liquid and/or solid waste storage facilities, and feed storage areas (excluding dry hay and straw storage which shall meet a 300 foot setback requirement) shall be a minimum of 1,000 feet from the boundary between zones A-1 and A-2.

13-4.06 SETBACKS APPLY EQUALLY
All distance requirements noted in 13-4.01 through 13-4.05 shall apply equally to new LCO construction or new residence construction. For example 13-4.03 requires animal confinement areas to be a minimum of 300 feet from existing residences. This requirement also means that new residences (construction begun after permit application for an LCO) must be located a minimum of 300 feet from the animal confinement areas shown on the LCO site plan as approved by Jerome County.

13-5. PROCEDURE FOR LCO AND SITING PERMIT APPLICATION

13-5.01 PERMIT
An LCO permit application as required in this Chapter shall be filed with the Planning & Zoning Administrator by the owner of the real property for which the LCO is proposed.

13-5.02 APPLICATION
LCO Permit application forms shall be available at the Jerome County Planning & Zoning Administrator's Office, Jerome, Idaho. Completed applications for LCO's will be filed with the Administrator. The Administrator shall forward a copy of the application to the Department of Agriculture Siting Team. The LCO Permit application shall include the following items:

- a. The name, complete address and telephone number of the applicant(s).
- b. The legal description of the real property upon which the LCO will be constructed and operated, along with common directions from the intersection of Main and Lincoln in Jerome, Idaho.
- c. A full description of the present use of the property, including the present zoning of the property.

- d. A full written description of the LCO.
- e. Vicinity map with the site location. (If available, a detailed sketch of the site location on an aerial photograph with the following:)
1. A complete site plan of the LCO site, minimum size 18" x 24". Minimum site plan drawing scale shall be 1" = 100'. The site plan shall include, but not be limited to, location of all structures, feed storage areas, animal confinement areas, waste storage areas, rock outcroppings, sink holes, traffic access, area lighting fixtures, adjoining residences within one mile of site boundaries of the proposed facility and public thoroughfares, and shall also include all setback measurements.
 2. Private and community domestic water wells, irrigation wells, and existing monitoring wells, existing injection wells as documented by the IDWR; irrigation canals and laterals, rivers, designated wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the proposed facility.
 3. FEMA Flood Zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant. This is obtainable from the Planning & Zoning Administrator's office.
 4. A waste system design for solid and/or liquid waste approved by the appropriate State agency regulating solid and/or liquid waste.
 5. A sketch of how the natural drainage would go around the corral area and not thru it. An engineering drawing is not required.
- f. A characterization of the proposed facility and any land application site(s) owned or operated by the applicant that, if available, includes the following information:
1. Annual precipitation as contained in the Idaho Waste Management Guidelines; and
 2. Soil characteristics from NRCS.
 - i. Topographical map.
 - ii. Soils map
 - iii. Soils profile
 3. Hydrogeological factors from IDWR, ISDA and USGS including:
 - i. Depth to first water-yielding zone and first encountered water.
 - ii. Direction of ground-water movement and gradient.
 - iii. Sources and estimates of recharge.
 - iv. Seasonal variations in water level and recharge characteristics.

- v. Susceptibility to contamination.
 - vi. Ground water/surface water relationships.
4. Water quality data from IDEQ, ISDA, IDWR and USGS, including:
- i. Microorganisms (bacteria or single-cell).
 - ii. Nutrients.
 - iii. Pharmaceuticals and organic compounds.
- g. Written comment on and approval of the site plans and site assessment by Department of Agriculture CAFO SITE ADVISORY TEAM is required. Site assessment comments are required from the appropriate Highway District, Irrigation Delivery Department, South Central Health District, Department of Agriculture, Department of Water Resources, and/or other agencies designated by the Planning & Zoning Administrator.
- h. A non-refundable fee, in an amount to be determined by resolution of the Jerome County Commissioners, shall accompany each application or re-application for an LCO Use Permit.

13-5.03 LIVESTOCK SITING PERMIT APPLICATION

The Livestock Siting Permit Application shall include the following items:

- a. The name, complete address and telephone number of the applicant.
- b. Legal description of property and common address.
- c. Acres of land, existing use, zoning district, type of LCO, quantity of animal units and species of animal.
- d. Full description of the LCO with a complete Site Plan.

13-5.04 TIME LIMITATIONS

Once granted, an LCO permit remains with the property described in the application. If the applicant fails to begin construction within 2 years of permit issuance, or fails to have an LCO Occupancy Permit within 5 years of LCO permit issuance, with the exception of legitimate legal delay, the LCO permit is no longer valid and an application must be resubmitted. If the LCO remains out of operation for a period of more than 10 years, the LCO permit is no longer valid and an application must be resubmitted.

13-5.05 EXISTING PERMIT TRANSFERS

The holder of the existing permit may transfer a Livestock Siting Permit or LCO Permit to a new owner or operator upon written notification to the Planning & Zoning Administrator. The Administrator shall place the transfer document in the existing LCO Permit file.

13-5.06 AMENDING THE LIVESTOCK SITING PERMIT AND LCO PERMIT

If the type of animal or animal species is changed from the existing Livestock Siting Permit or LCO Permit, then amended permits are required. The procedure for amending the permits includes the following:

a) The siting team is required to visit the site and provide written comment and approval.

b) The applicant shall comply with the requirements of 13-5.02 e.

13-6. LCO PERMIT APPROVAL AND APPEAL PROCEDURE.

13-6.01 PUBLIC NOTIFICATION

The Planning & Zoning Administrator shall cause a Notice of the filing of an application for an LCO Permit to be published in a newspaper of general circulation in Jerome County, Idaho. The Administrator shall also send the notice by mail to all property owners within one mile of the boundaries of the contiguous property owned by the applicant of the proposed LCO pursuant to Idaho Code 67-6529. The property owner shall be responsible to forward Notice of Hearing to all primary residents on the property. The applicant for the LCO Permit, in addition to the application fee, shall pay all costs of publication and notice.

13-6.02 PUBLIC COMMENT

The application shall be available for public inspection for a period of 15 days after publication in the newspaper, including weekends and holidays, during regular business hours, at the Planning & Zoning Administrator's office. Any primary resident, in accordance with Idaho Code 67-6529, may submit written comments and/or objections to the Administrator within 15-days after publication of the notice in the newspaper. The Administrator shall evaluate the written comments and submit those comments to be part of the record for the Hearing before the Board of County Commissioners.

13-6.03 PERMIT DECISION

One Public Hearing shall be heard before the Board of County Commissioners. A permit to construct shall be issued or denied by the Board of County Commissioners.

13-6.04 APPEAL

There is no appeal of this decision provided for in Chapter 19 of the Jerome County Zoning Ordinance. An affected person, aggrieved by the decision of the Board of County Commissioners, may seek judicial review under the procedure provided by Idaho Code or as the section may be amended.

13-6.05 AMENDMENTS DURING CONSTRUCTION

New LCO's shall be constructed according to the site plans submitted to the Planning & Zoning Administrator. The Administrator may approve amendments submitted by the applicant during the construction process to the site plan as long as the amended changes and/or material changes do not change the set back requirements in Chapter 13 of the Jerome County Zoning Ordinance.

13-6.06 OCCUPANCY PERMIT

The Occupancy Permit shall be issued and operation of the LCO may commence upon receipt by the Planning & Zoning Administrator of all the following:

- a. Certification by the applicant that the LCO has been constructed according to the site plans submitted to the Planning & Zoning Administrator, including any changes to those plans that were approved by the Administrator.
- b. A final approval letter from the appropriate State agency certifying that the waste system as constructed is approved.
- c. A letter or other certification from the Department of Water Resources that the applicant has water rights sufficient to operate the facility with the number of animal units permitted under the LCO Permit.
- d. A letter of approval for Nutrient Management Plan from appropriate agency, if required.

13-6.07 OPERATION

LCO's shall be operated in accordance with the LCO Permit submitted in the application.

13-7. VIOLATION.

13-7.01 Any LCO owner, who has not filed an LCO Permit or Livestock Siting Permit with the Planning & Zoning Administrator within 60 days of written notification from the Administrator that this is required, shall be in violation of the Jerome County Zoning Ordinance. The owner may not continue operation and must apply for an LCO Permit.

13-7.02 *Failure of the owner of an existing LCO to make application for a Livestock Siting Permit or LCO permit as required by this Chapter shall constitute a violation of the JCZO and the owner may not continue operation of the LCO without a LCO or Siting Permit obtained in accordance with this Chapter.*

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and,

WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of

Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 22nd DAY OF August, 2003.

JEROME COUNTY BOARD OF COMMISSIONERS



Veronica Lierman
VERONICA LIERMAN, CHAIR

[Signature]
JOHN ELORRIETA, COMMISSIONER

Alvin R. Chojnacky
ALVIN R. CHOJNACKY, COMMISSIONER

ATTEST:

Cheryl Watts
CHERYL WATTS, CLERK

RECORDING NO. _____

EXHIBIT 1-A

AFFIDAVIT of PUBLICATION

State of Idaho } ss.
County of Jerome }

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 28th day of August, 2003, and the date of the last publication was on the 28th day of August, 2003.

On this 28th day of August, in the year of 2003, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 1x

Lines tabular at _____ 8.0¢/Pica
1584 Lines straight at 110.88 7.0¢/Pica

Subsequent lines at _____ 6.0¢/Pica
Affidavit Fee: 2.50
TOTAL COST 113.38

COPY OF NOTICE

(Paste Here)

Ord. # 2003-9
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome County
BILL TO

ORDINANCE NO. 2003-9

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT, CHAPTER 2, DEFINITION OF TERMS, CHAPTER 5, REGULATIONS WITHIN ZONES, CHART 5-1, CHAPTER 6, PERFORMANCE STANDARDS, 6-5.01 r.4. and CHAPTER 13, LIVESTOCK CONFINEMENT OPERATIONS, CHAPTER 2, DEFINITION OF TERMS, adding Animal Feeding Operation (AFO). A small facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period, and the facility does not produce any crops, vegetation or forage growth and does not require a permit to confine animals if: 1. It has 75 or less confined animal units on one parcel or lot 2. It has 2 or less confined animal units per acre. Animal Unit. An animal unit is the unit of measure for any LCO and is defined as 1000 pounds of livestock. The weight of any type of livestock is determined by tables of weights typical for that type of livestock. Contiguous Real Property. Parcels that share a common boundary are contiguous property, without regard to canals, roads or railroads. Composting, Agricultural. A LCO operator that uses composting as part of his LCO can compost on any property in A-1 Zone that the LCO operator owns. Livestock Confinement Operation (LCO). A large facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period, and the facility does not produce any crops, vegetation or forage growth and does not require a permit to confine animals if: 1. It has more than 75 confined animal units on one parcel or lot 2. It has more than 2 confined animal units per acre. Chapter 5, Regulations Within Zones, Chart 5-1. Delete L-LCO Permit required and change to read L-LCO Permit required with Hearing before the Board of County Commissioners as mandated by Idaho Code 67-6529. Chapter 6, Performance Standards, 6-5.01 r.4. Composting and solid animal waste storage facilities shall be 50 feet away from water's edge of any canal or lateral ditches and 300 feet from any property line. Summary of amendments of Chapter 13,

Ord 2003-9

AFFIDAVIT of PUBLICATION

State of Idaho } ss.
County of Jerome }

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for

1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 28th day of August, 2003, and the date of the last publication was on the 28th day of August, 2003.

On this 28th day of August, in the year of 2003, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 1x

_____ Lines tabular at _____ 8.0¢/Pica
1584 Lines straight at 110.88 7.0¢/Pica
_____ Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50

TOTAL COST 113.38

COPY OF NOTICE

(Paste Here)

Ord # 2003-9

TITLE OF NOTICE

Livestock Confinement Operation, 13-1, 13-1.01, 13-1.02, 13-1.03 General. 13-2.01 Applicability requirements have been changed; requiring a Waste Distribution Plan; for all waste. Nutrient Management Plan, Pest & Odor Control shall utilize current best management practices, shield lightings and waste storage setbacks on property not a part of the LCO. 13-2.02 Pastured animals are not considered to be a confined livestock operation. 13-2.03 Livestock operation requiring a permit. 13-2.04 Animal unit will be defined as 1000 pounds of livestock. 13-2.05 Livestock operations are only allowed in A-1 Zone. 13-2.06 Requirements for existing LCO's without a LCO permit, 13-2.07 Expansion of an existing LCO, structures and property. Expansion is defined, for the purposes of this chapter, as an increase in animal units. 13-3, 13-3.01 & 13-3.02 Permitted locations for a LCO. 13-4 Required setbacks for a new LCO or expansion of existing LCO. Lagoons and solid waste shall be 300 feet and composting shall be 50 feet from a property line. 13-4.01 Public Roads and/or highway, 13-4.02 Wells, 13-4.03 Animal Confinement areas. 13-4.04 Property lines, 13-4.05 Location near boundaries between A-1 and A-2 and 13-4.06 Setbacks apply equally. 13-5 Procedure for LCO and siting permit application, 13-5.01 Permit, 13-5.02 Application, 13-5.03 Livestock siting permit application, 13-5.04 time limitations, 13-5.05 Existing permit transfers, 13-5.06 Amending the livestock siting permit and LCO permit. 13-6 LCO Permit approval and appeal procedure in accordance with Idaho Code 67-6529, 13-6.01 Public notification, 13-6.02 Public comment, 13-6.03 Permit decision, 13-6.04 Appeal, 13-6.05 Amendments during construction, 13-6.06 Occupancy permit, 13-6.07 Operation, 13-7, 13-7.01 & 13-7.02 Violation. WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and, WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and, WHEREAS, all notices and hearings required by County and State law have been given and held; and, WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved. THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code. Adopted and approved this _____ day of _____, 2003. Jerome County Board of Commissioners, Veronica Lierman, Chair, John Elorrieta, Commissioner, Alvin R. Chojnacky, Commissioner, ATTEST: Cheryl Watts, Clerk, Recording No. PUB: 8/28 N49036

EXHIBIT 2

ORDINANCE NO. 2004 - 02

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2, CHAPTER 5 CHART 5-9, CHAPTER 13, 13-2.03, 13-2.03 b, 13-2.07 b, 13-5.02 e 1-5, 13-5.02 f, 13-5.02 g, 13-5.02 h, 13-5.03 d, 13-5.04, 13-5.05, 13-5.06, and CHAPTER 19-8.03

Chapter 2, Definitions

BERM. A precautionary measure made by constructing an embankment, by excavation or combination thereof, to prevent runoff onto an adjacent property.

LIVESTOCK CONFINEMENT OPERATION ANIMAL CONFINEMENT SITE. A location where animals are confined within the Livestock Confinement Operation.

Change **LIVESTOCK CONFINEMENT OPERATION (LCO).** to read A large facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period. The proposed Livestock Confinement Operation can produce crops, vegetation or forage grown outside of the animal confinement site and land is included for purpose of animal units required by this Ordinance. A LCO requires a permit to confine animals if: 1. It has more than 75 confined animal units on one parcel or lot or 2. It has more than 2 confined animal units per acre.

Chapter 5, Chart 5-9 Construction Trades: Change from S-5 to S in City Impact Area.

Chapter 13, 13-2.03 A LCO is defined as a use of real property which may produce crops, vegetation or forage grown outside of the animal confinement site and includes the animal confinement site (other than fish production facilities) where the following conditions exist.

13-2.03 b add to the end of the sentence on the animal confinement site in the normal growing season.

13-2.07 b change LCO Structure Siting Permit to LCO Expansion Siting Permit, add all before other structures.

13-5.02 e Add as the first sentence A parcel map of all the property of the proposed livestock confinement operation with the site location of the animal confinement site outlined on the parcel map. Second sentence to read Vicinity map with the site location.

13-5.02 e 2 becomes 13-5.02 e 1.

13-5.02 e 1 becomes 13-5.02 f with the addition after LCO Animal Confinement.

Change 13-5.02 e 3 to 13-5.02 g.

Change 13-5.02 e 4 to 13-5.02 h.

Change 13-5.02 e 5 to 13-5.02 i.

Change 13-5.02 f to 13-5.02 j.

Instrument # 2041372
JEROME COUNTY, JEROME, IDAHO
2004-03-15 10:23:53 No. of Pages: 3
Recorded for : JEROME COUNTY COMMISSIONERS
CHERYL WATTS Fee: 0.00
Ex-Officio Recorder Deputy *Bunch*

Change 13-5.02 g to 13-5.02 k.

Change 13-5.02 h to 13-5.02 i and add Commissioners may waive or adjust fee at their discretion.

Add to 13-5.03 d after the word complete LCO Animal Confinement Site Plan.

13-5.04 as follows: LIVESTOCK STRUCTURE EXPANSION SITING PERMIT APPLICATION. a. The name, complete address and telephone number of the applicant. b. Legal description of the property and common address. c. Acres of land, type of structure and zoning district. d. A LCO animal confinement site including the dimension, size, setbacks or alterations and the location of the existing and new proposed structure (s) on the lot, including all feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic accesses, public thoroughfares and building heights. A topographical map of the parcel shall be submitted. (If a LCO or Siting Permit is on file, then the applicant only needs to update the existing file with the new information.)

Current 13-5.04 TIME LIMITATIONS. Becomes 13-5.05.

Current 13-5.05 EXISTING PERMIT TRANSFERS. Becomes 13-5.06.

Current 13-5.06 AMENDING THE LIVESTOCK SITING PERMIT AND LCO PERMIT. Becomes 13-5.07.

Chapter 19-8.03 Change to read: The applicant, or any affected person(s), who appears in person or in writing before the Commission may appeal the decision of the Commission to the Board of County Commissioners, provided that the Appeal is submitted to the Board within fifteen (15) days of the Commission signing the written Finding of Facts and Conclusions of Law.

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and,

WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF

Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 15 DAY OF March, 2004.

JEROME COUNTY BOARD OF COMMISSIONERS

Veronica Lierman
VERONICA LIERMAN, CHAIR

[Signature]
JOHN ELORRIETA, COMMISSIONER

Alvin R. Chojnacky
ALVIN R. CHOJNACKY, COMMISSIONER



Cheryl Watts
CHERYL WATTS, CLERK

RECORDING NO. _____

Ord 2004-2

AFFIDAVIT of PUBLICATION

COPY OF NOTICE

(Paste Here)

Ord 2004-2
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome Co Commissioners
BILL TO

ORDINANCE NO. 2004-2

SUMMARY OF AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2, CHAPTER 5 CHART 5-9, CHAPTER 13, AND CHAPTER 19-8.03 CHAPTER 2 DEFINITIONS, BERM. A precautionary measure made by constructing an embankment, by excavation or combination thereof, to prevent runoff onto an adjacent property. LIVESTOCK CONFINEMENT OPERATION ANIMAL CONFINEMENT SITE. A location where animals are confined within the Livestock Confinement Operation. Change LIVESTOCK CONFINEMENT OPERATION (LCO). to read A large facility which has animals that are stabled/confined or fed/maintained for 45 days or more within any 12 month period. The proposed Livestock Confinement and Operation can produce crops, vegetation or forage grown outside of the animal confinement site and land is included for purpose of animal units required by this Ordinance. A LCO requires a permit to confine animals if: 1. It has more than 75 confined animal units on one parcel or lot or 2. It has more than 2 confined animal units per acre. Chapter 5, Chart 5-9 Construction Trades: Change from S-5 to S in City Impact Area. Chapter 13, 13-2.03 A LCO is defined as a use of real property which may produce crops, vegetation or forage grown outside of the animal confinement site and includes the animal confinement site (other than fish production facilities) where the following conditions exist. 13-2.03 b add to the end of the sentence on the animal confinement site in the normal growing season. 13-2.07 b change LCO Structure Siting Permit to LCO Expansion Siting Permit, add all before other structures. 13-5.02 e Add as the first sentence A parcel map of all the property of the proposed livestock confinement operation with the site location of the animal confinement site outlined on the parcel map. Second sentence to read Vicinity map with the site location. 13-5.02 e 2 becomes 13-5.02 e 1. 13-5.02 e 1 becomes 13-5.02 f with the addition after LCO Animal Confinement. Change 13-5.02 e 3 to 13-5.02 g. Change 13-5.02 e 4 to 13-5.02 h. Change 13-5.02 e 5 to 13-5.02 i. Change 13-5.02 f to 13-5.02 j. Change 13-5.02 g to 13-5.02 k. Change 13-5.02 h to 13-5.02 l and add Commissioners may waive or

State of Idaho } ss.
County of Jerome }

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 25th day of March 2004, and the date of the last publication was on the 25th day of March 2004.

On this 25th day of March, in the year of 2004, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions IX

_____ Lines tabular at _____ 8.0¢/Pica
1571.04 Lines straight at 109.97 7.0¢/Pica
_____ Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50

TOTAL COST 112.47

AFFIDAVIT of PUBLICATION

COPY OF NOTICE

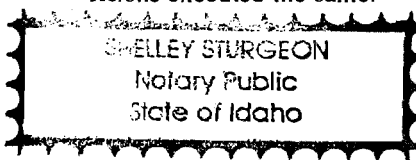
(Paste Here)

Ord 2004-2

State of Idaho } ss.
County of Jerome }

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 25th day of March 2004, and the date of the last publication was on the 25th day of March 2004.

On this 25th day of March, in the year of 2004, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.



Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 1X
_____ Lines tabular at _____ 8.0¢/Pica
1571.04 Lines straight at 109.97 7.0¢/Pica
_____ Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50
TOTAL COST 112.47

TITLE OF NOTICE
adjustment at their discretion. Add to 13-5.03 d after the word complete LCO Animal Confinement Site Plan. 13-5.04 as follows: LIVESTOCK STRUCTURE EXPANSION SITING PERMIT APPLICATION. a. The name, complete address and telephone number of the applicant. b. Legal description of the property and common address. c. Acres of land, type of structure and zoning district. d. A LCO animal confinement site including the dimension, size, setbacks or alterations and the location of the existing and new proposed structure (s) on the lot, including all feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic accesses, public thoroughfares and building heights. A topographical map of the parcel shall be submitted. (If a LCO or Siting Permit is on file, then the applicant only needs to update the existing file with the new information). Current 13-5.04 TIME LIMITATIONS. Becomes 13-5.05. Current 13-5.05 EXISTING PERMIT TRANSFERS. Becomes 13-5.06. Current 13-5.06 AMENDING THE LIVESTOCK SITING PERMIT AND LCO PERMIT. Becomes 13-5.07. Chapter 19-8.03 Change to read: The applicant, or any affected person(s), who appears in person or in writing before the Commission may appeal the decision of the Commission to the Board of County Commissioners, provided that the Appeal is submitted to the Board within fifteen (15) days of the Commission signing the written Finding of Facts and Conclusions of Law. WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and, WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and, WHEREAS, all notices and hearings required by County and State law have been given and held; and, WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved. THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code. ADOPTED AND APPROVED THIS 15TH DAY OF MARCH, 2004. JEROME COUNTY BOARD OF COMMISSIONERS. Complete copy of the Ordinance is available at the Jerome County web site, Planning and Zoning Office and County Clerk's Office.

/s/ VERONICA LIERMAN, CHAIR
/s/ JOHN ELORRIETA, COMMISSIONER
/s/ALVIN R CHOJNACKY, COMMISSIONER

ATTEST
s/Cheryl Watts
Jerome County Clerk
DIR. 3/25

N49649

ORDINANCE NO. 2004 - 03

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2; CHAPTER 5 CHART 5-1, CHART 5-6; CHAPTER 13, 13-4.02, 13-5.02 k., l., m., 13-5.08, 13-5.09 AND CHAPTER 19, 19-10.01

Add: CHAPTER 2 DEFINITIONS

Instrument # 2044399
JEROME COUNTY, JEROME, IDAHO
2004-08-16 11:06:16 No. of Pages: 4
Recorded for : JEROME COUNTY COMMISSIONERS
CHERYL WATTS Fee: 0.00
Ex-Officio Recorder Deputy *Burch*

Brink. Brink is the edge at the top of a steep place.

Canyon. The Canyon is a geological structure consisting of a deep gorge with various brinks and plateaus resembling a staircase, with layers of harder rocks forming cliffs and layers of softer rock forming gentler slopes.

Canyon Rim. The Canyon Rim is the highest brink of a canyon which consists of a slope of 30 degrees or steeper for a distance of 50 feet or more. The location of the rim shall be determined before any excavation of grading preparatory to development.

LCO Liquid Storage Facility. An impoundment that stores liquid animal or any other liquid waste associated with the LCO operation.

LCO Solid Storage Facility. A location where solid animal waste and/or composting is stored on the property.

Liquid Waste System. The wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system.

Plateau. Plateau is a flat surface between the Canyon Rim and the Slope.

Preservation Zone. The Preservation Zone is from the middle of the Snake River to the Canyon Rim. No building structure other than aquaculture, boat dock, pumping station and power plants shall be closer to the Snake River than one hundred (100) feet to a line on the side or bank of the river that is located by a level five feet above the high water mark of the natural flow created by impounded water of the river.

Slope. The Slope is land that goes up or down at an angle.

CHAPTER 5, CHART 5-1

Change Livestock Containment Operations to Livestock Confinement Operation and delete L in Light Industrial and Heavy Industrial under Livestock Confinement Operation.

CHAPTER 5, CHART 5-6

Delete S in A-1 Zone under Condominiums.

CHAPTER 13-4.02 WELLS.

Change to A. All water wells shall be a minimum of 300 feet from any liquid or solid waste storage facility and a minimum of 50 feet from all animal confinement areas. B. If all of the

following conditions are met, water wells may be a minimum of one hundred (100) feet from any liquid or solid waste storage facility and twenty (20) feet from all animal confinement areas: 1. Liquid waste storage facility is lined and approved by the appropriate agency having regulatory authority; 2. A solid berm, or comparable structure, two feet in height is installed around the wellhead to prevent runoff from contaminating the well; 3. A backflow valve is installed on the well to prevent any contaminants from reaching the water source; 4. An annular seal between the well casing and borehole is installed and approved pursuant to applicable Idaho Department of Water Resources requirements; 5. Any other condition(s) required by the County if site or other factors warrant.

CHAPTER 13-5.02 k,l,m

13-5.02 k – Written comment on and approval of the site plans and site assessment by Department of Agriculture CAFO Site Advisory Team is required.

13-5.02 l - Site assessment comments are required from the appropriate Highway District, Irrigation Delivery Department, South Central Health District, Department of Agriculture, Department of Water Resources, and/or other agencies designated by the Planning and Zoning Administrator. The Applicant is required to submit these comments with his application.

13-5.02 m – A non-refundable fee, in an amount to be determined by resolution of the Jerome County Commissioners, shall accompany each application or re-application for a LCO Use Permit. Commissioners may waive or adjust fee at their discretion.

CHAPTER 13-5.08

Add: REDUCTION OF PROPERTY LINE OF AN EXISTING SITING PERMIT OR LCO PERMIT. a. Reduction of property area shall require the owner of the Livestock Confinement Operation to apply for a LCO Property Line Reduction Permit. b. The existing Livestock Confinement Operation shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated. c. All structure setbacks shall comply with the requirements of Chapter 13-4 of this Ordinance.

CHAPTER 13-5.09

Add: PROPERTY LINE REDUCTION PERMIT APPLICATION. The Property Line Reduction Permit Application shall include the following items: a. The name, complete address and telephone number of the applicant. b. Legal description of the new property line reduction. c. Acres of land and zoning district. d. Site plan showing that all structure setbacks comply with the requirements of Chapter 13-4 of this Ordinance.

CHAPTER 19-10.01

As follows: Unless otherwise ordered by the Board the record and transcript shall be prepared as set out in this section. The staff report and all evidence admitted for consideration by the Planning and Zoning Administrator and Planning and Zoning Commission shall constitute the record. An estimate of cost for production of sufficient copies of the record and the transcription of all recorded hearings in front of the Planning and Zoning Commission and sufficient copies thereof shall within 10 days be provided to the person(s) appealing. The person(s) appealing shall have 14 days from the time they are mailed by regular mail notification of the estimate of cost to then pay for the estimate for the record and transcript and sufficient copies thereof on appeal and shall pay for any balance on the completion thereof. If the person(s) appealing do not pay for the estimated cost of the record and transcript and sufficient copies thereof the appeal may be dismissed

by the County. Upon payment by the person(s) appealing the record, transcript shall be prepared. Once the record and transcript are prepared the Board shall immediately set a hearing date. The Board shall decide to uphold, to conditionally uphold, or to overrule the decision of the Commission. The Board shall make its decision by a simple majority vote of the entire membership of the Board.

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and,

WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 16TH DAY OF August, 2004.

JEROME COUNTY BOARD OF COMMISSIONERS

Veronica Lierman
VERONICA LIERMAN, CHAIR

[Signature]
JOHN ELORRIETA, COMMISSIONER

Alvin R. Chojnacky
ALVIN R. CHOJNACKY, COMMISSIONER



ATTEST:

Cheryl Watts
CHERYL WATTS, CLERK

RECORDING NO. _____

AFFIDAVIT of PUBLICATION

COPY OF NOTICE

(Paste Here)

Ord. #2004-03
TITLE OF NOTICE

State of Idaho } ss.
County of Jerome }

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome Co. Comm.
BILL TO

ORDINANCE NO. 2004 -03
AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2; CHAPTER 5 CHART 5-1, CHART 5-6; CHAPTER 13, 13-4.02, 13-5.02 k, l, m., 13-5.08, 13-5.09 AND CHAPTER 19, 19-10.01
Add: CHAPTER 2 DEFINITIONS

Brink. Brink is the edge at the top of a steep place.
Canyon. The Canyon is a geological structure consisting of a deep gorge with various brinks and plateaus; resembling a staircase, with layers of harder rocks forming cliffs and layers of softer rock forming gentler slopes.
Canyon Rim. The Canyon Rim is the highest brink of a canyon which consists of a slope of 30 degrees or steeper for a distance of 50 feet or more. The location of the rim shall be determined before any excavation of grading preparatory to development.
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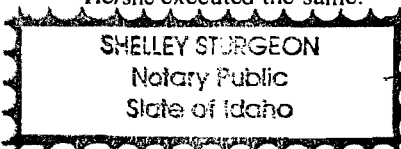
Preservation Zone. The Preservation Zone is from the middle of the Snake River to the Canyon Rim. No building structures other than aquaculture, boat dock, pumping station and power plants shall be closer to the Snake River than one hundred (100) feet to a line on the side or bank of the river that is located by a level five feet above the high water mark of the natural flow created by

Slope. The Slope is land that goes up or down at an angle.

CHAPTER 5, CHART 5-1
Change Livestock Containment Operations to Livestock Confinement Operation and delete Livestock in Light Industrial and Heavy Industrial under Livestock Confinement Operation.
CHAPTER 5, CHART 5-6

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 9th day of September, 2004, and the date of the last publication was on the 9th day of September, 2004.

On this 9th day of September, in the year of 2004, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.



Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 1X

Lines tabular at _____ 8.0¢/Pica
2538.34 Lines straight at 177.68 7.0¢/Pica
Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50

TOTAL COST 180.18

AFFIDAVIT of PUBLICATION

COPY OF NOTICE

(Paste Here)

State of Idaho } ss.
County of Jerome }

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SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

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Affidavit Fee: 2.50
TOTAL COST 180.18

Discontinue
Concomitantly.
CHAPTER 13-4.02 WELLS.
Change to A. All water wells shall be a minimum of 300 feet from any liquid or solid waste storage facility and a minimum of 50 feet from all animal confinement areas. B. If all of the following conditions are met, water wells may be a minimum of one hundred (100) feet from any liquid or solid waste storage facility and twenty (20) feet from all animal confinement areas: 1. Liquid waste storage facility is lined and approved by the appropriate agency having regulatory authority; 2. A solid berm, or comparable structure, two feet in height is installed around the wellhead to prevent runoff from contaminating the well; 3. A backflow valve is installed on the well to prevent any contaminants from reaching the water source; 4. An annular seal between the well casing and borehole is installed and approved pursuant to applicable Idaho Department of Water Resources requirements; 5. Any other condition(s) required by the County if site or other factors warrant.
CHAPTER 13-5.02 k.l.m
13-5.02 k - Written comment on and approval of the site plans and site assessment by Department of Agriculture CAFO Site Advisory Team is required.
13-5.02 l - Site assessment comments are required from the appropriate Highway District, Irrigation Delivery Department, South Central Health District, Department of Agriculture, Department of Water Resources, and/or other agencies designated by the Planning and Zoning Administrator. The Applicant is required to submit these comments with his application.
13-5.02 m - A non-refundable fee, in an amount to be determined by resolution of the Jerome County Commissioners, shall accompany each application or re-application for a LCO Use Permit. Commissioners may waive or adjust fee at their discretion.
CHAPTER 13-5.08
Add: REDUCTION OF PROPERTY LINE OF AN EXISTING SITING PERMIT OR LCO PERMIT. a. Reduction of property area shall require the owner of the Livestock Confinement Operation to apply for a LCO Property Line Reduction Permit. b. The existing Livestock Confinement Operation shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated. c. All structure setbacks shall comply with the requirements of Chapter 13-4 of this Ordinance.
CHAPTER 13-5.09
Add: PROPERTY LINE REDUCTION PERMIT APPLICATION. The Property Line Reduction Permit Application shall include the following items: a. The name, complete address and telephone number of the applicant. b. Legal description of the new property line reduction. c. Acres of land and zoning district. d. Site plan showing that all structure setbacks comply with the requirements of Chapter 13-4 of this Ordinance.
CHAPTER 13-10.01

AFFIDAVIT of PUBLICATION

State of Idaho }
 County of Jerome } ss.

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On this 9th day of September, in the year of 2004, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
 Notary Public
 State of Idaho

Shelley Sturgeon
 Notary Public for Idaho
 Residing at Jerome
 My commission expires: 12/3/05

NORTH SIDE NEWS
 Jerome, Idaho

COST OF PUBLICATION

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 Number of Insertions 1X

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2538.34 Lines straight at 177.68 7.0¢/Pica
 _____ Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50
TOTAL COST 180.18

COPY OF NOTICE

(Paste Here)

Ord # 2004-03

TITLE OF NOTICE

ture setbacks comply with the requirements of Chapter 13-4 of this Ordinance.

PI CHAPTER 19-10.01

As follows: Unless otherwise ordered by the Board the record and transcript shall be prepared as set out in this section. The staff report and all evidence admitted for consideration by the Planning and Zoning Administrator and Planning and Zoning Commission shall constitute the record. An estimate of cost for production of sufficient copies of the record and the transcription of all recorded hearings in front of the Planning and Zoning Commission and sufficient copies thereof shall within 10 days be provided to the person(s) appealing.

AMEN The person(s) appealing shall have 14 days from the time they are mailed by regular mail notification of the estimate of cost to then pay for the estimate for the record and transcript and sufficient copies thereof on appeal and shall pay for any balance on the completion thereof. If a ste

TY Z Cany for the estimated cost of the record and transcript and sufficient copies thereof the appeal may be dismissed by the County. Upon payment by the person(s) appealing the record, transcript shall be prepared. Once the record and transcript are prepared the Board shall immediately set a hearing date. The Board shall decide to uphold, to conditionally uphold, or to overrule the decision of the Commission. The Board shall make its decision by a simple majority vote of the entire membership of the Board.

CHAR 7-8 LCC Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and, 7-8 P Lique

5-1, C WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and, 7-8 P Lique

4.02, 7-8 P Lique

5.09 WHEREAS, all notices and hearings required by County and State law have been given and held; and, 7-8 P Lique

Add: WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of Planning and Zoning Commissioners that the requested Amendment be approved. 7-8 P Lique

Brink THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

Can This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ste ADOPTED AND APPROVED THIS DAY OF _____, 2004.

tion JEROME COUNTY BOARD OF COMMISSIONERS

mal VERONICA LIERMAN, CHAIR
 JOHN ELORRIETA, COMMISSIONER

ciat ALVIN R. CHOJNACKY, COMMISSIONER

7-8 LCC ATTEST:
 CHERYL WATTS, CLERK
 RECORDING NO. _____
 PUB:9/9 N5145

Instrument # 2050136
JEROME COUNTY, JEROME, IDAHO
2005-01-06 04:17:07 No. of Pages: 2
Recorded for: JEROME COUNTY
CHERYL WATTS Fee: 0.00
Ex-Officio Recorder Deputy

ORDINANCE NO. 2005 - 1

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2 Definitions;
Chapter 13-2.07, Chapter 13-4, 13-4.04, 13-5.01, 13-5.02, 13-5.04

WHEREAS, Amendments have been proposed to the Jerome County Zoning Ordinance and the proposed amendments are consistent with the Jerome County Comprehensive Plan. The proposed amendments clarify the Jerome County Zoning Ordinance and reduce confusion in the application of the Jerome County Zoning Ordinance. All notices and hearings required by County and State law have been given and held. The Jerome County Planning and Zoning Commission as well as the Board of County Commissioners have discussed and reviewed these proposed amendments and have found that the Jerome County Zoning Ordinance will be improved by these amendments.

BE IT ORDAINED THAT, the definition of CONTIGUOUS REAL PROPERTY in Chapter 2 of the Jerome County Zoning Ordinance is amended and shall read: CONTIGUOUS PROPERTIES: Properties sharing a property line by either touching at a point or sharing the same boundary. Properties are contiguous even if separated from each other by a public or private road or right-of-way. Properties connected only by easements, pipelines, waste systems and the like shall not be considered contiguous;

BE IT ORDAINED THAT, the definition of LIVESTOCK STRUCTURE EXPANSION SITING PERMIT in Chapter 2 of the Jerome County Zoning Ordinance is amended and shall read: A document issued by the Administrator to the holder of a LCO PERMIT allowing for modifications or expansions to an existing site, which do not substantially alter the existing LCO Animal Confinement Site Plan on file with the Administrator. Any modifications must meet all setback requirements. A Livestock Structure Expansion Siting Permit does not allow for an increase of animal units. This permit requires only administrative approval;

BE IT ORDAINED THAT, Chapter 13-2.07 of the Jerome County Zoning Ordinance is amended to read: EXPANSION OR MODIFICATION OF AN EXISTING LCO, STRUCTURES AND PROPERTY.

- a. Expansion of an existing LCO holding a LCO or Livestock Siting Permit will require the LCO owner to apply for a new LCO Permit as outlined in Section 13-5. Expansion is defined for the purposes of this Chapter, as an increase in animal units.
- b. A modification or expansion of structures as to location or otherwise with no increase in animal units of a LCO with an existing permit requires a Livestock Structure Expansion Siting Permit for corrals, lagoons, and wells.
- c. An expansion of property area only, with no increase in animal units or change of structures, will only require the submission of the property legal description and approval by the Administrator.
- d. Changes of structure(s) in an existing LCO, mandated by new Federal or State regulations, shall be permitted provided there is no erosion of existing setbacks.
- e. A proposed site subject to a public hearing according to I.C. 67-6529 (2) is defined by the Board of Jerome County Commissioners to not include modifications or expansions to property area or structures to an existing site which do not substantially alter the existing LCO Animal Confinement Site Plan on file with the Administrator.;

BE IT ORDAINED THAT, Chapter 13-4 of the Jerome County Zoning Ordinance is amended and shall read: REQUIRED SETBACKS FOR NEW OR MODIFIED LCO.;

BE IT ORDAINED THAT, Chapter 13-4.04 of the Jerome County Zoning Ordinance is amended and shall read: PROPERTY LINES.

Ex # 7

- a. Any modification of a LCO must result in all property of the LCO being contiguous. See Chapter 2, Contiguous Properties.
- b. Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be a minimum of 50 feet away from the water's edge of any canal, lateral or ditch which might return to the Snake River and 300 feet from any LCO property line.
- c. Manure stored off site must comply with Performance Standards in the Jerome County Zoning Ordinance, Chapter 6 -5.01.r.4.
- d. Composting shall be a minimum of 300 feet from any residence not associated with the LCO. It shall be a minimum of 50 feet from any highway district right-of-way and 50 feet minimum away from water's edge of any canal, lateral or ditch which might return to the Snake River, and 50 feet minimum from any adjoining neighbor's property line.

BE IT ORDAINED THAT, Chapter 13-5.01 of the Jerome County Zoning Ordinance is amended and shall read: PERMITS. All permit applications as required in this Chapter shall be filed with the Administrator by the owner, or by someone with the owner's written permission, of the real property for which the LCO is proposed.

BE IT ORDAINED THAT, the title to Chapter 13-5.02 is amended and shall read: LCO PERMIT APPLICATION. The remainder of this section will remain as previously set out.

BE IT ORDAINED THAT, the title to Chapter 13-5.04 is amended and shall read: LCO STRUCTURE SITING PERMIT APPLICATION. The remainder of this section will remain as previously set out.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS ^{6TH} DAY OF January 2005.

JEROME COUNTY BOARD OF COMMISSIONERS

Veronica Lierman

 VERONICA LIERMAN, CHAIR

Absent

 JOHN ELORRIETA, COMMISSIONER (absent)

Alvin R. Chojnacky

 ALVIN R. CHOJNACKY, COMMISSIONER



ATTEST:
Cheryl Watts
 CHERYL WATTS, CLERK
 RECORDING NO. _____

Ord. 2005-1

AFFIDAVIT of PUBLICATION

State of Idaho }
County of Jerome } ss.

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 13th day of January, 2005, and the date of the last publication was on the 13th day of January, 2005.

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SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

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Number of Lines in Notice _____
Number of Insertions 1X

Lines tabular at _____ 8.0¢/Pica
1937.48 Lines straight at 135.62 7.0¢/Pica

Subsequent lines at _____ 6.0¢/Pica
Affidavit Fee: 2.50
TOTAL COST 138.12

COPY OF NOTICE

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Ord. #2005-1
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome Co. Comm.
BILL TO

ORDINANCE NO. 2005-1

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2 definitions; Chapter 13-2.07, Chapter 13-4, 13-4.04, 13-5.01, 13-5.02, 13-5.04

WHEREAS, Amendments have been proposed to the Jerome County Zoning Ordinance and the proposed amendments are consistent with the Jerome County Comprehensive Plan. The proposed amendments clarify the Jerome County Zoning Ordinance and reduce confusion in the application of the Jerome County Zoning Ordinance. All notices and hearings required by County and State law have been given and held. The Jerome County Planning and Zoning Commission as well as the Board of County Commissioners have discussed and reviewed these proposed amendments and have found that the Jerome County Zoning Ordinance will be improved by these amendments.

BE IT ORDAINED THAT, the definition of CONTIGUOUS REAL PROPERTY in Chapter 2 of the Jerome County Zoning Ordinance is amended and shall read: CONTIGUOUS PROPERTIES: Properties sharing a property line by either touching at a point or sharing the same boundary. Properties are contiguous even if separated from each other by a public or private road or right-of-way. Properties connected only by easements, pipelines, waste systems and the like shall not be considered contiguous;

BE IT ORDAINED THAT, the definition of LIVESTOCK STRUCTURE: EXPANSION SITING PERMIT in Chapter 2 of the Jerome County Zoning Ordinance is amended and shall read: A document issued by the Administrator to the holder of a LCO PERMIT allowing for modifications or expansions to an existing site, which do not substantially alter the existing LCO Animal Confinement Site Plan on file with the Administrator. Any modifications must meet all setback requirements. A Livestock Structure Expansion Siting Permit does not allow for an increase of animal units. This permit requires only administrative approval;

BE IT ORDAINED THAT, Chapter 13-2.07 of the Jerome County Zoning Ordinance is amended to read: EXPANSION OR MODIFICATION OF AN EXISTING LCO, not STRUCTURES AND PROPERTIES, be associated with the LCO.

AFFIDAVIT of PUBLICATION

State of Idaho }
County of Jerome } ss.

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for

1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 13th day of January, 2005, and the date of the last publication was on the 13th day of January, 2005.

On this 13th day of January, in the year of 2005, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho

Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 1X

_____ Lines tabular at _____ 8.0¢/Pica

1937.48 Lines straight at 135.62 7.0¢/Pica

_____ Subsequent lines at _____ 6.0¢/Pica

Affidavit Fee: 2.50

TOTAL COST 138.12

COPY OF NOTICE

(Paste Here)

Ord. #2005-1

TITLE OF NOTICE

approval;
BE IT ORDAINED THAT, Chapter 13-2.07 of the Jerome County Zoning Ordinance is amended to read: EXPANSION OR MODIFICATION OF AN EXISTING LCO, STRUCTURES AND PROPERTY.

a. Expansion of an existing LCO holding a LCO or Livestock Siting Permit will require the LCO owner to apply for a new LCO Permit as outlined in Section 13-5. Expansion is defined for the purposes of this Chapter, as an increase in animal units.

b. A modification or expansion of structures as to location or otherwise with no increase in animal units of a LCO with an existing permit requires a Livestock Structure Expansion Siting Permit for corrals, lagoons, and wells.

c. An expansion of property area only, with no increase in animal units or change of structures, will only require the submission of the property legal description and approval by the Administrator.

d. Changes of structure(s) in an existing LCO, mandated by new Federal or State regulations, shall be permitted provided there is no erosion of existing setbacks.

e. A proposed site subject to a public hearing according to I.C. 67-6529 (2) is defined by the Board of Jerome County Commissioners to not include modifications or expansions to the property area or structures to an existing site which do not substantially alter the existing LCO Animal Confinement Site Plan on file with the Administrator.

BE IT ORDAINED THAT, Chapter 13-4 of the Jerome County Zoning Ordinance is amended and shall read: REQUIRED SETBACKS FOR NEW OR MODIFIED LCO.;

BE IT ORDAINED THAT, Chapter 13-4.04 of the Jerome County Zoning Ordinance is amended and shall read: PROPERTY LINES.

a. Any modification of a LCO must result in all property of the LCO being contiguous. See Chapter 2, Contiguous Properties.

b. Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be a minimum of 50 feet away from the water's edge of any canal, lateral or ditch which might return to the Snake River and 300 feet from any LCO property line.

c. Manure stored off site must comply with Performance Standards in the Jerome County Zoning Ordinance, Chapter 6-5.01.r.4.

d. Composting shall be a minimum of 300 feet from any residence not associated with the LCO. It shall be a minimum of 50 feet from any highway district right-of-way and 50 feet minimum away from water's edge of any canal, lateral or ditch which might return to the Snake River, and 50 feet minimum from any adjoining neighbor's property line.

BE IT ORDAINED THAT, Chapter 13-5.01 of the Jerome County Zoning Ordinance is amended and shall read: PERMITS. All permit applications as required in this Chapter shall be filed with the Administrator by the owner, or by

AFFIDAVIT of PUBLICATION

State of Idaho } ss.
County of Jerome }

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 13th day of January, 2005 and the date of the last publication was on the 13th day of January, 2005.

On this 13th day of January, in the year of 2005, before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

SHELLEY STURGEON
Notary Public
State of Idaho

Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/05

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

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TOTAL COST 138.12

COPY OF NOTICE

(Paste Here)

O.D. #2005-1

TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome Co. Comm.

of 100 feet from any residence not associated with the LCO. It shall be a minimum of 50 feet from any highway district right-of-way and 50 feet minimum away from water's edge of any canal, lateral or ditch which might return to the Snake River, and 50 feet minimum from any adjoining neighbor's property line.
BE IT ORDAINED THAT, Chapter 13-5.01 of the Jerome County Zoning Ordinance is amended and shall read: PERMITS. All permit applications as required in this Chapter shall be filed with the Administrator by the owner, or by someone with the owner's written permission, of the real property for which the LCO is proposed.
BE IT ORDAINED THAT, the title to Chapter 13-5.02 is amended and shall read: LCO PERMIT APPLICATION. The remainder of this section will remain as previously set out.
BE IT ORDAINED THAT, the title to Chapter 13-5.04 is amended and shall read: LCO STRUCTURE SITING PERMIT APPLICATION. The remainder of this section will remain as previously set out.
THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.
This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.
ADOPTED AND APPROVED THIS 6th DAY OF JANUARY, 2005.
JEROME COUNTY BOARD OF COMMISSIONERS
/s/ Veronica Lierman, Chair
Absent
John Elorrieta, Commissioner
/s/ Alvin R. Chojnacky, Commissioner
ATTEST: (SEAL)
/s/ Cheryl Watts, Clerk
PUB: 1/13 N53281

ORDINANCE NO. 2005- 07

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2, AND CHAPTER 13-2.07 f.

CHAPTER 2, DEFINITIONS.

LCO PROPERTY LINE REDUCTION PERMIT.

A document issued by the Administrator of this Ordinance to property owners of a livestock operation of 75 animal units or more that does have a Livestock Confinement Operation Permit/Siting Permit on file. It is a document filled out by the applicant, property owner, to establish the new property reduction legal description for the Livestock Confinement Operation to ensure there are a maximum of ten animal units per acre and that no structures are in violation of setback requirements of Chapter 13.

13-2.07f.

The reduction of property area only, maintaining a maximum of ten animal units per acre and all existing structure(s) shall meet the minimum setback requirements of the Jerome County Zoning Ordinance and shall apply for Property Line Reduction Permit that shall only require approval by the Administrator.

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and,

WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 26 DAY OF Sept., 2005.

JEROME COUNTY BOARD OF COMMISSIONERS

Veronica Lierman

VERONICA LIERMAN, CHAIR

Charles M Howell

CHARLES "CHARLIE" HOWELL, COMMISSIONER

Joseph E Davidson

JOSEPH "JOE" DAVIDSON, COMMISSIONER



ATTEST: *Cheryl Watts*

CHERYL WATTS, CLERK

RECORDING NO. _____

Instrument # 2005207

JEROME COUNTY, JEROME, IDAHO

2005-09-26 12:25:25 No. of Pages: 1

Recorded for : JEROME COUNTY COMMISSIONERS

CHERYL WATTS

Fee: 0.00

Ex-Officio Recorder Deputy

Cheryl Watts

Ex #8

July 2005

COPY OF NOTICE

(Paste Here)

DAD #2005-07

TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Jerome Co. P+Z
BILL TO

ORDINANCE NO. 2005-07

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT CHAPTER 2, AND CHAPTER 13-2.07 F.

**CHAPTER 2. DEFINITIONS
LCO PROPERTY LINE REDUCTION PERMIT**

A document issued by the Administrator of this Ordinance to property owners of a livestock operation of 75 animal units or more that does not have a Livestock Confinement Operation Permit/Slip Permit on file. It is a document filed out by the applicant, property owner, to establish the new property reduction legal description for the Livestock Confinement Operation to ensure there are a maximum of ten animal units per acre and that no structures are in violation of setback requirements of Chapter 13.

13-2.07

The reduction of property area only, maintaining a maximum of ten animal units per acre and all existing structures, shall meet the minimum setback requirements of this Jerome County Zoning Ordinance and shall apply for Property Line Reduction Permit that shall only require approval by the Administrator.

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission;

and WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and

WHEREAS, all notices and hearings required by County and State law have been given and held; and

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved;

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS DAY OF _____, 2005.

JEROME COUNTY BOARD OF COMMISSIONERS

VERONICA LIERMAN, CHAIR

CHARLES "CHARLIE" HOWELL, COMMISSIONER

JOSEPH "JDE" DAVIDSON, COMMISSIONER

ATTEST:
CHERYL WATTS, CLERK
RECORDING NO.

ORDINANCE 2006-04

AMENDING THE JEROME COUNTY ZONING ORDINANCE Chapter 2; Chapter 5, Chart 5-6; Chapter 10-4; Chapter 13-2.04; Chapter 13-5.02; Chapter 14-2.01; Chapter 14-5.01; Chapter 23-7.01; Chapter 23-8
AND COMPREHENSIVE PLAN pgs. 33, 75, 79 and 80

Jerome County Comprehensive Plan shall be amended as follows: Page 33, Under Goal: Prevent the loss of range and agricultural lands, add at the end of Actions: "Encourage compliance with Idaho Code regarding Use of Surface and Ground Water. Encourage Irrigation Districts, Canal Companies or other irrigation delivery entities to establish and/or maintain delivery systems and to apportion or allocate surface water rights to new land use applicants when available."

Page 75, Agricultural: Delete the words "as well as planned residential developments that allow the clustering of permitted units on small lots on less desirable acreage" in the third sentence.

Change Page 79 Goal: Maintain land use compatibility, Objectives: delete the word "and". Start a new sentence with the word "Prevent". Page 79, under Goal: Encourage and continue the use of land for agriculture to preserve the rural quality of life in the county. Actions: Delete "These non-agricultural uses must acknowledge the prevailing agricultural activity in these zones and agree to allow them to continue without challenge or disturbance".

Page 80 – Under Goal: Prevent the "dewatering" of agricultural lands Add to the end of Action: "Comply with Idaho Code regarding Use of Surface and Ground Water".

The Jerome County Zoning Ordinance shall be amended as follows: Chapter 2, Definitions, LAND DIVISION A-1 AND SUBDIVISION. LAND DIVISION A-1. Delete first 4 sentences beginning with "Division of a lot... and ending with ..." Chapter 8. Add "The minimum land division size within A-1 Agriculture Zone shall be 40 acres. Property owner may split a home site off from the original parcel only for the financing of their home. If the home site is not sold as part of the original parcel, it is subject to the Jerome County Subdivision and Land Division Ordinance. A deed is recorded at the Jerome County Courthouse". SUBDIVISION. Delete 1. through 7. and replace with "1. Land sold pursuant to condemnation proceedings under applicable State or Federal Laws. 2. Land divided into parcels all of which are forty (40) acres or more".

Chapter 5, Chart 5-6 Land Division under A-1 change the "S" to "L" indicating a Land Division Permit is required.

Chapter 10-4. In the first sentence delete "re-financing their home" and replace with "financing". Add at the end after Ordinance "The parcel without the home site shall not be built upon, which shall be noted on the deed. A deed is recorded at the Jerome County Courthouse".

Chapter 13-2.04 Add, at the end of the last sentence "The Administrator shall grandfather all existing Livestock Confinement Operation Permits that were approved by Jerome County before August 28, 2003 when Jerome County changed its designation of an animal unit from 1.4 to 1000 pounds of confined animals". Chapter 13-5.02 e – after the word "reservoirs", add "adjoining residences and public thoroughfares". 13-5.02 f – after the word "fixtures" delete "adjoining residences within one mile of site boundaries". 13-5.02 l – Add at the end of the last sentence "The Board of County Commissioners may place conditions on the Livestock Confinement Operation Permit as requested by the agencies".

Chapter 14-2.01 Delete "1" and renumber "2 and 3" as "1 and 2". Chapter 14-5.01A.7 – Add at the end of the first sentence "The Administrator may place conditions on the Land Division Permit as requested by the agencies. If the applicant feels the request is not reasonable, the applicant may appeal to the Planning and Zoning Commission." Add "14-5.01A.7 k Department of Water Resources". Chapter 14-5.01A.9 – Delete "under" in the first sentence and replace with "less than". In the second sentence, delete "unless the owner of the property obtains a Special Use Permit for more residential dwellings" and replace with "A Land Division Permit is required before the property deed is recorded in the Jerome County Courthouse. The Land Division Permit shall be issued by the Administrator. All divided parcels require a survey." Chapter 14-5.01A.12 – Add "applicant/developer" as the second word in the first sentence. Add "14-5.01-C. USE OF SURFACE AND GROUND WATER. All new land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation in accordance with Idaho Code §67-6537 USE OF SURFACE AND GROUND WATER."

Chapter 23-7.01 – after 8 ½" x 11" add, "that is sufficiently legible, handwritten or typed in type size not less than 10 point or pica in any standard font provided the type may not be smaller than 10-point standard Times New Roman". In Chapter 23-8— Change "forty five (45)" to "one hundred and eighty (180)". Delete, "it shall be signed by the presiding officer", and start the new sentence with "The presiding officer shall sign it"

WHEREAS, the applications to Amend the Jerome County Comprehensive Plan and the Jerome County Zoning Ordinance Text was received by the Planning and Zoning Commission; and,

WHEREAS, the requested Amendments are in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendments be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY

COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text and the Jerome County Comprehensive Plan be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 17th DAY OF APRIL 2006. JEROME COUNTY BOARD OF COMMISSIONERS.



Veronica Lierman

Veronica Lierman, Chair

Charles M Howell

Charles "Charlie" Howell, Commissioner

Joseph E Davidson

Joseph "Joe" Davidson, Commissioner

ATTEST:

Cheryl Watts
CHERYL WATTS, CLERK
RECORDING NO. _____

April 2006

001 2006-4

BILL 99
FAIR HOUSING RESOLUTION
2006-05
(Population of 5,000 and Up)

LET IT BE KNOWN TO ALL PERSONS OF Jerome County that discrimination on the basis of race, color, religion, gender or national origin in the sale, rental, leasing or financing of housing or land to be used for construction of housing or in the provision of brokerage services is prohibited by Title VIII of the 1968 Civil Rights Act (Federal Fair Housing Law).

It is the policy of Jerome County to encourage equal opportunity in housing for all persons regardless of race, color, religion, gender or national origin. The Fair Housing Amendments Act of 1988 expands coverage to include disabled persons and families with children. Therefore, the County does hereby pass the following Resolution.

BE IT RESOLVED that within the available resources the County will assist all persons who feel they have been discriminated against because of race, color, religion, gender, national origin, disability or familial status to seek equity under federal and state laws by filing a complaint with the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Compliance Division.

BE IT FURTHER RESOLVED that Jerome County shall publicize this Resolution and through this publicity shall encourage owners of real estate, developers, and builders to become aware of their respective responsibilities and rights under the Federal Fair Housing Law and amendments and any applicable state or local laws or ordinances.

SAID PROGRAM will at a minimum include: 1) publicizing this policy and other applicable fair housing information through local media and community contacts; 2) distributing posters and flyers to inform the public of their respective responsibilities and rights concerning equal opportunity in housing; 3) preparing of an analysis of impediments to fair housing choice and actions to mitigate such impediments; and 4) declaring April as Fair Housing Month.

EFFECTIVE DATE

This Resolution shall take effect February 27, 2006.

/s/ Veronica Lierman, Chairman
Jerome County

/s/ Attest: Cheryl Watts
County Clerk

IB: 4/27 N54265

BILL 105
ORDINANCE 2006-04
AMENDING THE JEROME COUNTY ZONING ORDINANCE Chapter 2; Chapter 5, Chart 5-6; Chapter 10-4; Chapter 13-5.02; Chapter 14-2.01; Chapter 14-5.01; Chapter 23-7 and 23-8 AND COMPREHENSIVE PLAN Pages 33, 75, 79 and 80 Jerome County Comprehensive Plan shall be amended as follows:
Page 33, Under Goal: Prevent the loss of range and agricultural lands, add at the end of Actions: "Encourage compliance with Idaho Code regarding Use of Surface and Ground Water. Encourage Irrigation Districts, Canal Companies or other irrigation delivery entities to establish and/or maintain delivery systems and to apportion or allocate surface water rights to new land use applicants when available." Page 75, Agricultural: Delete the words "as well as planned residential developments that allow the clustering of permitted units on small lots on less desirable acreage" in the third sentence. Change Page 79 Goal: Maintain land use compatibility, Objectives: delete the word "and." Start a new sentence with the word "Prevent". Page 79, under Goal: Encourage and continue the use of land for agriculture to preserve the rural quality of life in the county. Actions: Delete: "These non-agricultural uses must acknowledge the prevailing agricultural activity in these zones and agree to allow them to continue without challenge or Disturbance". Page 80, Under Goal: Prevent the "dewatering" of agricultural lands add to the end of Action: "Comply with Idaho Code regarding Use of Surface and Ground Water." The Jerome County Zoning Ordinance shall be amended as follows: Chapter 2, Definitions, LAND DIVISION A-1 AND SUBDIVISION LAND DIVISION A-1. Delete first 4 sentences beginning with "Division of a lot...and ending with ... Chapter 8." Add "The minimum land division size within A-1 Agriculture Zone, shall be 40 acres. Property owner may split a home site off from the original parcel only for the financing of their home. If the home site is not sold as part of the original parcel, it is subject to the Jerome County Subdivision and Land Division Ordinance. A deed is recorded at the Jerome County Courthouse." SUBDIVISION. Delete 1. through 7. and replace with "1. Land sold pursuant to condemnation proceedings under applicable State or Federal Laws. 2. Land divided into parcels all of which are forty (40) acres or more." Chapter 5, Chart 5-6 Land Division under A-1 change the "S" to "L" indicating a Land Division Permit is required. Chapter 10-4. In the first sentence delete "re-financing their home" and replace with "financing". Add at the end after Ordinance: "The parcel without the home site shall not be built upon, which shall be noted on the deed. A deed is recorded at the Jerome County Courthouse". Chapter 13-2.04. Add at the end of the last sentence "The Administrator shall grandfather all existing Livestock Confinement Operation Permits that were County before."

April

**FAIR HOUSING RESOLUTION
2008-05**
(Population of 5,000 and Up)

LET IT BE KNOWN TO ALL PERSONS OF Jerome County that discrimination on the basis of race, color, religion, gender or national origin in the sale, rental, leasing or financing of housing or land to be used for construction of housing or in the provision of brokerage services is prohibited by Title VIII of the 1968 Civil Rights Act (Federal Fair Housing Law).

It is the policy of Jerome County to encourage equal opportunity in housing for all persons regardless of race, color, religion, gender or national origin. The Fair Housing Amendments Act of 1988 expands coverage to include disabled persons and families with children. Therefore, the County does hereby pass the following Resolution.

BE IT RESOLVED that within the available resources the County will assist all persons who feel they have been discriminated against because of race, color, religion, gender, national origin, disability or familial status to seek equity under federal and state laws by filing a complaint with the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Compliance Division.

BE IT FURTHER RESOLVED that Jerome County shall publicize this Resolution and through this publicity shall encourage owners of real estate, developers, and builders to become aware of their respective responsibilities and rights under the Federal Fair Housing Law and amendments and any applicable state or local laws or ordinances.

SAID PROGRAM will at a minimum include: 1) publicizing this policy and other applicable fair housing information through local media and community contacts; 2) distributing posters and flyers to inform the public of their respective responsibilities and rights concerning equal opportunity in housing; 3) preparing of an analysis of impediments to fair housing choice and actions to mitigate such impediments; and 4) declaring April as Fair Housing Month.

EFFECTIVE DATE

This Resolution shall take effect February 27, 2006.

/s/ Veronica Lierman, Chairman
Jerome County

/s/ Artest Cheryl Watts
County Clerk

18, 4/27 NS4265

Existing Livestock Confinement Operation Permits that were approved by Jerome County before August 28, 2003 when Jerome County changed its designation of an animal unit from 1.4 to 1000 pounds of confined animals. Chapter 13-5.02 e after the word "reservoirs" add "adjoining residences and public thoroughfares". 13-5.02 f after the word "fixtures" delete "adjoining residences within one mile of site boundaries". 13-5.02 i. Add at the end of the last sentence "The Board of County Commissioners may place conditions on the Livestock Confinement Operation Permit as requested by the agencies". Chapter 14-2.01 Delete "1" and renumber "2 and 3" as "1 and 2". Chapter 14-5.01A.7 Add at the end of the first sentence "The Administrator may place conditions on the Land Division Permit as requested by the agencies. If the applicant feels the request is not reasonable, the applicant may appeal to the Planning and Zoning Commission." Add "14-5.01A.7 k. Department of Water Resources". Chapter 14-5.01A.9 Delete "under" in the first sentence and replace with "less than". In the second sentence, delete "unless the owner of the property obtains a Special Use Permit for more residential dwellings" and replace with "A Land Division Permit is required before the property deed is recorded in the Jerome County Courthouse. The Land Division Permit shall be issued by the Administrator. All divided parcels require a survey." Chapter 14-5.01A.12 Add "applicant/developer" as the second word in the first sentence. Add "14-5.01-C. USE OF SURFACE AND GROUND WATER. All new land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation in accordance with Idaho Code §67-6537 USE OF SURFACE AND GROUND WATER." Chapter 23-7.01 After "8 1/2x 11" add, "that is sufficiently legible, handwritten or typed in type size not less than 10 point or pica in any standard font provided the type may not be smaller than 10-point standard Times New Roman". In Chapter 23-8. Change "fifty five (45)" to "one hundred and eighty (180)". Delete, "it shall be signed by the presiding officer", and start the new sentence with "The presiding officer shall sign it". WHEREAS, the applications to Amend the Jerome County Comprehensive Plan and the Jerome County Zoning Ordinance Text was received by the Planning and Zoning Commission; and, WHEREAS, the requested Amendments are in conformity with the Jerome County Comprehensive Plan, and, WHEREAS, all notices and hearings required by County and State law have been given and held; and, WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendments be approved. THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text and the Jerome County Comprehensive Plan be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the

April 2006

Jerome County, Idaho, that the Jerome County Zoning Ordinance Text and the Jerome County Comprehensive Plan be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code. ADOPTED AND APPROVED THIS 17th DAY OF APRIL, 2006. JEROME COUNTY BOARD OF COMMISSIONERS.
S/Veronica Lierman, Chair
S/Charles "Charlie" Howell, Commissioner
S/Joseph "Joe" Davidson, Commissioner
Attest: S/Cheryl Watts, Jerome County Clerk
PUB: 4/27 N53746

BILL TO
FAIR HOUSING RESOLUTION
2006-05
(Population of 5,000 and Up)

LET IT BE KNOWN TO ALL PERSONS OF Jerome County that discrimination on the basis of race, color, religion, gender or national origin in the sale, rental, leasing or financing of housing or land to be used for construction of housing or in the provision of brokerage services is prohibited by Title VIII of the 1968 Civil Rights Act (Federal Fair Housing Law).

It is the policy of Jerome County to encourage equal opportunity in housing for all persons regardless of race, color, religion, gender or national origin. The Fair Housing Amendments Act of 1988 expands coverage to include disabled persons and families with children. Therefore, the County does hereby pass the following Resolution.

BE IT RESOLVED that within the available resources the County will assist all persons who feel they have been discriminated against because of race, color, religion, gender, national origin, disability or familial status to seek equity under federal and state laws by filing a complaint with the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Compliance Division.

BE IT FURTHER RESOLVED that Jerome County shall publicize this Resolution and through this publicity shall encourage owners of real estate, developers, and builders to become aware of their respective responsibilities and rights under the Federal Fair Housing Law and amendments and any applicable state or local laws or ordinances.

SAID PROGRAM will at a minimum include: 1) publicizing this policy and other applicable fair housing information through local media and community contacts; 2) distributing posters and flyers to inform the public of their respective responsibilities and rights concerning equal opportunity in housing; 3) preparing of an analysis of impediments to fair housing choice and actions to mitigate such impediments; and 4) declaring April as Fair Housing Month.

EFFECTIVE DATE
This Resolution shall take effect February 27, 2006.
/s/ Veronica Lierman, Chairman
Jerome County
/s/ Attest: Cheryl Watts
County Clerk
PUB: 4/27 N54265

ORDINANCE NO. 2006- 10

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT

Chapters: 1-6.01; 2-1; 4-1.01, 4-2.01, 4-8.04, 4-8.06; 6-5.01; 7-1.02, 7-2.01, 7-3.01, 7-4.01, 7-5.01, 7-6.01, 7-7.01, 7-7.02, 7-7.03, 7-7.04, 7-8.01, 7-9.01, 7-11.02; 8-2.01, 8-2.03, 8-2.04, 8-3.01, 8-3.02, 8-5.06, 8-6.01, 8-7.01, 8-8.01, 8-8.02, 9-4.01, 9-6.01, 9-7.01, 9-8.01, 9-11.01, 9-13.01, 9-15, 9-15.01, 9-17, 9-17.01, 9-17.02; 11-8.01(b) and (c); 12-6.02, 12-7.04, 12-7.05, 12-8.01, 12-9.01(a) and (c), 12-9.04, 12-10.01, 12-10.02, 12-10.03; 13-5.02(m); 14-5.01-A (7); 15-6.01(c); 16-6; 17-5.02; 18-1.01, 18-4,18-4.01, 18-4.02, 18-4.03, 18-4.04, 18-5, 18-5.01, 18-6.01; 19-1, 19-2, 19-4, 19-5.01, 19-5.02, 19-6.01, 19-7.01, 19-7.02, 19-8, 19-8.01, 19-8.02, 19-8.03, 19-10.01; 20-13.02; 21-1.01, 21-1.02, 21-2.01(a), 21-4.01(a), (b) and (c), 21-5,21-5.01, 21-5.02, 21-5.03, 21-6, 21-6.01, 21-7.01, 21-7.02; 23-1.01, 23-2.01, 23-3.01, 23-4.01, 23-5.01, 23-6.01, 23-6.02, 23-7.01, 23-7.02(a),(b),(c), (d), (e), and (f), 23-7.03, 23-8; and 25 as follows:

Chapter 1

1-6.01

This ordinance shall be interpreted in its various particulars to protect equally each citizen from the undue encroachment on his private property to the end that, within the plan established, each citizen shall have the maximum use of his property without placing undue burden upon that of his neighbor. Every citizen of Jerome County shall at all times have the right to appear in person or through his attorney or other agent before the Planning Commission, Zoning Commission or Board, as the case may be, in the proper order of business and before such Planning Commission, Zoning Commission or Board to freely petition for the relief of an alleged burden created by this ordinance, and to appeal a decision of the Planning Commission or Zoning Commission pursuant to the procedures herein set out to the Board and the Courts of the State of Idaho. In the enforcement of this ordinance it shall be deemed to apply similarly and equally to each person and property in similar circumstances and shall not be enforced to discriminate between one individual and another individual or between one group as compared to all others similarly situated.

Chapter 2

APPURTENANCE

The visible, functional, or ornamental objects accessory to and part of a building.

BELFRIES

Towers or steeples in which bells are intended to be hung.

CUPOLA

A small dome and the shaft that supports it; sits on top of a building.

OPEN SPACES

An area substantially open to the sky and which may be on the same lot with a building. The area may include, along with the natural environmental features, water areas, swimming pools, tennis courts, and other recreational facilities that the Zoning Commission deems permitted. Streets, parking areas, structures for habitation, and the like shall not be included.

OTHER USES

The term "other uses" as used in this Ordinance, implies uses that may be permitted in the zone or district. The term implies permission or approval for a use. Uses considered to be "other uses" require a review by the Zoning Commission, which will deny or approve, generally under stated conditions, the requested use.

PLANNING commission, appointed by the Board to hold Legislative Hearings and business assigned by the Board.

SPECIAL USE

A use permitted within a district which differs from the principal, permitted use and which requires the approval of that use by the Zoning Commission as manifested by the issuance of a Special Use Permit. Special uses which may be permitted in each zone are listed in the Schedule of Zoning Regulations.

SPIRE

The tapering termination of roof tower or roof form to a point, as a steeple.

Zoning Commission, appointed by the Board to hold Quasi-Judicial Hearings and business assigned by the Board.

Chapter 4

4-1.01

Areas zoned A-1 are those where all usual and presently operating agricultural activities are appropriate to the use of land and are expected to continue. Urbanization in A-1 zones generally is neither appropriate to nor compatible with the possible agricultural activities in the area. Where urbanization is considered necessary by a landowner, the landowner proposing such urbanization shall present to the Zoning Commission documentation indicating that those neighboring landowners and tenants whose real property or residence is within one-fourth (1/4) mile of any portion of the perimeter of the area proposed for urbanization have been advised of the proposed urbanization, and their responses to the proposal shall be a part of the documentation. In areas zoned A-1 Agriculture, operations, with the exception of those operations which require Special Use Permits, may be reduced, expanded, or changed at the will of the operator. The Agriculture Zone is characterized by farms and ranches engaged in the production of

food, fiber, animal products and in the raising of various kinds of livestock. (Amended 4-14-86; 1-21-99)

4-2.01

A-2 describes those areas which have been changing from primarily agricultural activities to more urban activities because of the increased influx of residential land uses over the last fifteen (15) years. Continuing urbanization in these areas is not discouraged, provided, however, that the Planning and/or Zoning Commission and the Board should weigh the benefits of any proposed urbanization in these areas against any harm which might result to the quality and character of the neighborhood as a result thereof before approving such urbanization. Urbanization is expected to increase, but the manner in which this urbanization takes place shall be the primary judgment of the Planning and/or Zoning Commissions and of the Board.

4-8.04

Sites of significant historical interest and value should be included in the Preservation Zone if such inclusion is reasonable and possible. The Planning and/or Zoning Commissions shall give careful consideration to the recommendations of the Jerome County Historical Society whenever the Planning and/or Zoning Commissions are considering the inclusion or the exclusion of a site and/or land area which is presented as being appropriate to this zone.

4-8.06

This Ordinance recognizes that the above list may be incomplete, and the Planning and/or Zoning Commissions are directed to afford a hearing to requests for recognition of other sites in the future.

Chapter 6

6-5.01

r. BUILDINGS AND DRAINFIELDS ADJACENT TO IRRIGATION CANALS, LATERALS AND DITCHES. (Amended 10-30-96; 4-8-99)

1. No buildings or structures shall be constructed or located:
 - a. Within fifteen (15) feet from the toe of a lateral or ditch, which is a constructed fill, or edge of a ten (10) foot roadway on the same side of lateral.
 - b. Large laterals need fifty (50) feet from edge of water.
 - c. Check with North Side Canal Company, Ltd. For correct set backs.

Chapter 7

7-1.02

The Zoning Commission shall hold a public hearing on each Special Use Permit application as specified in the Schedule of Regulations. The Zoning Commission may approve without reservation, approve with additional conditions, or deny the request for a Special Use Permit. The Zoning Commission shall act under the conditions as hereon specified, and the Commission shall consider such additional safeguards as will uphold the intent of this Ordinance.

7-2.01

- f. A site plan, drawn to scale, of the proposed site for the Special Use which shows the location of all buildings, parking and loading areas, traffic access, traffic circulation, open spaces, landscaping, refuse area, service area, utilities, signs, yard (s) and such other information as the Zoning Commission may require in the Zoning Commission's effort to determine if the proposed Special Use meets the intent and the requirements of this Ordinance.

7-3.01

The Zoning Commission shall review the facts and circumstances of each proposed Special Use, and that same Use may be granted to an applicant if the proposed Use is otherwise prohibited by the terms of this Ordinance; however, the same Use may be allowed with conditions appended by the Zoning Commission and/or the Board under specific provisions of this Ordinance if the proposed Use is otherwise prohibited by the terms of this Ordinance. The Use must not conflict with the Comprehensive Plan, and it may be allowed subject to conditions and terms, including the following standards. The Zoning Commission shall find evidence sufficient to show that each proposed Use at the proposed location will comply with Idaho Code 67-6512 and will:

7-4.01 a. PUBLIC USES.

Where it is determined that a proposed park, playground, school or other public use as shown on the future acquisition map, as authorized in Section 67-6517, Idaho Code, is located in whole or in part within a proposed development, the Zoning Commission shall notify the appropriate public agency concerning the proposed acquisition of land. Within thirty (30) days of the date of notice, the public agency may request the governing body to suspend consideration on the permit for sixty (60) days after the date of the request. If an agreement is not made within the aforesaid sixty (60) days the Zoning Commission shall resume consideration of the Special Use application.

c. SPECIAL DEVELOPMENTS

In the case of planned unit developments and large-scale developments, the Zoning Commission may require sufficient park or open space facilities of acceptable size, location and site characteristics that may be suitable for the proposed development.

7-5.01

In granting any Special Use, the Zoning Commission may prescribe appropriate conditions, bonds, and safeguards in conformance with this Ordinance. Violations of such conditions, bonds, or safeguards, when made a part of the terms under which the Special

Use is granted, shall be deemed a violation of this Ordinance. Upon granting a Special Use Permit, conditions may be attached to the Special Use Permit including, but not limited to those which:

7-6.01

Prior to granting a Special Use Permit, at least one (1) public hearing shall be held during which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing as well as a summary of the proposal to be heard shall be published in the official newspaper or in a paper of general circulation within the jurisdiction. Notice may be made available to other newspapers, radio stations, and television stations serving the jurisdiction for use as a public service announcement. Notice shall be provided to property owners having property within one-quarter (1/4) mile outside the perimeter of the land being considered for Special Use, and similar notice shall also be given in any additional area that may be substantially impacted by the proposed Special Use as determined by the Zoning Commission. When notice is required for two hundred (200) or more property owners and/or residents, two (2) notices published in the official newspaper or in a newspaper of general circulation shall be considered as sufficient notice to that population. The second of the two notices published in the newspaper shall appear ten (10) days prior to the public hearing.

7-7. ACTION BY THE ZONING COMMISSION.

7-7.01

Within one hundred eighty (180) days following the public hearing, the Zoning Commission shall either approve without reservation, approve with additional conditions, or deny the application for Special Use as presented. If the application is approved without reservation, or approved with additional conditions, the Zoning Commission shall direct the Administrator to issue a Special Use Permit stating the conditions specified by the Zoning Commission for approval. The conditions which may be attached to a Special Use Permit include, but are not limited to, those which:

7-7.02

Prior to granting a Special Use Permit, the Zoning Commission may request studies from various sources, including public agencies, concerning social, economic, fiscal, and environmental effects from the proposed Special Use.

7-7.03

When it grants or denies an application for a Special Use Permit, the Zoning Commission shall specify:

7-7.04

The applicant, or any affected person, who appears, in person or in writing, before the Zoning Commission may appeal the decision of the Zoning Commission to the Board; any appeal must be submitted to the Board within fifteen (15) days after the date of the action of the Zoning Commission.

7-8.01

The Administrator shall send written notification of the action of the Zoning Commission to the applicant within ten (10) days after the Zoning Commission has made its decision. The notification shall set forth the reasons and conditions pertinent to the decision of the Zoning Commission.

7-9.01

Upon receipt of an appeal concerning an action of the Zoning Commission, the Board shall set a date for a hearing when all information, testimony, and appropriate minutes of the Zoning Commission shall be considered. The Board shall, after evaluating all pertinent information, decide to uphold, conditionally uphold, or overrule the action of the Zoning Commission. A vote to overrule the action of the Zoning Commission requires affirmation by a simple majority of the full membership of the Board.

7-11.02

In addition to the other penalties provided after a finding of violation by the court or after notice and hearing before the Zoning Commission and a finding of violation of any condition or limitation of the Special Use Permit, the Zoning Commission may suspend or revoke the Special Use Permit.

Chapter 8

8-2.01 COMPLIANCE.

Any subdivider desiring to create a subdivision shall comply fully with all procedures outlined in this Ordinance and with the laws of the State of Idaho. A final plat shall not be recorded and improvements shall not be made on the property concerned unless the recommendation of the Zoning Commission has been obtained and unless the Board has issued its official approval of the plat and/or the improvement. No lot shall be sold from the proposed subdivision until the final plat which contains the said lot has been properly approved and recorded.

8-2.03 CERTIFICATION AND REVIEW.

- a. The Administrator of the Ordinance shall certify that the application and preliminary plat is complete, and he shall cause the same to be placed on the agenda of the next regular meeting of the Zoning Commission.
- b. The Zoning Commission shall review each preliminary plat within forty-five (45) days of its submission to the Administrator, and it shall submit said plat to the Board together with its written recommendation to approve or disapprove the said plat. The forty-five (45) day period may be extended with the written consent of the subdivider.

8-2.04 BOARD APPROVAL.

The Board shall consider a preliminary plat within thirty (30) days after receipt of the plat and the recommendations of the Zoning Commission. The Board shall either approve or reject the same, and it shall provide in writing the reasons for its action as well as any conditions attached to the approval.

8-3.01

The final plat and documents shall be submitted at least three (3) weeks prior to any meeting of the Zoning Commission for consideration to the Administrator including the following information, in addition to the preliminary requirements.

- a. All final plats submitted for approval shall conform to the preliminary plat and any conditions attached to said preliminary plat as approved by the Zoning Commission and the Board.
- j. Any additional information that may have been required at the proceedings involving the preliminary plat before the Zoning Commission or the Board.

8-3.02 FINAL PLAT REVIEW AND APPROVAL.

- a. The final plat submitted for approval in accordance with this Ordinance shall be reviewed by the Zoning Commission at its next regular meeting, and in no event later than forty-five (45) days from its submission to the Administrator. At that meeting the Zoning Commission shall review the final plat for compliance with this Ordinance, and the Zoning Commission shall send a written report of its findings, indicating approval or disapproval as well as any specified conditions, to the Board. The forty-five (45) day period specified herein may be extended with the written consent of the subdivider.

8-5.06

The division of a lot or adjustment of lot lines on a recorded plat shall be prohibited unless application for such division is made to the Board and reviewed by the Zoning Commission.

- a. Persons requesting a division of a lot or adjustment of lot lines on a recorded plat shall submit a new Subdivision application to the Zoning Commission and shall be approved by the Board.

8-6.01

- b. Water supply systems and sanitary sewer systems shall be installed in conformance with all regulations of the Idaho South Central District Health Department. If a proposed subdivision is to be serviced by a central water supply or a central sewer system in lieu of individual wells and septic tanks, the subdivider shall bear all costs which are associated with the installation of such central systems. The Board may, at some future date and upon the recommendation of the Zoning Commission, promulgate rules and regulations which hereunder establish density limits. Such limits, if exceeded by a proposed subdivision, shall require installation of central sewer and water systems.
- e. For proposed subdivision located outside incorporated cities but within one (1) mile outside the incorporated limits of any city, or in areas of city impact, both city and county zoning authority and City Council and Board must approve any irrigation systems in accordance with 50-1306 Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must approve any irrigation system.

- f. For proposed subdivisions located in counties with a Zoning Ordinance, any irrigation delivery system must be approved by the appropriate county zoning authority, the Board and the irrigation entity charged with delivery of water to said lands.

8-7.01

The Zoning Commission may recommend to the Board a Variance from the provisions of this Ordinance on a finding that undue hardship may result from strict compliance with specific provisions or requirements of the Ordinance or that the application of such provision is impracticable. The Zoning Commission shall recommend only that Variance which the Zoning Commission deems necessary or desirable for the public interest. The Zoning Commission, in making its findings as required herein, shall consider the nature of the proposed use, the existing use of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A Variance shall not be recommended unless the Zoning Commission finds through public hearing that:

- a. There are special circumstances or conditions which affect the said property so that the strict application of the provisions of this Ordinance would be impracticable or unreasonable. In such cases, the subdivider shall prepare a written argument concerning the conflict and present it to the Zoning Commission.

8-8.01

- a. If the proprietor and/or owner of a tract of land, his heirs, executors, administrators, legal representatives, successors, or assigns create a subdivision, as herein defined, and fail and/or neglect to execute and file a plat for record as herein set forth, the Board shall notify some or all of such owners and proprietors of the default through mail or otherwise, and the Board shall demand a prompt execution of such plat. If such owners or proprietors, whether notified or not, fail and/or neglect to execute and file for record the said plat within thirty (30) days after the date of such notice, the Board shall cause to be made a plat of such tract and any surveying necessary thereto. Said plat shall be prepared in accordance with the requirements of this Ordinance and shall be signed and acknowledged by the Recorder, who shall certify that he executed the action by reason of the failure of the owners or proprietors named to do so and that he filed for record. The plat, when so filed for record, shall have the same effect for all purposes as if it had been executed, acknowledged, and recorded by the owners or proprietors themselves.

8-8.02.

A fee shall be payable to the Administrator before review, verification, or recording a plat. Such fee shall be established by Board and posted in the Office of the Administrator.

Chapter 9.

9-4.01

All uses that may be allowed within the land use district are permitted within a PUD. Up to ten (10) per cent of the gross land area may be directed to other commercial, industrial, public, and quasi-public uses that are not allowed within the land use district, providing that the Zoning Commission finds favorably that:

9-6.01

A minimum of ten (10) per cent of the gross land area developed in any residential PUD project shall be reserved for common open space and recreational facilities for the residents or users of the area being developed. The required amount of open space land reserved under a PUD either shall be held in cooperate ownership by owners of the project area for the use of property owners within the development, or it shall be dedicated to the public for retention as common open space for parks, recreation, and related uses. Public utility easements, right-of-way for watercourses, and other similar channels and easements are not acceptable for common open space dedication unless such land or right-of-way is usable as a trail or other similar use, and unless such land use is approved by the Zoning Commission. Every property developed under the PUD approach should be designed to abut upon common open space or similar area. Clustering of buildings is encouraged. Where townhouses are used, there shall be no more than eight (8) townhouse units in any contiguous group. The ultimate responsibility for the maintenance of all open space shall rest upon the developer.

9-7.01.

Underground utilities, including telephone and electrical systems, are required within the limits of all PUD's. Appurtenances to these systems may be excepted from these requirements if they can be effectively screened and if the Zoning Commission finds that such exception does not violate the intent or character of the proposed PUD.

9-8.01.

To encourage high quality PUD development, the Zoning Commission may authorize an increase in residential density to one hundred fifteen (115) per cent of the permitted number of dwelling units under the terms of this Ordinance. Variations of character, identity, architecture, and siting, as incorporated in a development, shall be considered as cause(s) for density increase, provided that these factors make substantial contributions to the objectives of the PUD such as enhancement of the following:

9-11.01

- b. A Preliminary Development Plan evaluated by the Zoning Commission and approved by the Board.

9-13.01

- f. A vicinity map, drawn to a scale approved by the Zoning Commission, which shows the property lines, existing streets, proposed zoning, and such other items as the Zoning Commission requires in order to demonstrate the

relationship of the PUD to the Comprehensive Plan, to existing schools, and to other community facilities and services.

- g. A Preliminary Development Plan, drawn to a scale approved by the Zoning Commission, which shows topography at intervals of two (2) feet, locations and types of residential, commercial, and industrial land uses; the layout, dimensions, and names of rights-of-way; utility easements; parks and community spaces; layout and dimensions of lots and building setback lines; preliminary improvement drawings showing water, sewer, drainage, electric, telephone, and natural gas lines, and such other features as the Zoning Commission deems necessary.

9-15. APPROVAL IN PRINCIPLE BY THE ZONING COMMISSION

9-15.01

Within thirty (30) days following the public hearing, the Zoning Commission shall Review the Preliminary Development Plan and determine:

- c. If the benefits, combinations of land uses, and the interrelationships among the land uses in the surrounding areas justify the deviation from standard district regulations. The Zoning Commission's approval in principle of the Preliminary Development Plan shall be required before the applicant submits a Final Development Plan. An approval in principle shall not be construed as a favorable endorsement of the precise locations of uses, configurations of parcels, or engineering feasibility. The Zoning Commission shall evaluate the Preliminary Development Plan in the light of existing standards and criteria applicable to Special Use Permits before the Preliminary Development Plan is approved.

9-17. RECOMMENDATION BY ZONING COMMISSION.

9-17.01.

Within sixty (60) days following receipt of the Final Development Plan, the Zoning Commission shall recommend to the Board that the Final Development Plan be:

9-17.02.

The Zoning Commission shall then transmit the complete record concerning the application as well as the Zoning Commission's decision to the Board. The Zoning Commission shall base its decision upon the facts submitted with the application and other testimony. Among other things, the Zoning Commission shall specifically find with reference to the following:

Chapter 11

11-8.01.

- b. The Board shall hear and decide appeals when it is alleged that there has been an error in a requirement, decision, or determination of the Zoning Commission in the administration or enforcement of this ordinance.

- c. Those person aggrieved by the decision of the Zoning Commission, or any taxpayer, may appeal the question decision to the Board as provided in Idaho Code 31-714.

Chapter 12

12-6.02

MARKING AND LIGHTING. Notwithstanding the preceding provision of this section, the owner of a non-conforming structure or tree is hereby required to permit the installation, operation, and maintenance of such markers and lights as the Zoning Commission require as indications of airport obstructions to the operators of aircraft in the vicinity of the airport. Such markers and lights shall be installed, operated, and maintained at the expense of Jerome County, Idaho.

12-7.04

NONCONFORMING USES ABANDONED OR DESTROYED. If the Zoning Commission determines that a nonconforming tree or structure has been abandoned or that more than eighty per cent (80%) of it has been demolished, deteriorated, or decayed, then a permit that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations shall not be granted.

12-7.05

VARIANCE. A person desiring to erect or increase the height of any structure, or permit the growth of a tree, or use property in a manner which is not in accordance with the regulations prescribed in this Ordinance must first apply to the Zoning Commission for a variance from the affecting regulations. The application for a variance shall be accompanied by a determination by the Jerome County Airport Advisory Board and from the Federal Aviation Administration concerning the affect of the proposal on the operation of air navigation facilities and on the safe, efficient use of the navigable airspace. Such variance shall be recommended favorably if it is determined that a literal application or enforcement of the regulations would result in unnecessary hardship which will be relieved by the variance; if it is determined that the variance will not be contrary to the public interest, will not create a hazard to air navigation, will do no substantial injustice, and will be in accordance with the spirit of this Ordinance. An application for variance from the requirements of this Ordinance shall only be considered by the Zoning Commission after the airport manager has been given an opportunity to review the application for its aeronautical affects and submit his written comments to the Zoning Commission. If the airport manager's opinion has not been submitted within fifteen (15) days after his receipt of the application, the Zoning Commission shall act upon the application without such advise.

12-8.01

It shall be the duty of the Zoning Commission to administer and enforce the regulations prescribed herein through the office of the Planning and Zoning Administrator. Applications for permits and for variances shall be made to the Administrator upon a form published for that purpose. Applications required by this Ordinance shall be

promptly considered by the Zoning Commission. Each application shall be either: a. Granted without conditions. b. Granted with added conditions, or c. Denied.

12-9.01

- a. To hear and to decide appeals from any requirement, decision, or recommendation made by the Zoning Commission in its enforcement of this Ordinance.
- c. To make final decisions relating to Zoning Commission determinations.

12-9.04

The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to override any determination made by the Zoning Commission, to set aside any requirement which this Ordinance imposes upon the applicant, and to effect a variation from this Ordinance.

12-10.01

Any person who has been aggrieved or a taxpayer who has been affected by a decision of the Zoning Commission made in the administration of this Ordinance may appeal to the Board of Adjustment.

12-10.02

All appeals hereunder must be made within a reasonable time as provided by the rules of the Board of Adjustment. The appeal shall be filed with the Zoning Commission, and it shall specify the grounds for the appeal. The Zoning Commission shall then transmit all records pertaining to the action being questioned to the Board of Adjustment.

12-10.03

An appeal shall stay all proceedings in furtherance of the action appealed, unless the Zoning Commission certifies to the Board of Adjustment, after the notice of appeal has been filed, that by reason of the facts stated in the certificate a stay would, in the opinion of either the Jerome County Airport Advisory Board or the Zoning Commission, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a majority decision of the Board of Adjustment.

Chapter 13

13-5.02(m)

A non-refundable fee, in an amount to be determined by resolution of the Board shall accompany each application or re-application for a LCO Use Permit. The Board may waive or adjust fee at their discretion.

Chapter 14

14-5.01A(7).

Proof of approval of the land division by the following if required by the Administrator: The Administrator may place conditions on the Land Permit as requested by the agencies. If

the applicant feels the request is not reasonable, the applicant may appeal to the Zoning Commission.

Chapter 15

15-6.01

- c. If structural alterations are not made, any non-conforming use of a structure and/or land may be changed to another non-conforming use, provided that the Zoning Commission finds that the proposed use is as equally appropriate to the district as the existing use, and provided that the Zoning Commission issues a Special Use Permit for the new use. The Zoning Commission shall require the appropriate conditions and safeguards in accordance with other provisions of this Ordinance.

Chapter 16

16-6

The following signs are allowed upon the issuance of a Special Use Permit by the Zoning Commission.

Chapter 17

17-5.02

Where there is an adequate public transit system, or where for any other reason parking demand is unusually low, the parking space requirements cited above may be reduced proportionately by the Zoning Commission.

Chapter 18

18-1.01

For the purpose of carrying out the provisions of this Ordinance, an Administrator and a Planning Commission and Zoning Commission are hereby created.

18-4 THE PLANNING COMMISSION AND ZONING COMMISSION.

18-4.01

MEMBERSHIP. The Planning Commission and Zoning Commission each shall consist of not less than three (3) nor more than twelve (12) members, each of whom shall have been appointed by the Board and confirmed by a majority vote of the Board. An appointed member of the Planning Commission and Zoning Commission must have resided in the County for five (5) years prior to his appointment, and he must remain a resident of Jerome County during his service on the Planning Commission and Zoning Commission. Not more than one-third of the members of the Planning Commission and Zoning Commission may reside within an incorporated city in the County. The term of office for members shall be not less than three (3) years nor more than six (6) years. Members can serve for additional terms at the discretion of the Board. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same

manner as the vacancy being filled. Members may be removed for cause by a majority vote of the Board. Members shall be selected without respect for political affiliation. Members shall receive such mileage and per diem compensation as provided by the Board.

18-4.02 ORGANIZATION.

The Planning Commission and Zoning Commission shall elect a Chairman and fill any other office it deems necessary. The Planning Commission and Zoning Commission may establish subcommittees, advisory committees, hearing examiners, or neighborhood groups to advise and to assist in carrying out its responsibilities. The Planning Commission and Zoning Commission may appoint non-voting ex-officio advisors as may be necessary.

18-4.03 RULES, RECORDS, AND MEETINGS.

Written organization papers, or bylaws, consistent with this Ordinance and with other laws of the State of Idaho for the transaction of business of the Planning Commission and Zoning Commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in each year. A majority of voting members of the Planning Commission and Zoning Commission shall constitute a quorum.

18-4.04 EXPENDITURES AND STAFF.

With the approval of the Board, the Planning Commission and Zoning Commission may receive and expend funds, goods, and services from the Federal government or agencies and instrumentalities of state or local governments, and from civic and/or private sources, and the Planning Commission and Zoning Commission may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by the Planning Commission and Zoning Commission shall be within the amounts appropriated by the Board. Within such limits, the Planning Commission and Zoning Commission is authorized to hire employees and technical advisors, including but not limited to planners, engineers, architects and legal assistants.

18-5. DUTIES OF THE PLANNING COMMISSION AND ZONING COMMISSION.

18-5.01

For the purposes of this Ordinance, the Planning Commission and Zoning Commission shall have the following duties:

18-6.01

The Board creating the Planning Commission and Zoning Commission shall provide that the area and interests within its jurisdiction are broadly represented on the Planning Commission and Zoning Commission. A member or employee of the Board or Planning Commission and Zoning Commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any

proceeding shall be disclosed at or before any meeting during which the action is being heard or considered. A knowing violation of this section shall be a misdemeanor.

Chapter 19

19-1. GENERAL.

The Zoning Commission shall consider Administrative Appeals where it is alleged that an error has been made by the Administrator, where a question arises concerning the terms of this Ordinance, and where an affected person(s) requests a hearing.

19-2. ADMINISTRATIVE APPEALS.

Appeals to the Zoning Commission concerning interpretation or administration of this Ordinance may be initiated by a person(s) aggrieved by an officer or bureau of the legislative authority affected by a decision of the Administrator. Such Appeal shall be made within twenty (20) days following the questioned decision of the Administrator, and it shall be filed with the Administrator and with the Zoning Commission as a notice of Appeal, specifying the grounds for the Appeal. The Administrator shall make available to the Zoning Commission all materials which constitute the record upon which the Appeal is based.

19-4. VARIANCE.

The Zoning Commission may authorize a Variance from the terms of this Ordinance if it is not contrary to the public interest and if, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A non-conforming use of neighboring lands, structures or building in the same district, or in other districts, shall not be considered as grounds for granting a Variance. A Variance shall be granted only when a strict application of the provisions of this Ordinance would result in unnecessary hardship because of the characteristics of the site and the Variance is not in conflict with public interest.

19-5.01

A Variance from the terms of this Ordinance shall not be considered by the Zoning Commission unless a written application for a Variance has been submitted to the Administrator and the Zoning Commission containing the following:

19-5.02

When it grants a request for Variance, the Zoning Commission shall declare those specific findings from the presented evidence which demonstrate that the standards for Variance have been satisfied.

19-6.01

The Zoning Commission shall not grant an Appeal or Variance which would allow a use prohibited under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. In granting an Appeal or Variance, the Zoning Commission shall prescribe the appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and

safeguards, when they have been made a part of the terms under which the Appeal or Variance is granted, shall be a violation of this Ordinance.

19-7.01

Upon receipt of the application for an Administrative Appeal, the Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to all parties as required for Special Use Permits.

19-7.02

Upon receipt of the application for a Variance, the Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to property owners adjoining the parcel under consideration for a Variance.

19-8. ACTION BY THE ZONING COMMISSION.

19-8.01

Within thirty (30) days after the public hearing, the Zoning Commission shall either approve, approve with appended conditions, or deny the request for Appeal or Variance.

19-8.02

Upon granting or denying an application, the Zoning Commission shall specify the Ordinance and standards used in evaluating the application, the reasons for the action of approval or denial, and the actions, if any, that the applicant might take with respect to a re-application for Appeal or Variance.

19-8.03

The applicant, or any affected person(s), who appears in person or in writing before the Zoning Commission may appeal the decision of the Zoning Commission to the Board, provided that the Appeal is submitted to the Board within fifteen (15) days of the Zoning Commission signing the written Finding of Facts and Conclusions of Law.

19-10.01

Unless otherwise ordered by the Board the record and transcript shall be prepared as set out in this section. The staff report and all evidence admitted for consideration by the Planning and Zoning Administrator and Zoning Commission shall constitute the record. An estimate of cost for production of sufficient copies of the record and the transcription of all recorded hearings in front of the Zoning Commission and sufficient copies thereof shall within 10 days be provided to the person(s) appealing. The person(s) appealing shall have 14 days from the time they are mailed by regular mail notification of the estimate of cost to then pay for the estimate for the record and transcript and sufficient copies thereof on appeal and shall pay for any balance on the completion thereof. If the person(s) appealing do not pay for the estimated cost of the record and transcript and sufficient copies thereof the appeal may be dismissed by the County. Upon payment by the person(s) appealing the record, transcript shall be prepared. Once the record and transcript are prepared the Board shall immediately set a hearing date. The Board shall

decide to uphold, to conditionally uphold, or to overrule the decision of the Zoning Commission. The Board shall make its decision by a simple majority vote of the entire membership of the Board.

Chapter 20

20-13.02

After an investigation by the Administrator of a complaint for the violation of any of the provisions of Chapter 5 Regulations within Zones, Charts 5-1 through 5-14, Chapter 6 Performance Standards, Chapter 7 Special Use Permit, Chapter 13 Livestock Confinement Operation, Chapter 14 Land Division, Chapter 16 Signs, or Chapter 25 Hazardous Waste Disposal Sites prior to instituting formal proceeding for violation of this Ordinance, to obtain compliance the Administrator of the Planning and Zoning Commissions may assess and collect an administrative fee for such violations committed prior to submitting any application required by this Ordinance.

- a. Where procedures for compliance do not require a permit or a hearing before the Zoning Commission the amount of the administrative fee may be up to but should not exceed fifty dollars (\$50.00).

Chapter 21

21-1.01

If the public necessity, convenience, general welfare, or good zoning practices require, the Board may, by Ordinance after receipt or recommendation thereon from the Planning Commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, boundaries, or classifications of property.

21-1.02

Amendments or other modifications to this Ordinance may be made at any regular or special meeting of the Planning Commission. The Planning Commission, however, shall specifically address the question of modification of the Comprehensive Plan or Zoning Ordinance at the January and July meeting of each calendar year.

21-2.01

- a. By adoption of a motion by the Planning Commission.

21-4.01

Zoning districts shall be amended in the following manner:

- a. Requests for an Amendment to the Zoning portions of this Ordinance shall be submitted to the Planning Commission which shall evaluate the request to determine the extent and nature of the Amendment requested.
- b. If the request is in accord with the Comprehensive Plan, the Planning Commission shall make its recommendations to the Board, and the Board may adopt or reject the Amendment to the Ordinance under the notice and hearing procedures as herein provided.
- c. If the request is not in accord with the adopted Comprehensive Plan, the request shall be submitted to the Planning Commission, or, in its absence, the Board, which shall make its recommendations to the Board, and the Board

shall adopt or reject the Amendment to the Comprehensive Plan under the Notice and Hearing procedures provided in Section 67-6509 Idaho Code. After the Comprehensive Plan has been amended, the Zoning Ordinance shall be amended.

21-5. PLANNING COMMISSION PUBLIC HEARING.

21-5.01

The Planning Commission shall hold a Public Hearing and make recommendations on proposed Zoning Amendments. Zoning Amendments may consist of text or map revisions.

21-5.02

Zoning Ordinance Text Amendment: The Planning Commission, prior to recommending a Zoning Ordinance Text Amendment to the Board shall conduct at least one (1) Public Hearing at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the Hearing, Notice of the time, the place, and the Amendment to be considered shall be published in the official newspaper or paper of general circulation within the jurisdiction. If the Planning Commission, following the Hearing, makes a material change from that which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Commission forwards the proposed Amendment with its accompanying recommendations to the Board.

21-5.03

Zoning Ordinance Map Amendment: The Planning Commission, prior to recommending a Zoning Ordinance Map Amendment that is in accord with the Comprehensive Plan to the Board shall conduct at least one (1) Public Hearing at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the Hearing, Notice of the time, the place, and the Amendment to be considered shall be published in the official newspaper or paper of general circulation within the jurisdiction. Additional Notice shall be provided by mail to property owners and residents within one-half (1/2) mile of the external boundaries of the land being considered; Notice shall also be provided to any additional area that may be impacted by the proposed change as determined by the Administrator. When Notice is required to two hundred (200) or more property owners or residents, two (2) Notices in the official newspaper or paper of general circulation within the jurisdiction shall be considered to be sufficient notice in lieu of mail notifications, provided that the second Notice appears ten (10) days prior to the Public Hearing. If the Planning Commission, following the Hearing, makes a material change from that which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Planning Commission forwards the proposed Amendment with its accompanying recommendation to the Board.

21-6. RECOMMENDATION BY THE PLANNING COMMISSION.

21-6.01

Within one hundred eighty (180) days after the receipt of the proposed Amendment, the Planning Commission shall transmit its recommendation to the Board. The Planning Commission may recommend that the Amendment be granted as requested, it may

recommend a modification of the Amendment requested, or it may recommend that the Amendment be denied.

21-7.01

The Board, prior to adopting, revising, or rejecting the proposed Amendment to the Zoning Ordinance shall conduct at least one (1) Public Hearing using the same Notice and Hearing procedures as the Planning Commission. If the Board, following the Hearing, makes a material change from that which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Board adopts the Amendment.

21-7.02

The Board shall accept the recommendation of the Planning Commission's report unless it is rejected by a simple majority vote of the full Board.

23-1.01

The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the Planning Commission. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended.

23-2.01

The Planning Commission and Zoning Commission shall approve their Bylaws and make a recommendation of approval to the Board. The Bylaws of the Planning Commission and Zoning Commission shall be in effect and are hereby made part of this ordinance after the adoption of the Bylaws by the Board. All amendments to the Bylaws which are approved and adopted by the Board shall become effective upon adoption.

23-3.01

The Chairman of the meeting shall rule on all questions of procedure and the admission of evidence in accordance with this Chapter of this Ordinance, the Bylaws of the Planning Commission and Zoning Commission, or Robert's Rules of Order as currently stated.

23-4.01

The Order of Business at regular meetings of the Planning Commission and Zoning Commission shall be:

23-5.01

An accurate record of all business transacted at meetings and hearings of the Planning Commission and Zoning Commission shall be kept through the use of recording equipment and/or through the presence of a clerk/stenographer. A formal meeting of the Planning or Zoning Commission shall not proceed unless it is being properly recorded.

23-6.01

The Chairman of the Planning Commission or Zoning Commission, or his proper surrogate as provided in the Bylaws of the Planning Commission or Zoning Commission, shall conduct the meeting in a manner which assures that all parties to a petition for action by the Planning Commission or Zoning Commission, whether protagonist or antagonist, receive adequate opportunity to be heard, under the concept of due process. The Chairman shall require that all who give testimony keep their remarks pertinent to the matter under consideration. The Chairman shall have power to place a reasonable limit on the time allotted for each witness to testify.

23-6.02

The Chairman shall admit as evidence all testimony that is relevant to the matter before the Planning Commission or Zoning Commission insofar as the evidence proves, disproves, is material, or is germane to the matter under consideration.

23-7.01

All documentary evidence, whether delivered by e-mail, fax, mail, hand delivery or otherwise shall be submitted seven days prior to the scheduled Planning Commission or Zoning Commission Hearings. The only exception is that a person present at the scheduled hearing shall be allowed to present a one-sided document no larger than 8 1/2" x 11" that is sufficiently legible, handwritten or typed in type size not less than 12 point or pica in any standard font provided the type may not be smaller than 12-point standard Times New Roman when they present their testimony at the scheduled Planning or Zoning Hearing. The documents referred to in this section shall be surrendered to the Planning Commission or Zoning Commission and shall become a part of the permanent record of the testimony given in the matter under consideration. This section does not apply to staff of the Planning Commission or Zoning Commission.

23-7.02

Evidence shall be given in an orderly manner as follows:

- a. Testimony by the petitioner (allow 5 minutes), the one who is seeking an action by the Planning Commission or Zoning Commission. The petitioner, at the conclusion of this testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit).
- b. Testimony by the Planning and Zoning Administrator. The Administrator, at the conclusion of his/her testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit).
- c. Testimony by witnesses in support of the petition (2 minutes). Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit).
- d. Testimony by witnesses who oppose the petition (allow 5 minutes) for principal opposer and (2 minutes) for all others. Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the

Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit).

- e. Rebuttal testimony by the petitioner. At the conclusion of his/her rebuttal, the petitioner may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit).
- f. As a final action in receiving testimony, the Chairman of the Planning Commission or Zoning Commission may call for testimony from Staff, consultants and advisors to the Planning Commission or Zoning Commission or any other persons deemed necessary by the Planning Commission or Zoning Commission. Such witness(es) shall be subject to questioning by the Chairman of the Planning Commission or Zoning Commission and by members of the Planning Commission or Zoning Commission. (no time limit).

23-7.03

The burden of proving that the Planning Commission or Zoning Commission should act favorably toward the petition under consideration rests solely upon the petitioner.

23-8.

The Planning Commission or Zoning Commission, or the Board, as the case may be, shall render a decision within one hundred eighty (180) days after the date of the Hearing. The decision shall be in writing. The presiding officer shall sign it and it shall state the specific Findings of Fact and Conclusions of Law which support the decision. The criteria, standards, regulations, and recommendations found in the Comprehensive Plan and in such other Ordinances and Regulations of Jerome County that are used by the Planning Commission or Zoning Commission in making its decision shall be identified, and the manner in which they affect the final decision shall be stated.

Chapter 25

SECTION 4: AMENDMENT, That the Zoning Ordinance of Jerome County be and the same is hereby amended by the addition thereto of a new section to be known and designated as Ordinance #28-86 of the Jerome County Zoning Ordinance and to be read as follows:

Hazardous Waste Disposal Site - when considering a Conditional Use for such a site, the Zoning Commission must take into account the following:

HAZARDOUS WASTE DISPOSAL SITES

(1) Hazardous Waste Disposal Site means any property or structure intended or used for the treatment, storage, or disposal of hazardous wastes. Further, a Hazardous Waste Site also includes a site used for the purpose of disposal of hazardous waste, hazardous materials and toxic substances. Ancillary equipment used for transporting hazardous material to and from a disposal site shall be subject to the provisions of this Ordinance.

(2) When an application or proposal for a Hazardous Waste Disposal Site is presented to the Zoning Commission, such a proposed site must be in complete and full compliance

with all Federal and State laws and regulations pertaining to hazardous waste, hazardous material and toxic substances.

(3) When an application or proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider whether such a use compliments, benefits and is compatible with the surrounding land uses.

(4) When an application or proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the effect of transportation routes by vehicles containing materials to be disposed of in the proposed site.

(5) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the impact, if any, upon the water and water supplies, both surface and underground, in the County.

(6) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the geological bases that may or may not support such a proposed site.

(7) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the possibility of the existence of the site endangering human health, animal life, and plant life in the County.

(8) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider public input and must consider all information and aspects which it deems pertinent and relevant to such a proposal, not limited to the mandatory guidelines of this section.

(9) Applicants for a Hazardous Waste Disposal Site in Jerome County are financially responsible for all reasonable costs incurred by the Zoning Commission and County in reviewing and considering the application.

WHEREAS, the applications to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and,

WHEREAS, the requested Amendments are in conformity with the Jerome County Comprehensive Plan; and,

WHEREAS, all notices and hearings required by County and State law have been given and held; and,

WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendments be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 30TH DAY OF Oct, 2006.

JEROME COUNTY BOARD OF COMMISSIONERS

Veronica Lierman
Veronica Lierman, Chair

(absent)
Charles "Charlie" Howell, Commissioner

Joe Davidson
Joseph "Joe" Davidson, Commissioner

ATTEST:
Cheryl Watts
Cheryl Watts
Jerome County Clerk



AFFIDAVIT of PUBLICATION

State of Idaho } ss.
County of Jerome }

COPY OF NOTICE

(Paste Here)

Ord. 2006-10
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

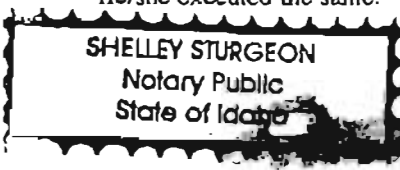
Jerome Co. Comm.
BILL TO

Norma DeVoe, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for

1 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 9th day of November, 2006 and the date of the last publication was on the 4th day of November, 2006

Norma DeVoe

On this 9th day of November in the year of 2006 before me, a Notary Public, personally appeared Norma DeVoe, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.



Shelley Sturgeon
Notary Public for Idaho
Residing at Jerome
My commission expires: 12/3/11

PUBLICATION RATES	
(Idaho Code, Rev. Statutes 1996)	
7-8 pt. per line tabular	8.0¢/Pica
7-8 pt. per line straight	7.0¢/Pica
7-8 pt. per line successive insertions	6.0¢/Pica

NORTH SIDE NEWS
Jerome, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 1x
_____ Lines tabular at _____ 8.0¢/Pica
17596.99 Lines straight at 1252.37 7.0¢/Pica
_____ Subsequent lines at _____ 6.0¢/Pica
Affidavit Fee: 2.50
TOTAL COST 1254.87

11252

53714

ORDINANCE NO. 2006-10
AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT.
 Chapters: 1-6.01; 2-1; 4-1.01, 4-2.01, 4-8.04, 4-8.06; 6-5.01; 7-1.02, 7-2.01, 7-3.01, 7-4.01, 7-5.01, 7-6.01, 7-7.01, 7-7.02, 7-7.03, 7-7.04, 7-8.01, 7-9.01, 7-11.02; 8-2.01, 8-2.03, 8-2.04, 8-3.01, 8-3.02, 8-5.06, 8-6.01, 8-7.01, 8-8.01, 8-8.02; 9-4.01, 9-6.01, 9-7.01, 9-8.01, 9-9.01, 9-13.01, 9-15, 9-15.01, 9-17.01, 9-17.02; 11-8.01(b) and (c); 12-6.02, 12-7.04, 12-7.05, 12-8.01, 12-9.01(a) and (c) 12.9.04, 12-10.01, 12-10.02, 12-10.03; 13-5.02(m); 14-5.01(A7); 15-6.01(c); 16-6; 17-5.02; 18-1.01, 18-4, 18-4.01, 18-4.02, 18-4.03, 18-4.04, 18-5, 18-5.01, 18-6.01; 19-1, 19-2, 19-4, 19-5.01, 19-5.02, 19-6.01, 19-7.01, 19-7.02, 19-8, 19-8.01, 19-8.02, 19-8.03, 19-10.01; 20-13.02; 21-1.01, 21-1.02, 21-2.01(a), 21-4.01(a), (b) and (c), 21-5, 21-5.01, 21-5.02, 21-5.03; 21-6, 21-6.01, 21-7.01, 21-7.02; 23-1.01, 23-2.01, 23-3.01, 23-4.01, 23-5.01, 23-6.01, 23-6.02, 23-7.01, 23-7.02(a),(b),(c),(d),(e), and (f), 23-7.03, 23-8; and 25 as follows:
 Chapter 1; 1-6.01 This ordinance shall be interpreted in its various particulars to protect equally each person from the undue encroachment on his private property to the extent that, within the plan established, each citizen shall have the maximum use of his property without placing undue burden upon that of his neighbor. Every citizen of Jerome County shall at all times have the right to appear in person or through his attorney or other agent before the Planning Commission, Zoning Commission or Board, as the case may be, in the proper order of business and before such Planning Commission, Zoning Commission or Board to freely petition for the relief of an alleged burden created by this ordinance, and to appeal a decision of the Planning Commission or Zoning Commission pursuant to the procedures herein set out to the Board and Courts of the State of Idaho. In the enforcement of this ordinance it shall be deemed to apply similarly and equally to each person and property in similar circumstances and shall not be enforced to discriminate between one individual and another individual or between one group as compared to all others similarly situated.
 Chapter 2, APPURTENANCE, The visible, functional, or ornamental objects accessory to and part of a building. BELFRIES, Towers or steeples in which bells are intended to be hung. CUPOLA, A small dome and the shaft that supports it; sits on top of a building. OPEN SPACES, An area substantially open to the sky and which may be on the same lot with a building. The area may include, along with the natural environmental features, water areas, swimming pools, tennis courts, and other recreational facilities that the Zoning Commission deems permitted. Streets, parking areas, structures for habitation, and the like shall not be included. OTHER USES, The term "other uses" as used in this Ordinance, implies uses that may be permitted in the zone or district. The term implies permission or approval for a use. Uses considered to be "other uses" require a review by the Zoning Commission, which will deny or

approve, generally under stated conditions, the requested use.
 PLANNING COMMISSION, appointed by the Board to hold Legislative Hearings and business assigned by the Board. SPECIAL USE, A use permitted within a district which differs from the principal, permitted use and which requires the approval of that use by the Zoning Commission as manifested by the issuance of a Special Use Permit. Special uses which may be permitted in each zone are listed in the Schedule of Zoning Regulations. SPIRE, The tapering termination of roof tower or roof form to a point, as a steeple. ZONING COMMISSION, appointed by the Board to hold Quasi-Judicial Hearings and business assigned by the Board.
 Chapter 4, 4-1.01, Areas zoned A-1 are those where all usual and presently operating agricultural activities are appropriate to the use of land and are expected to continue. Urbanization in A-1 zones generally is neither appropriate nor compatible with the possible agricultural activities in the area. Where urbanization is considered necessary by a landowner, the landowner proposing such urbanization shall present to the Zoning Commission documentation indicating that those neighboring landowners and tenants whose real property or residence is within one-fourth (1/4) mile of any portion of the perimeter of the area proposed for urbanization have been advised of the proposed urbanization, and their responses to the proposal shall be a part of the documentation. In areas zoned A-1 Agriculture, operations, with the exception of those operations which require Special Use Permits, may be reduced, expanded, or changed at the will of the operator. The Agriculture Zone is characterized by farms and ranches engaged in the production of food, fiber, animal products and in the raising of various kinds of livestock. (Amended 4-14-86; 1-21-99) 4-2.01, A-2 describes those areas which have been changing from primarily agricultural activities to more urban activities because of the increased influx of residential land uses over the last fifteen (15) years. Continuing urbanization in these areas is not discouraged, provided, however, that the Planning and/or Zoning Commission and the Board should weigh the benefits of any proposed urbanization in these areas against any harm which might result to the quality and character of the neighborhood as a result thereof before approving such urbanization. Urbanization is expected to increase, but the manner in which this urbanization takes place shall be the primary judgment of the Planning and/or Zoning Commissions and of the Board. 4-8.04, Sites of significant historical interest and value should be included in the Preservation Zone if such inclusion is reasonable and possible. The Planning and/or Zoning Commissions shall give careful consideration to the recommendations of the Jerome County Historical Society whenever the Planning and/or Zoning Commissions are considering the inclusion or the exclusion of a site and/or land area which is presented as being appropriate to this zone. 4-8.06, This Ordinance recognizes that the above list may be incomplete, and the Planning and/or Zoning Commissions are directed to afford

a hearing to requests for recognition of other sites in the future. Chapter 6, 6-5.01, r. BUILDINGS AND DRAIN FIELDS ADJACENT TO IRRIGATION CANALS, LATERALS AND DITCHES. (Amended 10-30-98; 4-8-99) 1. No buildings or structures shall be constructed or located: a. Within fifteen (15) feet from the toe of a lateral or ditch, which is a. constructed fill, or edge of a ten (10) foot roadway on the same side of lateral, b. Large laterals need fifty (50) feet from edge of water. c. Check with North Side Canal Company, Ltd. For correct set backs. 7, 7-1.02, The Zoning Commission shall hold a public hearing on each Special Use Permit application as specified in the Schedule of Regulations. The Zoning Commission may approve without reservation, approve with additional conditions, or deny the request for a Special Use Permit. The Zoning Commission shall act under the conditions as hereon specified, and the Commission shall consider such additional safeguards as will uphold the intent of this Ordinance. 7-2.01, f. A site plan, drawn to scale, of the proposed site for the Special Use which shows the location of all buildings, parking and loading areas, traffic access, traffic circulation, open spaces, landscaping, refuse area, service area, utilities, signs, yard(s) and such other information as the Zoning Commission may require in the Zoning Commission's effort to determine if the proposed Special Use meets the intent and the requirements of this Ordinance. 7-3.01 The Zoning Commission shall review the facts and circumstances of each proposed Special Use, and that same Use may be granted to an applicant if the proposed Use is otherwise prohibited by the terms of this Ordinance; however, the same Use may be allowed with conditions appended by the Zoning Commission and/or the Board under specific provisions of this Ordinance if the proposed Use is otherwise prohibited by the terms of this Ordinance. The use must not conflict with the Comprehensive Plan, and it may be allowed subject to conditions and terms, including the following standards. The Zoning Commission shall find evidence sufficient to show that each proposed Use at the proposed location will comply with Idaho Code 67-6512 and will: 7-4.01 a. PUBLIC USES. Where it is determined that a proposed park, playground, school or other public use as shown on the future acquisition map, as authorized in Section 67-6517, Idaho Code, is located in whole or in part within a proposed development, the Zoning Commission shall notify the appropriate public agency concerning the proposed acquisition of land. Within thirty (30) days of the date of notice, the public agency may request the governing body to suspend consideration on the permit for sixty (60) days after the date of the request. If an agreement is not made within the aforesaid sixty (60) days the Zoning Commission shall resume consideration of the Special Use application. c. SPECIAL DEVELOPMENTS, In the case of planned unit developments and large-scale developments, the Zoning Commission may require sufficient park or open space facilities of acceptable size, location and site characteristics that may be suitable for the proposed development. 7-5.01, In granting any Special Use, the Zoning Commission may prescribe appropriate conditions, bonds

have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing, as well as a summary of the proposal to be heard shall be published in the official newspaper or in a paper of general circulation within the jurisdiction. Notice may be made available to other newspapers, radio stations, and television stations serving the jurisdiction for use as a public service announcement. Notice shall be provided to property owners having property within one-quarter (1/4) mile outside the perimeter of the land being considered for Special Use, and similar notice shall also be given in any additional area that may be substantially impacted by the proposed Special Use as determined by the Zoning Commission. When notice is required for two hundred (200) or more property owners, and/or residents, two (2) notices published in the official newspaper or in a newspaper of general circulation shall be considered an sufficient notice to that population. The second of the two notices published in the newspaper shall appear ten (10) days prior to the public hearing.

7-7. ACTION BY THE ZONING COMMISSION, 7-7.01 Within one hundred eighty (180) days following the public hearing, the Zoning Commission shall either approve without reservation, approve with additional conditions, or deny the application for Special Use as presented. If the application is approved without reservation, or approved with additional conditions, the Zoning Commission shall direct the Administrator to issue a Special Use Permit stating the conditions specified by the Zoning Commission for approval. The conditions which may be attached to a Special Use Permit include, but are not limited to those which:

7-7.02 Prior to granting a Special Use Permit, the Zoning Commission may request studies from various sources, including public agencies, concerning social, economic, fiscal, and environmental effects from the proposed Special Use.

7-7.03 When it grants or denies an application for a Special Use Permit, the Zoning Commission shall specify:

7-7.04 The applicant, or any affected person, who appears in person or in writing, before the Zoning Commission may appeal the decision of the Zoning Commission to the Board; any appeal must be submitted to the Board within fifteen (15) days after the date of the action of the Zoning Commission.

7-8.01 The Administrator shall send written notification of the action of the Zoning Commission to the applicant within ten (10) days after the Zoning Commission has made its decision. The notification shall set forth the reasons and conditions pertinent to the decision of the Zoning Commission.

7-9.01 Upon receipt of an appeal concerning an action of the Zoning Commission, the Board shall set a date for a hearing on all information, testimony, and appropriate minutes of the Zoning Commission shall be considered. The Board shall, after evaluating all pertinent information, decide to uphold, conditionally uphold, or overturn the action of the Zoning Commission. A vote to overturn the action of the Zoning Commission requires affirmation by a simple majority of the full membership of

the Board. **7-11.02** In addition to the other penalties provided after a finding of violation by the court or after notice and hearing before the Zoning Commission and a finding of violation of any condition or limitation of the Special Use Permit, the Zoning Commission may suspend or revoke this Special Use Permit.

8-2.01 COMPLIANCE Any subdivider desiring to create a subdivision shall comply fully with all procedures outlined in this Ordinance and with the laws of the State of Idaho. A final plat shall not be recorded and improvements shall not be made on the property concerned unless the recommendation of the Zoning Commission has been obtained and unless the Board has issued its official approval of the plat and/or the improvement. No lot shall be sold from the proposed subdivision until the final plat which contains the said lot has been properly approved and recorded.

8-2.03 CERTIFICATION AND REVIEW. A. The Administrator of the Ordinance shall certify that the application and preliminary plat is complete, and he shall cause the same to be placed on the agenda of the next regular meeting of the Zoning Commission. B. The Zoning Commission shall review each preliminary plat within forty-five (45) days of its submission to the Administrator, and it shall submit said plat to the Board together with its written recommendation to approve or disapprove the said plat. The forty-five (45) day period may be extended with the written consent of the subdivider.

8-2.04 BOARD APPROVAL. The Board shall consider a preliminary plat within thirty (30) days after receipt of the Zoning Commission. The Board shall either approve or reject the same, and it shall provide in writing the reasons for its action as well as any conditions attached to the approval.

8-3.01 The final plat and documents shall be submitted at least three (3) weeks prior to any meeting of the Zoning Commission for consideration to the Administrator including the following information, in addition to the preliminary requirements: a. All final plats submitted for approval shall conform to the preliminary plat and any conditions attached to said preliminary plat as approved by the Zoning Commission and the Board. b. Any additional information that may have been required at the proceedings involving the preliminary plat before the Zoning Commission or the Board.

8-3.02 FINAL PLAT REVIEW AND APPROVAL. The final plat submitted for approval in accordance with this Ordinance shall be reviewed by the Zoning Commission at its next regular meeting, and in no event later than forty-five (45) days from its submission to the Administrator. At that meeting the Zoning Commission shall review the final plat for compliance with this Ordinance, and the Zoning Commission shall send a written report of its findings indicating approval or disapproval as well as any specified conditions, to the Board. The forty-five (45) day period specified herein may be extended with the written consent of the subdivider.

8-6.06 The division of a lot or adjustment of lot lines on a

recorded plat shall be prohibited unless application for such division is made to the Board and reviewed by the Zoning Commission.

a. Persons requesting a division of a lot or adjustment of lot lines on a recorded plat shall submit a new Subdivision application to the Zoning Commission and shall be approved by the Board.

8-6.01 b. Water supply systems and sanitary sewer systems shall be installed in conformance with all regulations of the Idaho South Central District Health Department. If a proposed subdivision is to be serviced by a central water supply or a central sewer system in lieu of individual wells and septic tanks, the subdivider shall bear all costs which are associated with the installation of such central systems. The Board may, at some future date and upon the recommendation of the Zoning Commission, promulgate rules and regulations which thereunder establish density limits. Such limits, if exceeded by a proposed subdivision, shall require installation of central sewer and water systems.

b. For proposed subdivision located outside incorporated cities but within one (1) mile outside the incorporated limits of any city, or in areas of city impact, both city and county zoning authority and City Council and Board must approve any irrigation systems in accordance with 50-1306 Idaho Code. In addition, the irrigation entity charged with the delivery of water to said lands must approve any irrigation system.

c. For proposed subdivisions located in counties with a Zoning Ordinance, an irrigation delivery system must be approved by the appropriate county zoning authority, the Board and the irrigation entity charged with delivery of water to said lands.

8-7.01 The Zoning Commission may recommend to the Board a Variance from the provisions of this Ordinance on a finding that undue hardship may result from strict compliance with specific provisions or requirements of the Ordinance or that the application of such provision is impracticable. The Zoning Commission shall recommend only that Variance which the Zoning Commission deems necessary or desirable for the public interest. The Zoning Commission, in making its findings as required herein, shall consider the nature of the proposed use, the existing use of land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A Variance shall not be recommended unless the Zoning Commission finds through public hearing that: a. There are special circumstances or conditions which affect the said property so that the strict application of the provisions of this Ordinance would be impracticable or unreasonable. In such cases, the subdivider shall prepare a written argument concerning the conflict and present it to the Zoning Commission.

8-8.01 a. If the proprietor and/or owner of a tract of land, his heirs, executors, administrators, legal representatives, successors, or assigns create a subdivision, as herein defined, and fail and/or neglect to execute and file a plat for record as herein set forth, the Board shall not

some or all of such owners or priors of the default through or otherwise, and the Board demand a prompt execution of plat. If such owners or proprietors notified or not, fail to neglect to execute and file for the said plat within thirty (30) after the date of such notice Board shall cause to be made of such tract and any surveying necessary thereto. Said plat shall be prepared in accordance with requirements of this Ordinance shall be signed and acknowledged by the Recorder, who shall certify that he executed the action by reason of the failure of the owners or proprietors named to do so and be filed for record. The plat, when filed for record, shall have the effect for all purposes as if it had been executed, acknowledged, recorded by the owners or proprietors themselves.

8-8.02 A fee shall be payable to the Administrator before review, verification, recording a plat. Such fee shall be established by Board and paid to the Office of the Administrator.

4.01 All uses that may be allowed within the land use district are permitted within a PUD. Up to ten per cent of the gross land area may be directed to other commercial, industrial, public, and quasi-public uses that are not allowed within the land use district, providing that Zoning Commission finds favor that:

8-6.01 A minimum of ten per cent of the gross land developed in any residential project shall be reserved for common open space and recreational facilities for the residents of the area being developed. The required amount of open space reserved under a PUD shall be held in cooperative ownership of the project area for use of property owners within development, or it shall be dedicated to the public for retention as common open space for parks, recreation, and related uses. Public use assessments, right-of-way for water courses, and other similar charges and easements are not accept for common open space dedicated unless such land or right-of-way is usable as a trail or other similar use and unless such land use approved by the Zoning Commission. Every property developed under the PUD approval shall be designed to provide common open space of an area. Clustering of buildings is encouraged. Where townhomes are used, there shall be no more than eight (8) townhomes within any contiguous group. The utility responsibility for the maintenance of open space shall rest upon developer.

9-7.01 Underground utilities, including telephone and electrical systems, are required within limits of all PUD's. Appurtenances to these systems may be exempt from these requirements if they can be effectively screened and if Zoning Commission finds that an exception does not violate the form or character of the proposed PUD. To encourage high quality PUD development, the Zoning Commission may authorize increase in residential density one hundred fifteen (115) per cent of the permitted number of dwelling units under the terms of this Ordinance. Variations of character

and safeguards in conformance with the Ordinance. Violation of such conditions, bonds, or safeguards when made a part of the terms under which the Special Use is granted, shall be deemed a violation of this Ordinance. Upon granting a Special Use Permit, conditions may be attached to the Special Use Permit including, but not limited to those which:

7-8.01 Prior to granting a Special Use Permit, at least one (1) public hearing shall be held during which interested persons shall identify, architecture, and siting, as incorporated in a development, shall be considered as cause(s) for density increase, provided that these factors make substantial contributions to the objectives of the PUD such as enhancement of the following:

9-11.01 b. A Preliminary Development Plan evaluated by the Zoning Commission and approved by the Board; 9-11.01 f. A vicinity map, drawn to a scale approved by the Zoning Commission, which shows the property lines, existing streets, proposed zoning, and such other items as the Zoning Commission requires in order to demonstrate the relationship of the PUD to the Comprehensive Plan, to existing schools, and to other community facilities and services; g. A Preliminary Development Plan, drawn to a scale approved by the Zoning Commission, which shows topography at intervals of two (2) feet, locations and types of residential, commercial, and industrial land uses; the layout, dimensions, and names of rights-of-way, utility easements, parks and community spaces; layout and dimensions of lots and building setback lines; preliminary improvement drawings showing water, sewer, drainage, electric, telephone, and natural gas lines, and such other features as the Zoning Commission deems necessary.

9-15. APPROVAL IN PRINCIPLE BY THE ZONING COMMISSION

9-15.01 Within thirty (30) days following the public hearing, the Zoning Commission shall review the Preliminary Development Plan and determine:

a. If the benefits, combinations of land uses, and the interrelationships among the land uses in the surrounding areas justify the deviation from standard district regulations. The Zoning Commission's approval in principle of the Preliminary Development Plan shall be required before the applicant submits a Final Development Plan. An approval in principle shall not be construed as a favorable endorsement of the precise locations of uses, configurations of parcels, or engineering feasibility. The Zoning Commission shall evaluate the Preliminary Development Plan in the light of existing standards and criteria applicable to Special Use Permits before the Preliminary Development Plan is approved.

9-17. RECOMMENDATION BY ZONING COMMISSION. 9-17.01 Within sixty (60) days following receipt of the Final Development Plan, the Zoning Commission shall recommend to the Board that the Final Development Plan be:

9-17.02 The Zoning Commission shall then transmit the complete record concerning the application as well as the Zoning Commission's decision to the Board. The Zoning Commission shall base its decision upon the facts submitted with the

application and other testimony. Other things, the Zoning Commission shall specifically find with reference to the following:

11-8.01 b. The Board shall hear and decide appeals when it is alleged that there has been an error in a requirement, decision, or determination of the Zoning Commission in the administration or enforcement of this ordinance.

c. Those persons aggrieved by the decision of the Zoning Commission, or any taxpayer, may appeal the question decision to the Board as provided in Idaho Code 31-714, 12-6.02 MARKING AND LIGHTING.

Notwithstanding the preceding provision of this section, the owner of a non-conforming structure or tree is hereby required to permit the installation, operation, and maintenance of such markers and lights as the Zoning Commission requires as indicators of airport obstructions to the operators of aircraft in the vicinity of the airport. Such markers and lights shall be installed, operated, and maintained at the expense of Jerome County, Idaho.

12-7.04 NON CONFORMING USES ABANDONED OR DESTROYED. If the Zoning Commission determines that a non conforming tree or structure has been abandoned or that more than eighty per cent (80%) of it has been demolished, deteriorated or decayed, then a permit that would allow such structure or tree to exceed the applicable height limit or other wise deviate from the zoning regulations shall not be granted.

12-7.06 VARIANCE. A person desiring to erect or increase the height of any structure, or permit the growth of a tree, or use property in a manner which is not in accordance with the regulations prescribed in this Ordinance must first apply to the Zoning Commission for a variance from the affecting regulations. The application for a variance shall be accompanied by a determination by the Jerome County Airport Advisory Board and from the Federal Aviation Administration concerning the effect of the proposal on the operation of air navigation facilities and on the safe, efficient use of the navigable airspace.

Such variance shall be recommended favorably if it is determined that a more application or enforcement of regulations would result in unnecessary hardship which will be relieved by the variance. If it is determined that the variance will not be contrary to the public interest, will not create a hazard to air navigation, will do no substantial injustice, and will be in accordance with the spirit of this Ordinance. An application for variance from the requirements of this Ordinance shall only be considered by the Zoning Commission after the airport manager has been given an opportunity to review the application for its aeronautical affects and submit his written comments to the Zoning Commission. If the airport manager's opinion has not been submitted within fifteen (15) days after his receipt of the application, the Zoning Commission shall act upon the application without such advice.

12-8.01 It shall be the duty of the Zoning Commission to administer and enforce the regulations prescribed herein through the office of the Planning and Zoning Administrator. Applications for permits and for variances shall be made to the Administrator upon a

for, established for that purpose. Applications required by this Ordinance shall be promptly considered by the Zoning Commission. Each application shall be either:

a. Granted without conditions; b. Granted with added conditions; or c. Denied.

12-9.01 a. To hear and to decide appeals from any requirement, decision, or recommendation

made by the Zoning Commission in its enforcement of this Ordinance.

c. To make final decision relating to Zoning Commission determinations.

12-9.04 The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to override any determination made by the Zoning Commission, to set aside any requirement which this Ordinance imposes upon the applicant, and to effect a variance from this Ordinance.

12-10.01 Any person who has been aggrieved or a taxpayer who has been affected by a decision of the Zoning Commission made in the administration of this Ordinance may appeal to the Board of Adjustment.

12-10.02 All appeals thereunder must be made within a reasonable time as provided by the rules of the Board of Adjustment. The appeal shall be filed with the Zoning Commission, and it shall specify the grounds for the appeal. The Zoning Commission shall then transmit all records pertaining to the action being questioned to the Board of Adjustment.

12-10.03 An appeal shall stay all proceedings in furtherance of the action appealed, unless the Zoning Commission certifies to the Board of Adjustment, after the notice of appeal has been filed, that by reason of the facts stated in the certificate a stay would, in the opinion of either the Jerome County Airport Advisory Board or the Zoning Commission, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a majority decision of the Board of Adjustment.

13-5.02 (m) A non-refundable fee, in an amount to be determined by resolution of the Board shall accompany each application or reapplication for a LCO Use Permit. The Board may waive or adjust fee at their discretion.

14-5.01 A(7). Proof of approval of the land division by the following is required by the Administrator. The Administrator may place conditions on the Land Permit as requested by the agencies. If the applicant feels the request is not reasonable, the applicant may appeal to the Zoning Commission.

15-8.01 c. If structural alterations are not made, any non-conforming use of a structure and/or land may be changed to another non-conforming use, provided that the Zoning Commission finds that the proposed use is as equally appropriate to the district as the existing use, and provided that the Zoning Commission issues a Special Use Permit for the new one. The Zoning Commission shall require the appropriate conditions and safeguards in accordance with other provisions of this Ordinance.

15-9 The following signs are allowed upon the issuance of a Special use Permit by the Zoning Commission.

17-6.02 Where there is an adequate public transit system, or there for any other reason parking demand is unusually low, the parking space requirements cited above may be reduced proportionately by the Zoning Commission.

18-1.01 For the purpose of carrying out the provisions of this Ordinance, an Administrator and a Planning and

Zoning Commission and hereby stated. 18-4 THE PLANNING COMMISSION AND ZONING COMMISSION. 18-4.01 MEMBERSHIP. The Planning Commission and Zoning Commission each shall consist of not less than three (3) nor more than twelve (12) members, each of whom shall have been appointed by the Board and confirmed by a majority vote of the Board. An appointed member of the Planning Commission and Zoning Commission must have resided in the County for five (5) years prior to his appointment, and he must remain a resident of Jerome County during his service on the Planning Commission and Zoning Commission. Not more than one-third of the members of the Planning Commission and Zoning Commission may reside within an incorporated city in the County. The term of office for members shall be not less than three (3) years nor more than six (6) years. Members can serve for additional terms at the discretion of the Board. Vacancies occurring otherwise than through the expiration of terms shall be filled at the same manner as the vacancy being filled. Members may be removed for cause by a majority vote of the Board. Members shall be selected without respect for political affiliation. Members shall receive such mileage and per diem compensation as provided by the Board. 18-4.02 ORGANIZATION. The Planning Commission and Zoning Commission shall elect a Chairman and fill any other office it deems necessary. The Planning Commission and Zoning Commission may establish subcommittees, advisory committees, hearing examiners, or neighborhood groups to advise and to assist in carrying out its responsibilities. The Planning Commission and Zoning Commission may appoint nonvoting ex-officio advisors as may be necessary. 18-4.03 RULES, RECORDS, AND MEETINGS. Written organization papers, or bylaws, consistent with this Ordinance and with other laws of the State of Idaho for the transaction of business of the Planning Commission and Zoning Commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in each year. A majority of voting members of the Planning Commission and Zoning Commission shall constitute a quorum. 18-4.04 EXPENDITURES AND STAFF. With the approval of the Board, the Planning Commission and Zoning Commission may receive and expend funds, goods, and services from the Federal government or agencies and instrumentalities of state or local governments, and from civic and/or private sources, and the Planning Commission and Zoning Commission may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by the Planning Commission and Zoning Commission shall be within the amounts appropriated by the Board. Within such limits, the Planning Commission and Zoning Commission is authorized to hire employees and technical advisors, including but not limited to planners, engineers, architects and legal

assistants. 18-05. DUTIES OF THE PLANNING COMMISSION AND ZONING COMMISSION. 18-5.01 For the purposes of this Ordinance, the Planning Commission and Zoning Commission shall have the following duties: 18-5.01 The Board creating the Planning Commission and Zoning Commission shall provide that the area and interests within its jurisdiction are broadly represented on the Planning Commission and Zoning Commission. A member or employee of the Board or Planning Commission and Zoning Commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting during which the action is being heard or considered. A knowing violation of this section shall be a misdemeanor. 19-1. GENERAL. The Zoning Commission shall consider Administrative Appeals where it is alleged that an error has been made by the Administrator, where a question arises concerning the terms of this Ordinance, and where an affected person(s) requests a hearing. 19-2. ADMINISTRATIVE APPEALS. Appeals to the Zoning Commission concerning interpretation or administration of this Ordinance may be initiated by a person(s) aggrieved by an officer or bureau of the legislative authority affected by a decision of the Administrator. Such Appeal shall be made within twenty (20) days following the questioned decision of the Administrator, and it shall be filed with the Administrator and with the Zoning Commission as a notice of Appeal, specifying the grounds for the Appeal. The Administrator shall make available to the Zoning Commission all material which constitute the record upon which the Appeal is based. 19-4. VARIANCE. The Zoning Commission may authorize a Variance from the terms of this Ordinance if it is not contrary to the public interest and if, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A non-conforming use of neighboring lands, structures or building in the same district, or in other districts, shall not be considered as grounds for granting a Variance. A Variance shall be granted only when a strict application of the provisions of this Ordinance would result in unnecessary hardship of the characteristics of the site and the Variance is not in conflict with public interest. 19-5.01 A Variance from the terms of this Ordinance shall not be considered by the Zoning Commission unless a written application for a Variance has been submitted to the Administrator and the Zoning Commission containing the following: 19-5.02 When a person(s) requests a Variance, the Zoning Commission shall declare those specific findings from the presented evidence which demonstrate that the standards for Variance have been satisfied. 19-6.01 The Zoning Commission shall not grant an Appeal or Variance which would allow a use prohibited under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said dis-

trict. In granting an Appeal or Variance, the Zoning Commission shall prescribe the appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when they have been made a part of the terms under which the Appeal or Variance is granted, shall be a violation of this Ordinance. 19-7.01 Upon receipt of the application for an Administrative Appeal, the Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to all parties as required for Special Use Permits. 19-7.02 Upon receipt of the application for a Variance, the Zoning Commission shall hold a public hearing, publish a notice in the official newspaper or paper of general circulation within the jurisdiction fifteen (15) days prior to the date of the hearing, and give written notice to property owners adjoining the parcel under consideration for a Variance. 19-8. ACTION BY THE ZONING COMMISSION. 19-8.01 Within thirty (30) days after the public hearing, the Zoning Commission shall either approve, approve with appended conditions, or deny the request for Appeal or Variance. 19-8.02 Upon granting or denying an application, the Zoning Commission shall specify the Ordinance and standards used in evaluating the application, the reasons for the action of approval or denial, and the actions, if any, that the applicant might take with respect to a reapplication for Appeal or Variance. 19-8.03 The applicant, or any affected person(s), who appears in person or in writing before the Zoning Commission may appeal the decision of the Zoning Commission to the Board, provided that the Appeal is submitted to the Board within fifteen (15) days of the Zoning Commission signing the written Finding of Facts and Conclusions of Law. 19-10.01 Unless otherwise ordered by the Board the record and transcript shall be prepared as set out in this section. The staff report and all evidence admitted for consideration by the Planning and Zoning Administrator and Zoning Commission shall constitute the record. An estimate of cost for production of sufficient copies of the record and the transcription of all recorded hearings in front of the Zoning Commission and sufficient copies thereof shall within 10 days be provided to the person(s) appealing. The person(s) appealing shall have 14 days from the time they are mailed by regular mail notification of the estimate of cost to then pay for the estimate for the record and transcript and sufficient copies thereof on appeal and shall pay for any balance on the completion thereof. If the person(s) appealing do not pay for the estimated cost of the record and transcript and sufficient copies thereof, the appeal may be dismissed by the County. Upon payment by the person(s) appealing the record, transcript shall be prepared. Once the record and transcript are

prepared the Board shall immediately set a hearing date. The Board shall decide to uphold, to conditionally uphold, or to overrule the decision of the Zoning Commission. The Board shall make its decision by a simple majority vote of the entire membership of the Board. 20-13.02 After an investigation by the Administrator of a complaint for the violation of any of the provisions of chapter 5 Regulations within Zones, Charts 5-1 through 5-14, Chapter 6 Performance Standards, Chapter 7 Special Use Permit, Chapter 13 Livestock Confinement Operation, Chapter 14 Land Division, Chapter 16 Signs, or Chapter 25 Hazardous Waste Disposal Sites prior to instituting formal proceeding for violation of this Ordinance, to obtain compliance the Administrator of the Planning and Zoning Commissions may assess and collect an administrative fee for such violations committed prior to submitting any application required by this Ordinance. a. Where procedures for compliance do not require a permit or a hearing before the Zoning Commission the amount of the administrative fee may be up to but should not exceed fifty dollars (\$50.00). 21-1.01 If the public necessity, convenience, general welfare, or good zoning practices require, the Board may, by Ordinance after receipt or recommendation thereon from the Planning Commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, boundaries, or classifications of property. 21-1.02 Amendments or other modifications to this Ordinance may be made at any regular or special meeting of the Planning Commission. The Planning Commission, however, shall specifically address the question of modification of the Comprehensive Plan or Zoning Ordinance at the January and July meeting of each calendar year. 21-2.01 a. By adoption of a motion by the Planning Commission. 21-4.01 Zoning districts shall be amended in the following manner: a. Requests for an Amendment to the Zoning portions of this Ordinance shall be submitted to the Planning Commission which shall evaluate the request to determine the extent and nature of the Amendment requested. b. If the request is in accord with the Comprehensive Plan, the Planning Commission shall make its recommendations to the Board, and the Board may adopt or reject the Amendment to the Ordinance under the notice and hearing procedures as herein provided. c. If the request is not in accord with the adopted Comprehensive Plan, the request shall be submitted to the Planning Commission, or, in its absence, the Board, which shall make its recommendations to the Board, and the Board shall adopt or reject the Amendment to the Comprehensive Plan under the notice and hearing procedures provided in Section 67-6509 Idaho Code. After the Comprehensive Plan has been amended, the Zoning Ordinance shall be amended. 21-5. PLANNING COMMISSION PUBLIC HEARING. 21-5.01 The Planning Commission shall hold a Public Hearing and make recommendations on proposed Zoning Amendments. Zoning Amendments may consist of text or map revisions. 21-5.02 Zoning Ordinance Text

Amendment: The Planning Commission, prior to recommending a Zoning Ordinance Text Amendment to the Board shall conduct at least one (1) Public Hearing at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the Hearing, Notice of the time, the place, and the Amendment to be considered shall be published in the official newspaper or paper of general circulation within the jurisdiction. If the Planning Commission, following the Hearing, makes a material change from that which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Commission forwards the proposed Amendment with its accompanying recommendations to the Board. 21-5.03 Zoning Ordinance Map Amendment: The Planning Commission, prior to recommending a Zoning Ordinance Map Amendment that is in accord with the Comprehensive Plan to the Board shall conduct at least one (1) Public Hearing at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the Hearing, Notice of the time, the place, and the Amendment to be considered shall be published in the official newspaper or paper of general circulation within the jurisdiction. Additional Notice shall be provided by mail to property owners and residents within one-half (1/2) mile of the external boundaries of the land being considered. Notice shall also be provided to any additional area that may be impacted by the proposed change as determined by the Administrator. When Notice is required to two hundred (200) or more property owners or residents, two (2) Notices in the official newspaper or paper of general circulation within the jurisdiction shall be considered to be sufficient notice in lieu of mail notifications, provided that the second Notice appears ten (10) days prior to the Public Hearing. If the Planning Commission, following the Hearing, makes a material change from that which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Planning Commission forwards the proposed Amendment with its accompanying recommendation to the Board. 21-6. RECOMMENDATION BY THE PLANNING COMMISSION. 21-6.01 Within one hundred eighty (180) days after the receipt of the proposed Amendment, the Planning Commission shall transmit its recommendation to the Board. The Planning Commission may recommend that the Amendment be granted as requested, it may recommend a modification of the Amendment requested, or it may recommend that the Amendment be denied. 21-7.01 The Board, prior to adopting, revising, or rejecting the proposed Amendment to the Zoning Ordinance shall conduct at least one (1) Public Hearing using the same Notice and Hearing procedures as the Planning Commission. If the Board, following the Hearing, makes a material change from that

which was presented at the Public Hearing, additional Notice and Hearing shall be provided before the Board adopts the Amendment. 21-7.02 The Board shall accept the recommendation of the Planning Commission's report unless it is rejected by a simple majority vote of the full Board. 23-1.01 The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the Planning Commission. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended. 23-2.01 The Planning Commission and Zoning Commission shall approve their Bylaws and make a recommendation of approval to the Board. The Bylaws of the Planning Commission and Zoning Commission shall be in effect and are hereby made part of this ordinance after the adoption of the Bylaws by the Board. All amendments to the Bylaws which are approved and adopted by the Board shall become effective upon adoption. 23-3.01 The Chairman of the meeting shall rule on all questions of procedure and the admission of evidence in accordance with this Chapter of this Ordinance, the Bylaws of the Planning Commission and Zoning Commission, or Robert's Rules of Order as currently stated. 23-4.01 The Order of Business at regular meetings of the Planning Commission and Zoning Commission shall be: 23-5.01 An accurate record of all business transacted at meetings and hearings of the Planning Commission and Zoning Commission shall be kept through the use of recording equipment and/or through the presence of a stenographer. A formal meeting of the Planning or Zoning Commission shall not proceed unless it is being properly recorded. 23-6.01 The Chairman of the Planning Commission or Zoning Commission, or his proper surrogate as provided in the Bylaws of the Planning Commission or Zoning Commission, shall conduct the meeting in a manner which assures that all parties to a petition for action by the Planning Commission or Zoning Commission, whether protagonist or antagonist, receive adequate opportunity to be heard, under the concept of due process. The Chairman shall require that all who give testimony keep their remarks pertinent to the matter under consideration. The Chairman shall have power to place a reasonable limit on the time allotted for each witness to testify. 23-6.02 The Chairman shall admit as evidence all testimony that is relevant to the matter before the Planning Commission or Zoning Commission, insofar as the evidence proves, disproves, is material, or is germane to the matter under consideration. 23-7.01 All documentary evidence, whether delivered by e-mail, fax, mail, hand delivery or otherwise shall be submitted seven days prior to the scheduled Planning Commission or Zoning Commission Hearings. The only exception is that a person present at the scheduled hearing shall be allowed to present

a one-sided document no larger than 8 1/2" x 11" that is sufficiently legible, handwritten or typed in type size not less than 12 point or pica in any standard font provided the type may not be smaller than 12-point standard Times New Roman when they present their testimony at the scheduled Planning and Zoning Hearing. The documents referred to in this section shall be surrendered to the Planning Commission or Zoning Commission and shall become a part of the permanent record of the testimony given in the matter under consideration. This section does not apply to staff of the Planning Commission or Zoning Commission. 23-7.02 Evidence shall be given in an orderly manner as follows: a. Testimony by the petitioner (allow 5 minutes), the one who is seeking an action by the Planning Commission or Zoning Commission. The petitioner, at the conclusion of this testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). b. Testimony by the Planning and Zoning Administrator. The Administrator, at the conclusion of his/her testimony, may be questioned by the Chairman of the Planning Commission or Zoning Commission (no time limit). c. Testimony by witnesses in support of the petition (2 minutes). Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). d. Testimony by witnesses who oppose the petition (allow 5 minutes) for principal opposer and (2 minutes) for all others. Each witness at the conclusion of his/her testimony may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). e. Rebuttal testimony by the petitioner. At the conclusion of his/her rebuttal, the petitioner may be questioned by the Chairman of the Planning Commission or Zoning Commission and by individual members of the Planning Commission or Zoning Commission (no time limit). f. As a final action in receiving testimony, the Chairman of the Planning Commission or Zoning Commission may call for testimony from Staff, consultants and advisors to the Planning Commission or Zoning Commission or any other persons deemed necessary by the Planning Commission or Zoning Commission. Such witness(es) shall be subject to questioning by the Chairman of the Planning Commission or Zoning Commission and by members of the Planning Commission or Zoning Commission (no time limit). 23-7.03 The burden of proving that the Planning Commission or Zoning Commission should act favorably toward the petition under consideration rests solely upon the petitioner. 23-8 The Planning Commission or Zoning Commission, or the Board,

as the case may be, shall render a decision within one hundred eighty (180) days after the date of the Hearing. The decision shall be in writing. The presiding officer shall sign it and it shall state the specific Finding of Facts and Conclusions of Law which support the decision. The criteria, standards, regulations, and recommendations found in the Comprehensive Plan and in such other Ordinances and Regulations of Jerome County that are used by the Planning Commission or Zoning Commission in making its decision shall be identified, and the manner in which they affect the final decision shall be stated. Chapter 25 SECTION 4: AMENDMENT. That the Zoning Ordinance of Jerome County be and the same is hereby amended by the addition thereto of a new section to be known and designated as Ordinance #28-86 of the Jerome County Zoning Ordinance and to be read as follows: Hazardous Waste Disposal Site - hen considering a Conditional Use for such a site, the Zoning Commission must take into account the following: HAZARDOUS WASTE DISPOSAL SITES (1) Hazardous Waste Disposal Site means any property or structure intended or used for the treatment, storage, or disposal of hazardous wastes. Further, a Hazardous Waste Site also includes a site used for the purpose of disposal of hazardous waste, hazardous materials and toxic substances. Ancillary equipment used for transporting hazardous material to and from a disposal site shall be subject to the provisions of this Ordinance. (2) When an application or proposal for a Hazardous Waste Disposal site is presented to the Zoning Commission, such a proposed site must be in complete and full compliance with all Federal and State laws and regulations pertaining to hazardous waste, hazardous material and toxic substances. (3) When an application or proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider whether such a use complements, benefits and is compatible with the surrounding land uses. (4) When an application or proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the effect of transportation routes by vehicles containing materials to be disposed of in the proposed site. (5) When an application or a proposal for a Hazardous Waste Site is presented, the Zoning Commission must consider the impact, if any, upon the water and water supplies, both surface and underground, in the County. (6) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the geological bases that may or may not support such a proposed site. (7) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider the possibility of the existence of the site endangering human health, animal life, and plant life in the County. (8) When an application or a proposal for a Hazardous Waste Disposal Site is presented, the Zoning Commission must consider public input and must consider all information and aspects which it deems pertinent and relevant to

such a proposal, not limited to the mandatory guidelines of this section. (9) Applicants for a Hazardous Waste Disposal Site in Jerome County are financially responsible for all reasonable costs incurred by the Zoning Commission and County in reviewing and considering the application. WHEREAS, the applications to Amend the Jerome County Zoning Ordinance Text was received by the Jerome County Planning and Zoning Commission; and, WHEREAS, the requested Amendments are in conformity with the Jerome County Comprehensive Plan; and, WHEREAS, all notices and hearings required by County and State law have been given and held; and, WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendments be approved. THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code. ADOPTED AND APPROVED THIS 30th DAY OF October, 2006. JEROME COUNTY BOARD OF COMMISSIONERS
 S/Vernica Lierman, Chair
 S/Charles "Charlie" Howell, Commissioner
 S/Joseph "Joe" Davidson, Commissioner
 ATTEST: S/Cheryl Watts, Jerome County Clerk
 PUB: 119 N50714

6

EXHIBIT 3

Instrument # 2082230

JEROME COUNTY, JEROME, IDAHO

4-25-2008 01:48:39 No. of Pages: 10

Recorded for : JEROME COUNTY COMMISSIONERS

MICHELLE EMERSON Fee: 0.00

Ex-Officio Recorder Deputy

SCANNED

ORDINANCE NO. 2007- 6

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT

Chapter 2, 6-2, 13 and 23

Chapter 2 Definitions

APPLICANT/APPELLANT-The person or entity seeking a decision from the Board.

COMMUNICATION FACILITIES-Such uses and structures as radio and television transmitting and receiving antennas, radar stations, cellular towers, and microwave towers.

FAMILY, IMMEDIATE-A member of the immediate family includes any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner of the real property.

GOVERNING AUTHORITY -Shall refer to the Planning Commission, Zoning Commission or the Board, whichever is the applicable entity that is conducting the hearing.

LOT LINE ADJUSTMENT-The adjusting of common property line(s) or boundaries between adjacent lots, tracts or parcels where an equal or lesser number of lots, tracts or parcels are created and where any existing or resulting parcel is not reduced below the minimum requirements established by the zoning ordinance.

PUBLIC UTILITIES-Structures or facilities essential to supplying the public with electricity, power, gas, water, water treatment, transportation, communication, or public services. The definition includes power plants, electrical substations, gas regulator stations, and water treatment plants.

STAFF-Any Jerome County officer or employee present during the hearing.

UTILITIES-Installation(s) for providing service such as the generation, transmission or distribution of water, gas, electricity and communications; the collection and treatment of sewage and solid waste; the collection, storage or diversion of surface water and storm water, and ancillary facilities providing service to and used by the public. These services may be provided by a public or private agency. and Amendments summarized as follows:

Chapter 6

6-2 SUPPLEMENTAL, SETBACK AND HEIGHT REGULATIONS

6-2.01 e. EXCEPTIONS TO THE SETBACK REGULATIONS. The setback limitations contained in the Official Schedule of District Regulations do not apply to utility structures within the road right-of-way or an approved utility easement as long as the appropriate highway district or the entity that is responsible for the maintenance of the road(s) or utility easement approves the utility structures.

Chapter 13 LIVESTOCK CONFINEMENT OPERATIONS

13-2.01 REQUIREMENTS.

Any and all livestock confinement operations (LCOs) are subject to the following requirements:

a) A Waste Distribution Plan for all waste produced by a LCO. Discharge of waste from a property owned or controlled by any LCO operator is prohibited. This applies to any LCO, regardless of size or type. Animal waste products, including sprinkled waste, shall not leave the property of the LCO, unless the LCO operator has agreed with another party to disperse animal waste products on that person's property. Liquid waste treatment lagoon, separators and holding ponds and such dispersal shall meet all local, State and Federal guidelines.

d) All new LCO operations or the expanding portion of an existing LCO operation shall be required to use shielded or directional lighting.

13-2.02 PASTURED ANIMALS.

Pastured animals are not considered to be a LCO and therefore, they do not need a permit, nor are they regulated as to the number of animals that an owner can have on his property. Pasture is defined as land where crops, vegetation, or forage growth are sustained in the normal growing season.

13-2.03 LIVESTOCK CONFINEMENT OPERATIONS REQUIRE A PERMIT.

All LCOs operating in Jerome County require a permit-(Amended 3-25-2004, 8-22-07)

13-2.04 ANIMAL UNITS.

One animal unit is the unit of measure for any LCO and is defined as 1,000 pounds of livestock. The weight of any type of livestock is determined by tables of weights typical for that type of livestock. The Administrator shall grandfather all existing LCO Permits that were approved by Jerome County before August 28, 2003 when Jerome County changed its designation of an animal unit from 1.4 to 1000 pounds of confined animals. (Amended 4-27-2006)

13-2.05 PERMITTED LOCATIONS.

New LCO operations shall only be allowed in A-1 Zones.

13-2.06 EXISTING LCO'S WITHOUT A LCO PERMIT.

a. All existing LCOs, in existence without a LCO Permit shall be required to have a Livestock Siting Permit.

b. Such LCOs shall be granted a Livestock Siting Permit without a fee upon filing a completed Livestock Siting Permit Application with the Administrator.

c. Such LCOs shall file a completed application no later than 60 days after notification by the Administrator that a Livestock Siting Permit is required.

13-2.07 EXPANSION OR MODIFICATION OF AN EXISTING LCO, STRUCTURES AND PROPERTY. (Amended 1-13-05)

a. Expansion of an existing LCO with an existing permit will require the LCO owner to apply for a new LCO Permit as outlined in Section 13-5. Expansion is defined, for the purposes of this Chapter, as an increase in animal units.

b. A modification or expansion of existing corrals, lagoons and wells that are part of an existing LCO, with no increase in animal units, requires a Livestock Structure Expansion Siting Permit. (Amended 3-25-2004; 1-13-05, 8-22-07)

f. The reduction of property area only, maintaining a maximum of ten animal units per acre and all existing structure(s) shall meet the minimum setback requirements of the this Ordinance and shall apply for Property Line Reduction Permit that shall only require approval by the Administrator. (Added 10/6/2005, 8-20-07)

13-3 MAXIMUM ANIMAL UNIT DENSITY FOR LCO'S.

The maximum density of animal units for any LCO shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated.

13-4.04 PROPERTY LINES. (Amended 1-13-05)

c. Manure stored off site must comply with Performance Standards outlined in this Ordinance, Chapter 6-5.01 r. 4. (Amended 1-13-05,8-20-07)

13-5.02 LCO PERMIT APPLICATION. (Amended 1-13-05)

LCO Permit application forms shall be available at the Administrator's Office. Completed applications for LCO's will be filed with the Administrator. The Administrator shall forward a copy of the application to the Department of Agriculture Siting Team. The LCO Permit application shall include the following items(Amended 8-20-07)

e. A parcel map of all the property of the proposed LCO with the site location of the animal confinement site outlined on the parcel map. Vicinity map with the LCO site location. (If available, a detailed sketch of the site location on an aerial photograph with the following:.) (Amended 3-25-2004, 8-20-07)

g. FEMA Flood Zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant. This is obtainable from the Administrator's office. (Amended 3-25-2004, 8-20-07)

l. Site assessment comments are required from the appropriate Highway District, Irrigation Delivery Department, South Central Health District, Department of Agriculture, Department of Water Resources, and/or other agencies designated by the Administrator. The Applicant is required to submit these comments with his application. The Board may place conditions on the LCO Permit as requested by the agencies. (Amended 3-25-2004; 9-9-04; 4-27-2006, 8-20-07)

13-5.06 EXISTING PERMIT TRANSFERS.

The holder of the existing permit may transfer a Livestock Siting Permit or LCO Permit to a new owner or operator upon written notification to the Administrator. The Administrator shall place the transfer document in the existing LCO Permit file. (Amended 3-25-2004, 8-22-07)

13-5.08 REDUCTION OF PROPERTY LINE OF AN EXISTING SITING PERMIT OR LCO PERMIT. (Added 9-9-04, 8-20-07)

- a. Reduction of property area shall require the owner of the LCO to apply for a LCO Property Line Reduction Permit.
- b. The existing LCO shall not exceed ten (10) animal units per acre on the contiguous real property on which the LCO is operated.

13-6 PUBLIC NOTIFICATION AND INSPECTION.(Amended 8-20-07)

13-6.01 The Administrator shall cause a notice of the filing of an application for a LCO Permit to be published in a newspaper of general circulation in Jerome County, Idaho. The Administrator shall also send the notice by mail to all property owners within one mile of the boundaries of the contiguous property owned by the applicant of the proposed LCO pursuant to Idaho Code 67-6529. The property owner shall be responsible to forward Notice of Hearing to all primary residents on the property. The applicant for the LCO Permit, in addition to the application fee, shall pay all costs of publication and notice. (Amended 8-20-07)

13-6.02 The application shall be available for public inspection during regular business hours at the Administrator's office.(Amended 8-20-07)

13-7 PUBLIC HEARING AND APPEAL.(Amended 8-20-07)

13-7.01 One Public Hearing shall be heard before the Board on applications brought pursuant to this chapter. At such hearing, all members of the public desiring to present oral or written comment, or documentary evidence, shall be allowed to do so, subject to the hearing procedures (including limits of time) as set fourth in Chapter 23 of this Ordinance.(Amended 8-20-07)

13-7.02 The decision granting or denying an application brought pursuant to this chapter shall be in writing and shall conform to the standards and criteria set fourth in Idaho Code Section 67-6535, as it may be amended from time to time. (Amended 8-20-07)

13-7.03 There is no appeal of a decision made pursuant to section 13-7.02 Judicial review may be sought under the procedures provided by Idaho Code, as it may be amended from time to time. (Amended 8-20-07)

13-8 AMENDMENTS DURING CONSTRUCTION.

New LCO's shall be constructed according to the site plans submitted to the Planning & Zoning Administrator. The Administrator may approve amendments submitted by the applicant during the construction process to the site plan as long as the amended changes and/or material changes do not change the set back requirements in Chapter 13 of the Jerome County Zoning Ordinance.

13-9 OCCUPANCY PERMIT AND OPERATION (Amended 8-20-07).

13-9.01 The Occupancy Permit shall be issued and operation of the LCO may commence upon receipt by the Administrator of all the following: (Amended 8-20-07)

a. Certification by the applicant that the LCO has been constructed according to the site plans as approved by the Board or according to any changes to those plans that were approved by the Administrator. (Amended 8-20-07)

13-9.02. LCOs shall be operated in accordance with the issued Occupancy Permit. (Amended 8-20-07)

13-10. VIOLATION.

13-10.01 Any person who operates a LCO and who has not been issued a proper permit, shall have sixty (60) days from the date of receipt of written notification from the Administrator to file a LCO Permit or Livestock Siting Permit pursuant to the procedures outlined in this chapter. Failure to file such permit within the sixty (60) day period shall constitute a violation of this Ordinance and the LCO shall cease its operation until a proper permit has been issued. (Amended 8-20-07)

Chapter 23 PROCEDURAL REQUIREMENTS FOR MEETINGS AND HEARINGS

23-1.01 The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the Planning Commission, Zoning Commission and Board. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended. (Amended 8-31-2006; 11-9-2006, 8-20-07)

23-3. ORDER OF BUSINESS. (Amended 8-31-2006, 8-22-07)

23-3.01 The Order of Business at regular meetings of the Planning Commission and Zoning Commission shall be: (Amended 11-9-2006, 8-20-07)

- e. Reports concerning current activities of the Administrator and/or Building Official. (Amended 1-12-98, 8-20-07)

23-4. RECORD OF MEETING.

23-4.01 An accurate record of all business transacted at meetings and hearings of the Planning Commission and Zoning Commission shall be kept through the use of recording equipment and/or through the presence of a clerk/stenographer. A formal meeting of the Planning or Zoning Commission shall not proceed unless it is being properly recorded. (Amended 8-31-2006; 11-9-2006, 8-20-07)

23-4.02 The Planning Commission shall meet with or seek input from the Zoning Commission when any new proposals for legislative changes to the Ordinance, Comprehensive Plan and Land Use Map are considered and before the Planning Commission conducts any hearing on proposed legislative changes. (Added 8-31-2006, amended 8-20-07)

23-4.03 The Zoning Commission shall meet with or seek input from the Planning Commission on all new changes to the Comprehensive Future Land Use Map when any new submitted proposals are before the Zoning Commission. (Added 8-31-2006, amended 8-20-07)

23-5 THE CHAIRMAN (Amended 8-20-07)

23-5.01 The Chairman of the Planning Commission or Zoning Commission, or his proper surrogate as provided in the Bylaws of the Planning Commission or Zoning Commission, shall conduct the meeting in a manner which assures that all parties to a petition for action by the Planning Commission or Zoning Commission, whether protagonist or antagonist, receive adequate opportunity to be heard, under the concept of due process. The Chairman shall require that all

who give testimony keep their remarks pertinent to the matter under consideration. The Chairman shall have power to place a reasonable limit on the time allotted for each witness to testify. (Amended 8-31-2006: 11-9-2006, 8-20-07)

23-5.02. The Chairman of the Planning Commission or Zoning Commission shall admit as evidence all testimony that is relevant to the matter before the Planning Commission or Zoning Commission insofar as the evidence proves, disproves, is material, or is germane to the matter under consideration. (Amended 8-31-2006: 11-9-2006, 8-22-07)

23-6. HEARING PROCEDURES OF THE PLANNING AND ZONING COMMISSIONS AND THE BOARD.

23-6.01 BURDEN OF PROOF:

The burden of proving that the governing body should act favorably toward the applicant/appellant rests solely upon the applicant/appellant.

23-6.02 CONDUCT OF HEARING:

Hearings before the governing body shall be conducted in general conformance with the following procedure:

- A. Generally: All individuals presenting evidence at the hearing shall be sworn or affirmed before the governing body. The Chair of the governing body may limit testimony and scope of the hearing as he sees fit. With permission from the Chair, members of the governing body may at any time during the hearing freely inquire of anyone at the hearing, including staff, without limit of time. The Chair of the governing body shall rule on all questions of procedure and the admission of evidence, with such ruling being made in accordance with the Bylaws of the applicable governing body, this Ordinance and/or the Idaho Code.
- B. Report: Hearings before the governing body may commence with a report from staff. Such report will be given without limit of time. The report may be written or oral, at the pleasure of the governing body, and may include testimony from witnesses. The report may contain recommendations, however the governing body shall not be bound by any such recommendations.
- C. Applicant/Appellant Comments: At the conclusion of staff's comments, if any, the applicant/appellant, and those favoring the applicant/appellant's position shall be allowed an opportunity to support the applicant/appellant's position by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in subsection F of this section. All others favoring the applicant/appellant's position shall be allowed to present evidence, in the form of oral or written

testimony and/or documentary evidence presented in the manner prescribed in subsection F of this section. An applicant/appellant may be represented by counsel. Except as provided in subsection E of this section, at the governing board's discretion, testimony for and against an application may be presented in rotating order.

- D. Opponent And General Comments: When the applicant/appellant has concluded his presentation of evidence, those opposing the applicant/appellant's position or having general questions or comments shall be provided an opportunity to refute the evidence presented on behalf of the applicant/appellant by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in subsection F of this section.
- E. Applicant/Appellant Rebuttal: When the opponents, if any, have all concluded the presentation of their evidence, the applicant/appellant shall be allowed a brief period for rebuttal.
- F. Written Testimony and Documentary Evidence: Five (5) copies of all written testimony and/or other documentary evidence shall be submitted by mail or hand delivery to the Administrator's Office. Such copies shall be received no later than seven days prior to the scheduled hearing. The only exception is that a person present at the scheduled hearing may be allowed to present a one-sided document no larger than 8½ inches x 11 inches that is sufficiently legible, handwritten or typed in type size not less than 12 point or pica in any standard font provided the type may not be smaller than 12-point standard Times New Roman. In order to be considered as evidence, the original and five (5) copies of the document shall be presented to the governing body, with the original being admitted into evidence and becoming part of the permanent record. This section does not apply to the applicant/appellant, the staff or witnesses called by the governing body.

23-6.03 RECORD:

The staff report shall automatically become part of the record, as shall any documents submitted by the applicant/appellant, the proponents and/or the opponents, as shall all testimony given at the hearing. At conclusion of the hearing, the governing body shall close the record unless the governing body determines, in its discretion, additional evidence is required, in which event, it may proceed as follows: close the record with the exception of allowing the submission of specifically requested information, leave the entire record open for the submission of additional evidence to a date certain at which time it will automatically be closed without further action of the governing body, or continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable.

23-6.04 REOPENING THE RECORD IN MATTERS BEFORE THE BOARD:

In matters before the Board, the Board may, prior to issuing a written decision, and for good cause demonstrated, reopen the record for the purpose of receiving additional evidence. Only the applicant/appellant or an affected person as defined under Idaho Code Section 67-6521 may seek to reopen the record by concurrently filing a timely motion to reopen the proceedings containing information therein to demonstrate good cause, along with a payment of the estimated costs that will be incurred by the County to comply with applicable law governing notice and hearings. If the actual cost is more than the estimated cost, the person seeking to reopen the hearing shall then pay the remaining amount before any action is taken on his motion. If the actual cost is less than the estimated cost, then the balance shall be returned to the payer of the estimated cost. The Board shall decide a motion to reopen the record within a timely manner by way of oral or written decision. The Board may, within the time allowed herein, reopen the record for good cause on its own motion. If the Board determines to reopen the record, it shall thereafter comply with applicable law governing notice and hearing procedures, including those set forth in this Ordinance.

23-6.05 DECISIONS:

When the record has been closed, the governing body may then deliberate towards a decision based on the record, or it may take the matter under advisement for the purpose of deliberating towards a decision based on the record at a later date. After deliberating, the governing body shall render a written decision within one hundred eighty (180) days from the date when deliberations cease. The written decision shall comply with applicable law. The governing body shall deliberate and make decisions at meetings that comply with the Open Meeting Act, Idaho Code section 67-2340, et seq., as it may be amended from time to time.

WHEREAS, the application to Amend the Jerome County Zoning Ordinance Map was received by the Jerome County Planning and Zoning Commission; and,
WHEREAS, the requested Amendment is in conformity with the Jerome County Comprehensive Plan; and,
WHEREAS, all notices and hearings required by County and State law have been given and held; and,
WHEREAS, the Jerome County Planning and Zoning Commission has recommended to the Board of County Commissioners that the requested Amendment be approved.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Map be amended as above.

This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 10th DAY OF Sept., 2007. JEROME

COUNTY BOARD OF COMMISSIONERS

Charles M Howell

Charles "Charlie" Howell, Chair

Joseph E Davidson

Joseph "Joe" Davidson, Commissioner

Diana Obenauer

Diana Obenauer, Commissioner



ATTEST:

Michelle Emerson

Michelle Emerson
Jerome County Clerk

ORDINANCE NO. 2008-04

SCANNED

AMENDING THE JEROME COUNTY ZONING ORDINANCE TEXT

Chapters 2; Chapter 3 -4.01(f); Chapter 5 Charts 5-1, 5-4, 5-12; Chapter 6-2, -2.01(e); Chapter 13-6.01, -02, -03, -04 and -7.01; Chapter 14-5.01, 5.01A ,#10 (a) (b) and #12, #13, 14-5.01B; 14-6 thru 6.04 ; Chapter 20-14.01; Chapter 23.

CHAPTER 2 DEFINITIONS

AGENCY.

The local, state or federal governmental entity, department, office, or administrative unit responsible for carrying out regulations

APPLICANT/APPELLANT

The person or entity seeking a decision from the Administrator or the Governing Body.

APPLICATION.

The form(s) and all accompanying documents, exhibits and fees required of an applicant by the applicable department, Board or Commission of the county for development review, approval or permitting purposes.

APPLICATION, COMPLETED.

All application requests shall contain the following: (1) submittal and completion of all applicable application forms; (2) submittal of all required supporting application information by the applicant; (3) all required agency documents (4) submittal of all required fees.

BAR.

A commercial enterprise whose primary activity is the sale of alcoholic beverages to be consumed on the premises. Bars include nightclubs, private clubs, hotel lounges and similar facilities serving alcoholic liquor. This definition does not include restaurants where the principal business is preparation of food.

BIOMASS.

Plant material, used for the production of such things as fuel alcohol and non-chemical fertilizers. Biomass sources may be plants grown especially for that purpose or waste products from livestock, harvesting, milling, or from agricultural production or processing.

COMMERCIAL LIVESTOCK TRUCK WASHING FACILITY.

A facility(s) that charges a fee to wash livestock trucks and trailers

COMMUNICATION FACILITIES.

Such uses and structure as radio and television transmitting and receiving antennas, radar stations, cellular towers, telephone services and microwave towers.

Instrument # 2084294

JEROME COUNTY, JEROME, IDAHO

8-5-2008 03:23:37 No. of Pages: 13

Recorded for : JEROME COUNTY COMMISSIONERS

MICHELLE EMERSON

Ex-Officio Recorder Deputy

*Not published
Needed correction*

COMMUNICATION UTILITY BUILDING(S) AND STRUCTURE(S).

A structure that is used for the transmission, transfer, or distribution of telephone, liquid propane gas, natural gas, Internet or electrical services and related activities. This definition shall not be classified as a plant.

COMMUNICATION UTILITY BUILDINGS AND STRUCTURES.

A structure that is used for the transmission, transfer, or distribution of telephone, liquid propane gas, natural gas, Internet or electrical services and related activities. This definition shall not be classified as a plant.

ENERGY SYSTEM, NON-CONVENTIONAL.

Power generated from natural forces such as wind, water, sunlight, or geothermal heat, or from biomass.

ENERGY SYSTEM, THERMAL.

Any energy system including supply elements, furnaces, tanks, boilers, related controls and energy distribution components, which uses any source of thermal energy. These sources include but are not limited to gas, oil, coal, and nuclear materials.

FACILITY.

A structure or place that is built, installed, or established to serve a particular purpose.

FAMILY, IMMEDIATE-A member of the immediate family includes any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner of the real property.

FERTILIZER WORKS.

The site of manufacturing or production of fertilizer from commercial composting.

FOSSIL FUEL.

A combustible solid, liquid, or gaseous material, rich in carbon, formed from the remains of plants and animals. Common fossil fuels include coal, natural gas, and derivatives of petroleum such as fuel oil and gasoline.

FUTURE LAND USE MAP

Is one of the components found in the Comprehensive Plan to show where the County has designated future land use designations.

GOVERNING BODY.

Shall refer to the Planning and Zoning Commission or the Board, whichever is the applicable entity that is conducting the hearing.

GOVERNMENTAL PROTECTION FACILITY.

Governmental Protective Facility is any agency designated by Jerome County to provide ambulance, fire and police protection.

HEARING. (Added 8-31-2006)

The convening of a quorum of a governing body for purposes of hearing public testimony, evidence and or comment, which is mandated by Idaho Code or this Ordinance, and which the consideration of such will be necessary for the conducting of county business at a subsequent meeting.

LAND DIVISION A-1.

(Amended 12-17-90; 10-30-95; 5-10-01; 1-22-04; 4-27-06)

The minimum land division size within A-1 Agriculture Zone shall be 40 acres. Property owner may split a home site off from the original parcel. If the home site is not sold as part of the original parcel, it is subject to the Jerome County Subdivision and Land Division Ordinance. A deed is recorded at the Jerome County Courthouse. Divisions which result in lots of 40 acres or more are not regulated by this Ordinance. All divisions of a lot, tract or parcel into fewer than 5 parcels at least 1 acre and smaller than 40 acres require a Land Division Permit.

LOT LINE ADJUSTMENT

The adjusting of common property line(s) or boundaries between adjacent lots, tracts or parcels where an equal or lesser number of lots, tracts or parcels are created and where any existing or resulting parcels is not reduced below the minimum requirements established by the zoning ordinance.

MEETING

The convening of a quorum of a governing body for purposes of conducting authorized county business, the nature of which does not necessitate public input, and where such input is not mandated under Idaho Code of this Ordinance

ORIGINAL LOT, TRACT OR PARCEL.

An original lot, tract or parcel of land from the date of reference of March 11, 1985. Any remaining portions of a lot, tract or parcel of land that results from partial rezoning of the lot, tract or parcel of land.

PETITION

A formal written request to review and consider a text amendment to one or more items within the Jerome County Zoning Ordinance or Comprehensive Plan. A petition may be generated by one or more person(s).

PLANT, FERTILIZER

A site for manufacturing or production of chemical fertilizer.

PLANT, INDUSTRIAL MANUFACTURING/PROCESSING.

Any establishment (not including a rendering plant) engaged in a series of continuous actions that changes one or more raw materials into a finished product and/or a product that is distributed or packaged and shipped for additional processing or fabrication.

PLANT-ENERGY PRODUCING, NON-CONVENTIONAL.

Any facility or installation such as a windmill, hydroelectric unit or solar collecting or concentrating array, which is designed and intended to produce energy from natural forces such as wind, water, sunlight, or geothermal heat, or from biomass for offsite use.

PLANT-THERMAL ENERGY PRODUCING, CONVENTIONAL.

Any facility which is designed and intended to convert energy from one or more energy sources, including but not limited to fossil fuels for either the transmission from the generation facility to a power distribution system or to final consumers.

PUBLIC UTILITIES.

Structures or facilities essential to supplying the public with electricity, power, gas, water, water treatment, transportation, communication and public services. The definition includes power plants, electrical substations, gas regulators stations, and water treatment plants.

SETBACK.

The shortest distance between the recorded property line and any building portion thereof or structure or item. All minimum yard and lot line setback requirements are subject to Jerome County Zoning Ordinance.

SPECIAL USE PERMIT

A document issued by the Administrator of this Ordinance upon the specific action of the Zoning Commission. The document defines the uses as well as the conditions limiting those uses in response to a request from an individual who seeks permission to use a piece of real property in a specific way for a specific purpose.

STAFF.

Employees of the Jerome County Planning, Zoning or Building Departments or other persons identified by a governing body, who are authorized by the Board, Ordinance or Idaho Code, to prepares documents or otherwise assist a governing body with planning and zoning matters.

UTILITIES.

Installation(s) for conducting providing services such as the generation, transmission or distribution of water, sewage, gas, electricity and communication; the collection and treatment of sewage and solid waste; the collection, storage or diversion of surface water and storm water, and ancillary facilities providing services to and used by the public. These services may be provided by a public or private agency.

The following definitions have been repealed from Chapter 2: GUESTHOUSE, TAVERN OR LOUNGE, CONDITIONAL USE, CONDITIONAL USE PERMIT, AND FAMILY FOOD PRODUCTION.

CHAPTER 3

3-4.01 f. When the Text of this Ordinance and the Maps of this Ordinance do not agree, the Maps shall prevail. The only exception is those listed sites in Jerome County Zoning

Ordinance Chapter 4-8.05. When the provisions of the sections of the text of this Ordinance do not agree, the most stringent provisions shall prevail.

CHAPTER 5, CHART 5-1

Add Commercial Truck Washing Facility with "S" under the A-1 zone indicating a Special Use Permit is required.

CHAPTER 5, CHART 5-4

Changing Miscellaneous Products from S-1 TO S; adding the category for Plant-Energy Producing, Non-Conventional (adding "S" in every zone), Plant-Industrial, Manufacturing/Processing, Plant-Thermal Energy Producing., Conventional (adding "S" in the IH zone).

CHAPTER 5, CHART 5-12

Changing Farm Equipment Sales by adding an "S" in the IMP Zone.

CHAPTER 6.

6-2. SUPPLEMENTAL, SETBACK AND HEIGHT REGULATIONS.

6-2.01

e. EXCEPTIONS TO THE SETBACK REGULATIONS

The setback limitations contained in the Official Schedule of District Regulations do not apply to utility structure(s) within the road right-of-way or an approved utility easement(s) as long as the appropriate highway district or the entity that is responsible for the maintenance of the road(s) or utility easement(s) approves the utility structure(s).

CHAPTER 13

13-6.01 PUBLIC-NOTICE AND INSPECTION

- a. The Administrator shall cause notice of the filing of an application for a LCO Permit to be published in a newspaper of general circulation in Jerome County, Idaho. The Administrator shall also send notice by mail to all property owners within one mile of the boundaries of the contiguous property that is to contain the proposed LCO. The property owner shall be responsible to forward Notice of Hearing to all primary residents on the property. The applicant for the LCO Permit, in addition to the application fee, shall pay all costs of publication and notice.
- b. The application shall be available for public inspection in the Administrator's office.

13-6.02 PUBLIC HEARING AND APPEAL.

The application shall be available for public inspection for a period of 15 days after publication in the newspaper, including weekends and holidays, during regular business hours, at the Planning & Zoning Administrator's office. Any

primary resident, in accordance with Idaho Code 67-6529, may submit written comments and/or objections to the Administrator within 15 days after publication of the notice in the newspaper. The Administrator shall evaluate the written comments and submit those comments to be part of the record for the Hearing before the Board of County Commissioners.

- a. One Public Hearing shall be heard before the Zoning Commission on applications brought pursuant to this chapter. At such hearing, all members of the public desiring to present oral or written comment, or documentary evidence, shall be allowed to do so, subject to the hearing procedures (including limits of time) as set forth in Chapter 23 of this Ordinance. The Zoning Commission will forward their recommendation to the Board.
- b. One Public Hearing shall be heard before the Board on applications brought pursuant to this chapter. At such hearing, all members of the public desiring to present oral or written comment, or documentary evidence, shall be allowed to do so, subject to the hearing procedures (including limits of time) as set forth in Chapter 23 of this Ordinance.
- c. The decision granting or denying an application brought pursuant to this chapter shall be in writing and shall conform to the standards and criteria set forth in Idaho Code Section 67-6535, as it may be amended from time to time.

13-6.03 AMENDMENTS DURING CONSTRUCTION.

13-6.04 OCCUPANCY PERMIT.

13-6.05 OPERATION.

13-7.01. Any LCO owner, who has not filed a LCO Permit or Livestock Siting Permit with the Planning & Zoning Administrator within 60 days of written notification from the Administrator that this is required, shall be in violation of the Jerome County Zoning Ordinance. The owner may not continue operation and must apply for a LCO Permit.

CHAPTER 14

14-2.01 The provisions of this Chapter shall apply to all land divisions in the County, per definition of Land Division found in Chapter 2, with the following exceptions. (Amended 4-27-2006)

1. Divisions of 40 acres or more.

14-5.01 The Administrator shall use the following criteria when determining whether or not the proposed division complies with this Ordinance.

14-5.01-A. SURVEY

All lots must be a minimum of one (1).

- a. Property that is being used for utility structures that do not require a septic system.
 - b. A lot, parcel or tract of land that will connect into a community water and sewer system in an area zoned A-2 Agriculture Residential, commercial or industrial.
12. Original Parcel exceptions: a.
- a. If a portion of a lot, tract or parcel is divided from the original property resulting from an approved zoned change, lots, tracts or parcels shall be considered an "Original Parcel".
 - b. When a County or State Road divides a lot, tract or parcel into two (2) or more parcels each resulting portion shall become an "Original Parcel".
 - c. When an application for a Land Division Permit is approved for utility structures on less than one (1) acre, the resulting portion shall become an "Original Parcel" and will not be considered in the total number of land divisions of the originating lot, tract or parcel.
 - d. When a lot, tract or parcel creates a new legal description of the property without creating any additional lots, tracts or parcels (defined as a lot line adjustment) and the property is surveyed and a deed is recorded the resulting parcels will retain their status as defined under "Original Lot, Tract or Parcel".
13. Existing residential dwelling(s) designated within an A-1 Agricultural Zone on a parcel less than forty acres existing prior to the date of adoption of this amendment shall be allowed one or more land divisions provided said divisions do not create a subdivision. The parcel that does not contain the dwelling(s) shall be deemed unbuildable. A Land Division Survey shall be recorded with the remaining lot, tract or parcel designated as unbuildable as stated by the Jerome County Zoning Ordinance.
14. The applicant/developer must provide a plan for all community ditches to ensure the delivery of water from the head gate through the existing developing property to all the property which is entitled to receive water and if necessary to ensure delivery or for safety reasons the developer may be required to place community ditches underground by tile, culvert, or etc., through the developing property. The location of any underground ditch shall be recorded. (Amended 6-29-2000; 4-27-2006)
15. Upon final approval by the Administrator, the land division survey shall be recorded. Health certificate for sanitary restriction and Administrator's approval shall be recorded on the Land Division Survey. Building Permits shall not be issued and construction shall not commence until the proposed land division has been recorded. (Amended 6-20-94; 3-3-97; 3-16-2000; 6-29-2000)

14-5.01-B. SETBACKS.

1. The setback requirements for Livestock Confinement Operations as found in Chapter 13 of this Ordinance shall also apply to new residences involved in any land division proposal.

14-6. LOT LINE ADJUSTMENT

14-6.01. A lot line adjustment of lot lines of a recorded parcel with the Jerome County Courthouse shall be prohibited unless application for such lot line adjustment is submitted to the Planning & Zoning Office and is approved by the Administrator.

14-6.02. Applicability

1. The lot line adjustment shall not create any new lots, parcels or tracts of land.
2. All lot line adjustment parcels shall comply with all minimum acreage and setback requirements of this Ordinance.

14-6.03 Application

Persons requesting a division of a lot or adjustment of lot lines or a recorded deed shall submit;

1. A parcel map from the Jerome County Assessor's Office showing the location of where the new lot lines.
2. A parcel map showing the location of all existing structures, canals, roads and ditches.
3. Provide a legal description and a real property summary sheet of all the properties that are affected by the lot line adjustment(s).

14-6.04 Proof of Approval

1. The Administrator may require proof of approval of the lot line adjustment(s) by the following agencies.
 - a. South Central District Health Department
 - b. Appropriate Highway District
 - c. Appropriate Irrigation District
2. A new legal description(s) shall be submitted of each parcel that changes its lot lines.
3. The new legal description(s) shall be approved by the Jerome County Assessor's Office.
4. The property shall be surveyed and a copy of the recorded survey shall be filed with Jerome County Planning & Zoning Office.

14-7 FEES.

CHAPTER 20

20-14.01 Violation of any section or provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Each day such

violation continues shall be considered a separate offense. Any person convicted of a violation of any section or provision of this Ordinance, where no other penalty is set forth, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment, for any offense. Any person, including but not limited to, a landowner, tenant, sub divider, builder, or public official person who, participates in, assists in, or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Board or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent a violation of this Ordinance or of the Idaho Code.

23-1. PURPOSE.

23-1.01 The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the Planning Commission, Zoning Commission and Board. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended

23-2 BY-LAWS

23-2.01 The Planning Commission and Zoning Commission shall each adopt, amend or repeal its respective Bylaws in accordance with decision of the Board, this Ordinance or the Idaho Code. All such action shall occur at a meeting and will become effective upon majority vote.

23-3. ORDER OF BUSINESS

23-3.01 The Order of Business at regular meetings of the Planning Commission and Zoning Commission shall be: (Amended 11-9-06, 8-20-07)

23-4. RECORD OF MEETING.

23-4.01 An accurate record of all business transacted at meetings and hearings of the Planning Commission and Zoning Commission shall be kept through the use of recording equipment and/or through the presence of a clerk/stenographer making a verbatim record. A meeting or hearing of the Planning or Zoning Commissions shall not proceed unless it is being properly recorded)

23-5. HEARING PROCEDURES OF THE PLANNING AND ZONING COMMISSION AND THE BOARD.

23-5.01 BURDEN OF PROOF:

The burden of proving that the governing body should act favorably toward the applicant/appellant rests solely upon the applicant/appellant.

23-5.02 CONDUCT OF HEARING:

Hearings before the governing body shall be conducted in general conformance with each of the procedures set out in the individual paragraphs below, although the order that such paragraphs are taken at any particular hearing does not have to be the order shown below. The chairman shall determine the appropriate order for a particular hearing and shall announce it prior to the start of that hearing.

- A. Generally: All individuals presenting evidence at the hearing shall be sworn or affirmed before the governing body. The Chair of the governing body may limit testimony and scope of the hearing as he sees fit. With permission from the Chair, members of the governing body may at any time during the hearing freely inquire of anyone at the hearing, including staff, without limit of time. The Chair of the governing body shall rule on all questions of procedure and the admission of evidence, with such ruling being made in accordance with the Bylaws of the applicable governing body, this Ordinance or the Idaho Code.
- B. Report: Hearings before the governing body may commence with a report from staff. Such report will be given without limit of time. The report may be written or oral, at the pleasure of the governing body and may include testimony from witnesses. The report may contain recommendations, however the governing body shall not be bound by any such recommendations.
- C. Applicant/Appellant Comments: The applicant/appellant, and those favoring the applicant/appellant's position shall be allowed an opportunity to support the applicant/appellant's position by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in subsection F of this section. An applicant/appellant may be represented by counsel. Except as provided in subsection E of this section, at the chairman's discretion, testimony for and against an application may be presented in rotating order.
- D. Opponent And General Comments: Those opposing the applicant/appellant's position or having general questions or comments shall be provided an opportunity to refute the evidence presented on behalf of the applicant/appellant by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in subsection F of this section.
- E. Applicant/Appellant Rebuttal: When the opponents, if any, have all concluded the presentation of their evidence, the applicant/appellant shall be allowed a brief period for rebuttal.

- F. Written testimony and Documentary Evidence: Those wishing to present written testimony and/or other documentary evidence at a hearing shall mail or hand-deliver the appropriate number of copies to the Administrator's Office seven days prior to the scheduled hearing. In hearings before the Board, five (5) is the appropriate number of copies; and in hearing before the Planning and Zoning Commissions the appropriate number shall be thirteen (13) copies. The only exception is that a person present at the scheduled hearing may be allowed to present a one-sided document no larger than 8½ inches x 11 inches that is sufficiently legible, handwritten or typed in type size not less than 12 point or pica in any standard font provided the type may not be smaller than 12-point standard Times New Roman. In order to be considered as evidence, the original and five (5) or thirteen (13) copies as the case might be, of the one-sided document shall be presented to the governing body at the Hearing, with the original being admitted into evidence and becoming part of the permanent record. This section does not apply to the applicant/appellant, the staff or witnesses called by the governing body.

23-5.03 RECORD:

The staff report shall automatically become part of the record, as shall any documents submitted by the applicant/appellant, the proponents and/or the opponents, as shall all testimony given at the hearing. At the conclusion of the hearing, the governing body shall close the record unless the governing body determines, in its discretion, additional evidence is required, in which event, it may proceed as follows:

- 1) close the record with the exception of allowing the submission of specifically requested information;
- 2) leave the entire record open for the submission of additional evidence to a date certain;
- 3) or continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable. The applicant/appellant shall always be provided a reasonable opportunity to rebut any additional evidence allowed into the record.

23-5.04 REOPENING THE RECORD IN MATTERS BEFORE THE BOARD:

In matters before the Board, the Board may, prior to issuing a written decision, and for good cause demonstrated, reopen the record for the purpose of receiving additional evidence. Only the applicant/appellant or an affected person as defined under Idaho Code Section 67-6521 may seek to reopen the record by concurrently filing a timely motion to reopen the proceedings containing information therein to demonstrate good cause, along with a payment of the estimated costs that will be incurred by the Jerome County in having to comply with applicable law governing notice and hearings. If the actual cost is more

than the estimated cost, the person seeking to reopen the hearing shall then pay the remaining amount before any action is taken on his motion. If the actual cost is less than the estimated cost, then the balance shall be returned to the payer of the estimated cost. The Board shall decide at a recorded meeting whether good cause has been demonstrated, and shall state such on the record. The Board may, within the time allowed herein, reopen the record for good cause on its own motion. If the Board determines to reopen the record, it shall thereafter comply with applicable law governing notice and hearing procedures, including those set fourth in this Chapter.

23-5.05 DECISIONS:

When the record has been closed, the governing body may then deliberate towards a decision based on the record, or it may take the matter under advisement for the purpose of deliberating towards a decision based on the record at a later date. After deliberating, the governing body shall, within one hundred eighty (180) days from the date when deliberations cease, render a decision in accordance with Idaho Code Section 67-6535, as it may be amended from time to time, or other applicable law.

The following sections were repealed: 23-6, -6.01, 6.02; 23-7 thru -8.

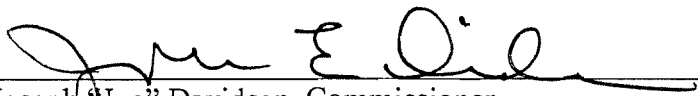
WHEREAS, the applications to amend the Jerome County Zoning Ordinance text were received by the Jerome County Planning Commission; and,
WHEREAS, the requested Amendments are in accordance with the Jerome County Comprehensive Plan; and,
WHEREAS, all notices and hearings required by County and State law have been given and held; and,
WHEREAS, the Jerome County Planning And Zoning Commission has recommended to the Board of County Commissioners that the requested amendments be approved;
THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS of Jerome County, Idaho, that the Jerome County Zoning Ordinance Text be amended as above. This Ordinance shall become effective upon its passage, approval and publication according to Sections 31-715 and 715A of the Idaho Code.

ADOPTED AND APPROVED THIS 5 DAY OF August, 2008

JEROME COUNTY BOARD OF COMMISSIONERS

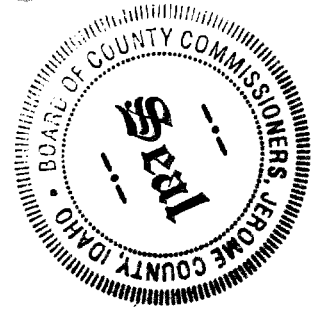
(absent)

Charles "Charlie" Howell, Chair



Joseph "Joe" Davidson, Commissioner



Diana Obenauer, Commissioner



ATTEST:



Michelle Emerson
Jerome County Clerk

G:\Ordinances\ORDINANCE 2008-_04_BOCC SIGNATURES 8-5-08.doc

CORRECTED ORDINANCE NO. 2008- 4
Amending The Text Of Various Sections Of The
Jerome County Zoning Ordinance

SCANNED

WHEREAS, the Board of Jerome County Commissioners initiated processes for amending the Jerome County Zoning Ordinance; and

WHEREAS, applications to amend the Jerome County Zoning Ordinance text were received by the Jerome County Planning and Zoning Commission; and

WHEREAS, the Jerome County Planning and Zoning Commission held a public hearing and had discussions on the proposed amendments and recommended to the Board of Jerome County Commissioners that the amendments be approved; and

WHEREAS, after receiving recommendations from the Jerome County Planning and Zoning Commission, the Board of Jerome County Commissioners held a public hearing and held discussions on the proposed amendments; and

WHEREAS, the requested Amendments are in accordance with the Jerome County Comprehensive Plan; and

WHEREAS, all notice and hearing procedures required by the Idaho Code and the Jerome County Zoning Ordinance, specifically Chapter 21, were followed and complied with; and

WHEREAS, the Board approved and passed the proposed amendments, thereby establishing Ordinance 2008-4; and

WHEREAS, Ordinance 2008-4 contained a number of amendments to the text of the Jerome County Zoning Ordinance; and

WHEREAS, a verbatim record was produced from the hearings and discussions held on this matter; and

WHEREAS, based on the record in this matter, it was the clear intent of the Jerome County Planning and Zoning Commission and the Board of Jerome County Commissioners to include, among other, two specific types of amendments in Ordinance No. 2008-4, the first being to amend, wherever found in the Jerome County Zoning Ordinance, the terms, "Planning Commission, Zoning Commission and/or Planning and Zoning Commission," with the term, "Planning and Zoning Commission," and the second being to amend Section 13-6.02 in the following manner (struck through language intended to be deleted; bold, underline language intended to be added

~~b. PUBLIC COMMENT~~ The application shall be available for public inspection for a period of 15 days after publication in the newspaper, including weekends and holidays, during regular business hours, at the

1

~~Planning & Zoning Administrator's office. Any primary resident, in accordance with Idaho Code 67-6529, may submit written comments~~

~~and/or objections to the Administrator within 15 days after publication of the notice in the newspaper. The Administrator shall evaluate the written comments and submit those comments to be part of the record for the Hearing before the Board of County Commissioners.~~

;and

WHEREAS, scrivener's error caused the language intended to be deleted (as indicated above) to be retained, and caused the language intended to be added (as indicated above) to be omitted from Ordinance No. 2008-4; and

WHEREAS, although the version of Ordinance 2008-4 that contains the scrivener's error has been approved and passed, it has not yet become effective, as it has not been published; and

WHEREAS, the scrivener's error has been recognized and corrected prior to Ordinance 2008-4 being published;

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, JEROME COUNTY, IDAHO, that effective upon approval, passage and publication, the text of the following sections of the Jerome County Zoning Ordinance are amended as shown below.

Chapters 2; Chapter 3 -4.01(f); Chapter 5 Charts 5-1, 5-4, 5-12; Chapter 6-2, -2.01(e); Chapter 13-6.01, -02, -03, -04 and -7.01; Chapter 14-5.01, 5.01A, #10 (a) (b) and #12, #13, 14-5.01B; 14-6 thru 6.04; Chapter 20-14.01; Chapter 23.

CHAPTER 2 DEFINITIONS

AGENCY

The local, state or federal governmental entity, department, office, or administrative unit responsible for carrying out regulations.

APPLICANT/APPELLANT

The person or entity seeking a decision from the Administrator or the Governing Body.

APPLICATION

The form(s) and all accompanying documents, exhibits and fees required of an applicant by the applicable department, Board or Commission of the county for development review, approval or permitting purposes.

APPLICATION, COMPLETED

All application requests shall contain the following: (1) submittal and completion of all applicable application forms; (2) submittal of all required supporting application information by the applicant; (3) all required agency documents (4) submittal of all required fees.

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A commercial enterprise whose primary activity is the sale of alcoholic beverages to be consumed on the premises. Bars include nightclubs, private clubs, hotel lounges and similar facilities serving alcoholic liquor. This definition does not include restaurants where the principal business is preparation of food.

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Plant material, used for the production of such things as fuel alcohol and non-chemical fertilizers. Biomass sources may be plants grown especially for that purpose or waste products from livestock, harvesting, milling, or from agricultural production or processing.

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Any energy system including supply elements, furnaces, tanks, boilers, related controls and energy distribution components, which uses any source of thermal energy. These sources include but are not limited to gas, oil, coal, and nuclear materials.

FACILITY

A structure or place that is built, installed, or established to serve a particular purpose.

FAMILY, IMMEDIATE

A member of the immediate family includes any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner of the real property.

FERTILIZER WORKS

The site of manufacturing or production of fertilizer from commercial composting.