

CAFO  
ORDINANCE NO. 90

AN ORDINANCE DEFINING AND ESTABLISHING STANDARDS FOR CONFINED ANIMAL FEEDING OPERATIONS (CAFOs); PROVIDING A TITLE, PURPOSE, INTERPRETATION, SEVERABILITY, REPEALER AND ENACTMENT; PROVIDING DEFINITIONS; CONFIRMING THE RIGHTS AND ESTABLISHING REQUIREMENTS FOR EXISTING CAFOs; REQUIRING SITING PERMITS FOR NEW AND EXPANDING CAFOs; DESCRIBING THE CONTENTS OF APPLICATIONS FOR SITING PERMITS; EXPLAINING THE APPLICATION AND HEARING PROCESS; DEFINING THE CRITERIA FOR APPROVAL OF SITING PERMITS; ALLOWING FOR VARIANCE; DESCRIBING THE PROCEDURE FOR THE GRANTING OR DENIAL OF SITING PERMITS; REQUIRING OCCUPANCY CERTIFICATES AND SETTING FORTH THE PROCESS TO OBTAIN OCCUPANCY CERTIFICATES; ESTABLISHING OPERATING CRITERIA FOR CAFOs; ESTABLISHING REQUIREMENTS FOR DISCONTINUED CAFOs; PROVIDING FOR APPEAL; PROVIDING FOR ENFORCEMENT; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS** the Gooding County Comprehensive Plan, adopted on March 8, 1999, (page 14) lists as goals "to encourage the retention of productive agricultural land and to promote the improvement of agricultural lands in the county for increased production and conservation, to protect agricultural land for the production of food and fiber, and protect the agricultural base as the primary economic base of the entire county, to protect the aquifer by encouraging good waste management plans, [and] to work with the appropriate state and federal agencies to see that proper steps are followed to avoid discharge of pollutants;"

**WHEREAS** the Gooding County Comprehensive Plan (page 13) found that there were then in Gooding County approximately 16,000 beef cattle, 25,000 sheep and 63,000 dairy cows, not including replacements;

**WHEREAS** the Idaho Agricultural Statistics Service estimated in May, 2005, that there were 233,000 cattle and calves in Gooding County, which was the highest number of cattle and calves in any county in the State of Idaho;

**WHEREAS**, as of May 31, 2007, Gooding County has, through the siting permit process for Confined Animal Feeding Operations (CAFOs) authorized by permit 329,834.18 total animal units on 43,171.54 CAFO acres;

**WHEREAS**, as of December 19, 2006, Gooding County Assessor records show 115,202.6 irrigated agricultural acres in Gooding County;

**WHEREAS** the Middle Snake Coordinated Water Resource Management Plan (page 35), issued by The Middle Snake Regional Water Resource Commission, of which Gooding County is a Member County, identifies as an objective (BO2) the implementation of "improved irrigation management and soil fertility management to reduce movement of biological, chemical and physical contaminants through the soil profile to surface and sub surface water;" and identified as one of the strategies(BO2.b) to accomplish this objective the matching of "animal waste, agricultural solid waste and chemical fertilizer application with crop usage of nutrients;"

**WHEREAS** Middle Snake Coordinated Water Resource Management Plan (page 38), with specific reference to animal feeding operations, identified as Goal B the improvement of "the quality of return flows and groundwater;" identified an objective (BO1) the reduction of "nutrients in runoff and leaching on crop land where livestock waste has been applied;" and identified as some of the strategies to accomplish this objective the need to "ensure compliance with state and federal regulations and local guidelines for livestock operations ... [to] include containment of livestock waste and the nutrient management plan which provide provisions for the application and handling of nutrients[,] encourage the timely incorporation of livestock waste to reduce the potential of contaminated runoff[,] and require that "all livestock waste applied to crop land ... be matched to the nutrient needs of the crop;"

**WHEREAS** soil sampling of agricultural fields in Gooding County in 2006 indicated that 88 per cent of the fields sampled exceeded the maximum allowable phosphorus levels as set by the Idaho Department of Agriculture; and, as a result of this soil sampling, the Idaho Department of Agriculture has voiced concerns whether required nutrient management plans for CAFOs are either not based upon accurate science or not being followed, or both;

**WHEREAS** it appears that animal unit densities of up to ten (10) per acre has resulted in the over application of animal waste on existing agricultural land, which indicates there is insufficient irrigated tillable land available in Gooding County to handle the animal waste produced by existing CAFOs;

**WHEREAS** higher animal numbers and continued over application of animal waste has increased potential to contaminate both agricultural soil and water resources;

**WHEREAS** Gooding County and the entire Magic Valley is still suffering from extreme drought conditions and calls from Senior Water Users have caused litigation and attempts at a mitigation plan and the future curtailment of some water rights is a definite possibility;

**WHEREAS** the Gooding County Planning and Zoning Commission and the Board of Commissioners have, within the past year and a half, both received an increased number of complaints as compared to prior years concerning contaminated wells, obnoxious odors, pests, dust and airborne contaminants from residents in the County; and

**WHEREAS** this Board has determined it will be in the best interest of the health, safety and general welfare of the citizens of Gooding County and beneficial to the protection of agricultural land and water resources to limit the rapid growth of animal numbers in Gooding County; and

**WHEREAS** this Board has concluded this ordinance will limit the growth of animal numbers in Gooding County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY

COMMISSIONERS OF GOODING COUNTY, IDAHO, AS FOLLOWS:

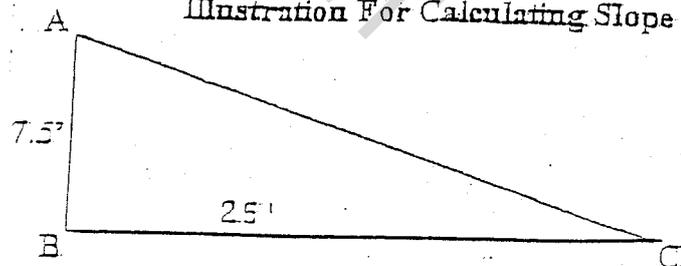
- I. TITLE, PURPOSE, INTERPRETATION, SEVERABILITY, REPEALER AND ENACTMENT:
  - A. This Ordinance is adopted pursuant to authority granted by Title 67, Chapter 65 of the Idaho Code, and Article 12, Section 2 of the Idaho Constitution, as amended or subsequently codified.
  - B. The Board of County Commissioners of Gooding County specifically finds that there is a danger of pollution to the aquifers, watersheds, surface water, ground water, springs and water courses located in Gooding County by the locating of CAFOs on or near rivers, flood plains and canyon rims or in other areas where aquifers are subject to surface use influences. The locating of CAFOs near these areas increases the chances of pollution to the waters in Gooding County.
  - C. The Board of County Commissioners of Gooding County specifically seeks to promote and protect the health, safety and the general welfare of the public.
  - D. The Board of County Commissioners of Gooding County specifically finds that this ordinance conforms with and is in compliance with the policies of the Gooding County Comprehensive Plan.
  - E. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.
  - F. All prior ordinances pertaining to Confined Animal Feeding Operations, or parts of prior ordinances pertaining to Confined Animal Feeding Operations, to the extent they are in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.
  - G. This Ordinance shall become effective from and after the date of its approval and publication, as provided by law.
- II. DEFINITIONS:
  - A. ADMINISTRATOR: An official, having knowledge in the principles and practices of zoning, who is appointed by the Board to administer and enforce Gooding County's land use planning ordinances.
  - B. AFFECTED PERSON: A person or legal entity owning property or residing within one (1) mile of an existing or proposed CAFO, or a resident or real property owner of Gooding County who may be materially affected in their health, safety or property rights by the CAFO.
  - C. ANIMAL UNITS: A measure of animal density calculated by multiplying the number of animals by the animal equivalency factor from the following chart:

ANIMAL TYPES		ANIMAL EQUIVALENCY FACTOR
DAIRY CATTLE		
	Bull/Holstein Cow 1,400 Pounds	1.4
	Bull/Jersey Cow 1,000 Pounds	1.0
	Bull/Heifers 900-1,100 Pounds	1.0
	Bull/Heifers 700-899 Pounds	0.8
	Bull/Heifers 500-699 Pounds	0.6
	Bull/Heifers 300-499 Pounds	0.4
	Bull/Heifers 100-299 Pounds	0.2
BEEF CATTLE/BISON		
	Bull (each)	1.0
	Steers/Cows (over 1,000 lbs)	1.0
	Steers/Cows (600-1,000 lbs)	0.8
	Calves (under 600 lbs)	0.4
SWINE		
	Pigs (55 lbs-market)	0.15
	Pigs (up to 55 lbs)	0.05
	Sows (each)	0.4
	Boars (each)	0.5
SHEEP	(each)	0.15
HORSES	(1,000 lbs)	1.0
	(over 1,000 lbs)	1.5
FISH	(1,000 lbs)	1.0
CHICKENS		
	Layers (each)	0.0033
	Broilers (each)	0.0033
FOR SPECIES NOT SPECIFICALLY IDENTIFIED	(100 pounds)	0.1

D. APPLICANT: A person or legal entity seeking approvals or permits pursuant to this ordinance having an ownership interest in real property of a nature sufficient to determine the use to which the real property will be put as proposed in the applications for approvals or permits.

- E. **BEST MANAGEMENT PRACTICES (BMPs):** As per Idaho Code 25-3803(4) "Best Management Practices" means practices, techniques or measures which are determined by the Idaho Department of Agriculture (ISDA) to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.
- F. **BOARD:** Gooding County Board of Commissioners.
- G. **CAFO (CONFINED ANIMAL FEEDING OPERATION):**
1. An operation where the following conditions exist:
    - a) Animals have been, are, or will be stabled, confined, fed or maintained for six (6) months of any calendar year; and,
    - b) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over at least a 25% portion of any of the corral or other confinement area, and,
    - c) Any combination of animal units, which totaling 70 animal units or more; or
    - d) Any operation with a milk shipping permit; or
    - e) Any operation with a liquid waste management system.
  2. For purposes of this definition, two or more CAFOs under common ownership are considered to be a single CAFO if they adjoin each other or if they share a common area or system for the management of waste. Utilization of a community (more than one operator involved) or commercial waste management system shall not be considered to be sharing a common waste management system.
- H. **CAFO FOOTPRINT:** The designated real property within which corrals, barns, or other improvements, feed storage areas, animal feeding areas, waste storage areas including lagoons and any area that requires runoff containment, (excluding farm ground) are located.
- I. **CAFO SITE ADVISORY TEAM ("Team"):** A team comprised of representatives from the Idaho State Department of Agriculture (ISDA), Idaho Division of Environmental Quality (IDEQ), Idaho Department of Water Resources (IDWR), and an ex officio designee of Gooding County.
- J. **CANYON RIM(s):** The Snake River or Malad River canyon rim(s) where the slope exceeds 30% for a slope distance of 25' or more. The location of the rim shall be determined before any excavation or grading preparatory to development occurs. In some areas, there is more than one rim.

Illustration For Calculating Slope



Line:

A-B is the elevation (7.5')

A-C is a slope

A-C is the slope of 30%

B-C is horizontal distance

30% grade or slope is a 30' difference in elevation every 100' Thus 30% of 25' = 7.5'

- K. **COMMISSION:** The Zoning, Planning and Zoning, Joint Zoning, or Joint Planning and Zoning Commission appointed by the Board.
- L. **COMPOSTING:** Biological decomposition of organic matter. It is accomplished in such a way to promote aerobic degradation. The process inhibits pathogens, viable weed seeds and odors.
- M. **CORRAL:** An enclosed area in which animals are housed and fed without the presence of crops, forage growth, and other vegetation, which are not sustained in the normal growing season.
- N. **FLUSH SYSTEM:** Any system utilizing hydraulic flow to remove waste from animal housing and feeding areas, not including milking parlor or wash pens.
- O. **EXISTING CAFO:** A CAFO built and in operation and properly permitted under prior ordinances or built and in operation as of February 10, 1997, the effective date of CAFO Ordinance No. 62.
- P. **INCORPORATED:** Tilled into soil according to acceptable agricultural practices as defined by the current National Resources Conservation Service (NRCS) Conservation Practice Standard Code 590.
- Q. **MCL:** Maximum Contaminant Level in the Idaho Department of Health and Welfare's Water Quality Standards and Wastewater Treatment Requirements.
- R. **MEMORANDUM OF UNDERSTANDING:** Memorandum of Understanding between Gooding County and the CAFO Site Advisory Team relative to CAFO sitings is an Agreement wherein Gooding County will provide the Team with certain information set forth in the application in Article VI: O Siting Advisory Team Information.
- S. **NUTRIENT MANAGEMENT PLAN:** Management plan prepared by a state certified nutrient management planner in accordance with NRCS Standard 590 as required by the Idaho State Department of Agriculture.
- T. **RESIDENCE:** Any structure primarily used as a dwelling for human beings and which meets all applicable state and local requirements for such use.
- U. **WASTE:** Waste is:
  1. **Liquid Waste:** Waste water and other waste material in liquid form, including liquid manure, which is generated from the operation of the CAFO. For purposes of this Ordinance, "liquid" shall mean having moisture content of 90% or greater.
  2. **Solid Waste:** Animal waste material in solid form, including manure, which is generated from the operation of the CAFO.
- V. **WASTE MANAGEMENT SYSTEM:** The process, area, and/or mechanism employed for the retention, storage, composting or treatment of waste.
- W. **WASTE STORAGE:** Area where liquid and/or solid manure is stored, excluding corrals where waste is removed at least once a year.

III. EXISTING CAFOS:

- A. Existing CAFOs shall be allowed to continue to operate in accordance with the siting permit issued under prior ordinances; or if no permit has been issued, as registered as defined by Ordinance No. 62; or if not registered, as built and in operation as of February 10, 1997, or if not registered and not previously having met the definition of a CAFO under prior ordinances, as built and in operation as of the effective date of this ordinance; and shall be considered grandfathered to that extent only.
- B. Except as grandfathered in accordance with Section A above, existing CAFOs are not relieved of any obligations or penalties for non-compliance with the provisions of this Ordinance, or the provisions of prior CAFO ordinances still in effect.
- C. The owner of any CAFO operating in Gooding county without a siting permit having been issued or without registration as provided by Ordinance No. 62, shall apply to the administrator for a siting permit within 90 days of the adoption of this ordinance. The information submitted on the application shall include that which existed on February 10, 1997, the effective date of CAFO Ordinance No. 62, and that which exists at the time of the application.
- D. The owner of a CAFO applying for a siting permit in accordance with Section C above, or any existing CAFO enlarging, replacing, remodeling, modifying or adding corrals, feed storage areas, animal feeding areas, barns or other facilities or improvements, within the CAFO footprint, but not increasing animal units or changing the size or location of the waste management system, shall be required to file an Application for Existing CAFO Siting Permit or Modification form, as set forth below, with the Administrator. A fee shall be submitted as set by resolution by the Board of County Commissioners of Gooding County. If the facilities or improvements meet the setback requirements of the ordinance in effect at the date of issuance of the permit holder's original permit or registration, the Administrator shall issue a permit to construct, replace or remodel the facilities.

APPLICATION FOR EXISTING CAFO SITING PERMIT OR MODIFICATION:

- 1. Name, address, telephone number of applicant and CAFO facility location.
- 2. Legal description of CAFO real property and legal owner of real property.
- 3. Total number of acres on the CAFO.
- 4. Existing use of land.
- 5. Proposed modification:  
Is the proposed modification within the CAFO footprint?
- 6. Zoning District.
- 7. Complete the attached Animal Unit Worksheet.
- 8. Is this CAFO footprint located within 3,960 feet of a parcel of property in a transitional zone, residential zone or an existing platted subdivision?
- 9. Does the modification meet all setback requirements?
- 10. A vicinity map of a radius of one mile from the CAFO, one inch equals six hundred sixty (660) feet or eight (8) inches equals one (1) mile drawn to scale showing the following:
  - a. Land use.
  - b. Surface water courses.
  - c. Wells, sinkholes or waste wells of record with Idaho Department of Water Resources and/or local irrigation districts, or of which the applicant is aware.

- d. Designate/outline the area where the CAFO, as defined in this ordinance, is or will be located.
  11. A site plan of the CAFO, of a minimum legible size drawn to a scale of 1 inch = 100 feet, or as approved by the Administrator in writing, showing the following:
    - a. Topography at intervals of twenty (20) feet.
    - b. Dimensions, size, location, use and setbacks of existing and proposed facilities and improvements on the CAFO, if any, including;
      - i. barns
      - ii. Feed storage areas
      - iii. Animal confinement and feeding areas (corrals)
      - iv. Waste storage areas – liquid, solid and compost areas
      - v. Wells
    - c. Springs and surface water courses.
    - d. Traffic access: ingress, egress, and road widths to conform to International Fire Code for emergency access.
    - e. Public thoroughfares.
    - f. Lighting.
  12. Attach a written description of the waste management system, including a Site Limitations Rating Criteria (Exhibit A) for land where the waste is stored and/or applied.
  13. Letter from any affected canal company stating whether CAFO or proposed modification meets the canal company requirements.
  14. Letter from IDWR relative to water right permit or license from the State of Idaho. CAFO operator shall show evidence that water permit is adequate for the operation.
  15. A letter of compliance from ISDA, or the applicable state agency, that the CAFO has an approved Nutrient Management Plan, if required, and whether the CAFO is operating in compliance with the approved Nutrient Management Plan.
  16. A letter of approval of the new design shall be submitted by the appropriate state agency with the application.
- E. Existing CAFOs shall not increase in total animal units above those animal units authorized by existing permit, registration, or as otherwise established in accordance with Section A of this Article III, without first conforming to the requirements of this ordinance for the expansion portion and obtaining a New Siting Permit.
- F. Submission of the application shall constitute permission from the applicant for the Administrator or designee to inspect the site for the proposed CAFO or expansion and request from the applicant verifiable records, relative to the existing CAFO for the purpose of investigating whether the application meets the criteria set forth in this ordinance for approval. Failure to provide requested information shall result in an incomplete application.
- G. The owner of a CAFO shall notify the County within thirty (30) days of ceasing or suspending operations of the CAFO. Failure to do so will render the CAFO in violation and subject to enforcement action. If the CAFO is vacant for a period of one year, the County may request that the owner declare his intentions with respect to the continued non-use of the CAFO in writing within twenty-eight (28) days of the request. If the owner elects to continue the non-use, he shall be required to follow the process outlined in Idaho Code §67-6538. A CAFO shall lose its siting permit and grandfather rights if the operation is vacant for ten (10) years or sooner if the owner fails to comply with the provisions outlined in Idaho Code 67-6538.

- H. If a CAFO permitted under a prior ordinance has not commenced construction of the approved facilities and improvements within the footprint within a period of one (1) year from the approval of the siting permit, the Planning and Zoning Administrator may request that the owner declare his intentions regarding construction of the facilities and improvements in writing within 28 days of the request. If the owner elects to continue the non-use, he shall be required to follow the process outlined in Idaho Code §67-6538. A CAFO shall lose its siting permit and grandfather rights if construction is not commenced within ten (10) years from issuance of the permit or sooner if the owner fails to comply with the provisions outlined in Idaho Code §67-6538.
- I. Existing CAFOs shall be transferable, provided, the new owner files a transfer statement form with the Administrator within sixty (60) days from the date of the purchase of the CAFO. The new owner must sign a transfer statement form, stating that a Nutrient Management Plan is in place. The transfer statement form shall include the date of the transfer and the names and mailing addresses of both the transferor and transferee.

#### IV. SITING PERMIT REQUIRED:

Prior to commencing construction of any facilities or improvements, a siting permit shall be obtained pursuant to this ordinance:

- A. To operate a new CAFO;
- B. To increase the animal units of an existing CAFO over those animal units authorized by existing permit, registration, or as otherwise established in accordance with Section A of Article III above;
- C. To enlarge or change the location of the footprint of an existing CAFO; or
- D. To enlarge the capacity or change the location of the waste management system of an existing CAFO.

#### V. APPLICATION FOR SITING PERMIT: Each application for a siting permit shall be submitted on a form obtained from the administrator and contain the following:

- A. Name, address, and telephone number of applicant and CAFO location.
- B. Legal description of CAFO property, and legal owner of real property.
- C. Existing use of all real property which is part of the CAFO. This information shall include business records substantiating the type and number of animal units currently stabled, confined, fed, or maintained on the property, if any.
- D. Zoning district.
- E. Complete the Animal Unit Worksheet.
- F. A vicinity map of a radius of one mile from the CAFO, drawn to a scale of one inch equals six hundred sixty (660) feet or eight (8) inches equals one (1) mile showing the

following:

1. Land use.
  2. Surface water courses.
  3. Wells, sinkholes or waste wells of record with Idaho Department of Water Resources and/or local irrigation districts, or of which the applicant is aware.
  4. Designate/outline the area where the CAFO footprint, as defined in this ordinance, is or will be located.
- G. A site plan, of a minimum legible size drawn to a scale of 1 inch = 100 feet, or as approved by the Administrator in writing, showing the following:
1. Topography at intervals of twenty (20) feet.
  2. Dimensions, size, location and use of all proposed and existing facilities and improvements on the CAFO, if any, including setbacks, of the following:
    - a. Barns.
    - b. Feed storage areas.
    - c. Animal confinement and feeding areas (corrals).
    - d. Liquid and solid waste storage and composting areas.
    - e. Wells.
  3. Springs and surface water courses.
  4. Traffic access: ingress, egress, and road widths to conform to Uniform Fire Code (20' minimum) for emergency access to the CAFO and within the footprint.
  5. Public thoroughfares.
  6. Lighting.
  7. Designate/outline the area where the CAFO footprint, as defined in this ordinance, is or will be located.
- H. A written description of the waste management system.
- I. Site Limitations Rating Criteria (See Exhibit A) for all land, including the CAFO footprint, under direct control of the CAFO.
- J. A written strategy to mitigate odor, or an odor management plan developed and accordance with the Idaho Agriculture Odor Management Act, if required.
- K. A written strategy or plan to mitigate dust and pests, including but not limited to flies, rodents, birds, etc.
- L. Letter from any affected canal company stating whether the proposed CAFO meets the canal company requirements.
- M. Letter from IDWR relative to water right permit, obtained or applied for, or license from the State of Idaho. CAFO operator shall show evidence that the water permit is adequate for the operation.
- N. Letter from local fire protection district stating whether the roads on the Site Plan and the vicinity county roads are adequate for fire protection vehicles.
- O. Letter from local highway district approving ingress and egress points on the Site Plan and stating whether county roads are adequate to service the proposed operation.
- P. Nutrient Management Plan, if required by Idaho law or rule.

- Q. Siting Advisory Team Information: Information shall be submitted in accordance with IDAPA 02.04.18 - Rules Governing CAFO Site Advisory Team, as it now exists or as it may hereafter be amended.
- R. A description of any proposed phasing of the construction of the facilities or improvements. (Each phase must be capable of standing alone.)
- S. A fee shall be submitted with the application as set by resolution of the Board of County Commissioners of Gooding County.

VI. PROCESS OF APPLICATION AND NOTICE OF HEARING:

- A. Application Review: The Administrator shall review the application for completeness within 10 business days.
  - 1. Upon determining that the application is complete, the Administrator shall submit the application to the CAFO Site Advisory Team for review.
  - 2. Upon determining the application is not complete, the Administrator shall provide written notice of the deficiencies to the applicant. The Administrator may request additional information if deemed necessary to process the application. The application will not be considered complete until the deficiencies or additional information as identified by the Administrator are corrected. If the deficiencies are not corrected within 180 days, the application shall be deemed denied and no further action taken by the Administrator.
- B. Once the CAFO application is complete and submitted to the CAFO Site Advisory Team, the Team (or its designee(s)) shall conduct an on-site evaluation.
  - 1. Unless specifically waived in writing, the applicant and/or owners and Administrator (or designee) shall always be present during evaluations of the Team. If the Administrator is unable to participate, then an alternate county official shall be appointed.
  - 2. The Suitability Determination shall be signed by the Team members or their designees and prepared in accordance with the most current IDAPA rules governing CAFO Site Advisory Teams.
- C. OTHER AGENCIES: The Administrator may invite other agencies, including, but not limited to representatives of Idaho Universities, U.S. Environmental Protection Agency, U.S. Natural Resources Conservation Service, U.S. Geological Survey, etc. to review the completed application and/or the proposed site and make comments and recommendations to the Commission.
- D. Submission of the application shall constitute permission from the applicant for the Administrator or designee to inspect the site for the proposed CAFO or expansion and request from the applicant verifiable records, relative to the existing CAFO for the purpose of investigating whether the application meets the criteria set forth in this ordinance for approval. Failure to provide requested information shall result in an incomplete application.
- E. Hearing and Notice: The Administrator shall submit the completed application and CAFO Advisory Team Determination to the Commission for one public hearing. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the

proposed CAFO application shall be published in the official newspaper of the county. Notice may also be made available to other newspapers, radio and television stations serving Gooding County. Fifteen (15) days prior notice shall also be provided by first class mail to property owners within one (1) mile of the CAFO and any other affected person that has made written request to the Administrator for notice.

VII. **CRITERIA FOR APPROVAL:** Prior to approval of a siting permit, the Commission must find that the new CAFO meets all requirements of this ordinance including the following:

A. **General requirements:**

1. New CAFOs or expansion of animal units over those animal units authorized by existing permit, registration, or as otherwise established in accordance with Section A of Article III above will only be allowed in agricultural zoning districts with the exception of aquaculture CAFOs which will be allowed in all zones except residential zones.
2. The CAFO applicant must comply with and not be in violation of any federal, state or county law or regulation or the requirements of an affected canal company, local fire protection district or local highway district which directly applies to the location or operation of a CAFO. Violations which occurred prior to the application may be considered relevant by the Commission as evidence of continued non-compliance.
3. The operator must not have begun construction of new facilities and improvements for, or commenced operations as, a CAFO upon the land to be used as a CAFO, other than as previously authorized by prior permit. A violation of this requirement is subject to enforcement pursuant to Article XIV: Enforcement.

B. **Waste management:**

1. If required by a State of Idaho agency having jurisdiction, a CAFO shall follow and be in compliance with a current nutrient management plan which has been approved by said agency.
2. The waste management system shall not be located or operated closer than one thousand three hundred twenty (1,320) feet from a residence owned by someone other than the applicant. A new residence located in an agricultural zone shall not be built within one thousand three hundred twenty (1,320) feet of a waste management system. The liquid waste management system shall not be located and/or operated closer than three hundred (300) feet from property lines and right-of-ways. Solid waste management system shall not be located closer than two hundred (200) feet from the right-of-ways and one hundred fifty (150) feet from property lines. For the purpose of distribution or application of waste, the setbacks contained above in this paragraph VII B. 2 shall not apply. Storage of waste or compost shall not be allowed in any zone other than an agricultural zoning district.
3. The waste management system shall not be located and/or operated closer than five hundred (500) feet from a domestic well not owned by the CAFO. A domestic well for a new residence, which doesn't belong to the CAFO, must meet the five hundred (500) feet setback from CAFO waste management system.
4. That a CAFO shall have the lowest environmental risk rating by the CAFO Site Advisory Team. If a CAFO receives other than the lowest environmental risk rating, the Commission may consider during the approval process a letter from NRCS or comparable agency or firm showing whether and how the risk rating may be mitigated and applicant's ability to so mitigate.
5. Site Limitations Rating Criteria, as set forth in Exhibit A, shall be provided for all land within the CAFO. There shall be no rating of very severe or severe in any of the

factors. If either severe or very severe ratings appear, the applicant may provide, for consideration by the Commission during the approval process, a letter or document from NRCS and/or comparable agency or firm explaining whether and how the very severe or severe ratings may be mitigated and applicant's ability to so mitigate.

6. A new or expanding CAFO siting permit will require applicant to provide a letter confirming approval of a Nutrient Management Plan prepared in accordance with the requirements of the appropriate state agency, if a Nutrient Management Plan is required by a state or federal agency. An applicant seeking expansion of a CAFO shall also provide written verification from the appropriate state or federal agency that applicant is currently operating in compliance with the approved Nutrient Management Plan, if a Nutrient Management Plan is required. An applicant seeking a new CAFO siting permit must provide written verification that he can operate in compliance with the approved Nutrient Management Plan, if a Nutrient Management Plan is required.
  7. In accordance with Idaho Code 25-3805 – Design and Construction, all new or modified liquid waste systems shall be designed by licensed professional engineers and constructed in accordance with standards and specifications either approved by the Idaho Department of Agriculture (ISDA) or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. All persons shall submit plans and specifications for new or modified liquid waste systems to the director of ISDA for approval. A person shall not begin construction of a liquid waste system prior to approval of plans and specifications by ISDA. (Idaho Code 25-3805)
    - a. Flush systems not utilizing biological, chemical or other odor reducing technologies are not allowed.
    - b. Flush systems utilizing fresh water, aerobic basins, sequencing batch reactors, anaerobic digestion, or other odor reducing technologies will be allowed (aquaculture is exempt).
  8. Aquaculture CAFOs are exempt from the waste management setbacks except for the storage of solid waste on land.
- C. Water quality: All CAFO applicants must demonstrate that:
1. The CAFO will be in compliance with the Clean Water Act and any relevant federal or state regulation implementing the Clean Water Act in Idaho.
  2. There will not be discharge of pollutants into surface or ground water except as permitted by the appropriate state and/or federal agency with jurisdiction. A copy of any permit from any agency relative to discharge of pollutants must be filed with the Siting Permit file of the applicant.
  3. The CAFO owns adequate potable water rights to operate. This must be evidenced by a permit or license from the Idaho Department of Water Resources, or that the CAFO is in the process of obtaining the permit or license from the State of Idaho, in which case issuance of the siting permit will be contingent upon obtaining the appropriate permit or license. The Administrator will not issue a CAFO occupancy permit without written proof of an approved water right, or completed transfer from the IDWR.
- D. Property rights:
1. The approved maximum density of animals shall not exceed five (5) animal units per tillable, irrigated acre owned by the CAFO applicant. The land base to support the animal units is required to be in Gooding County with the exception of contiguous land in an adjacent county. Aquaculture shall remain at ten (10) animal units per

acre.

2. Corrals shall be located at least one thousand three hundred twenty (1,320) feet from the nearest corner of any residence not belonging to the owner of the CAFO. Residences shall be constructed at least one thousand three hundred twenty (1,320) feet away from existing corrals not belonging to the owner constructing the residence. Corrals shall have a one hundred (100) foot setback from a public right-of-way and property lines.
3. All feed storage areas shall have a seventy-five (75) foot setback from a public right-of-way and three hundred (300) feet from an existing residence not owned by owner of the CAFO. Provided, however, that silage, haylage, potatoes or any other feed product resulting from the ensilage process which is stored in the open air shall be located at least seven hundred (700) feet from any existing residence not belonging to the owner of the CAFO. Residences shall be constructed at least seven hundred (700) feet from any existing feed storage areas of this type not belonging to the owner constructing the residence.
4. Lights from CAFOs shall be placed and shielded to prevent the light source from becoming a nuisance or hazard outside the property lines of the CAFO.
5. The CAFO footprint shall not be located within three thousand nine hundred sixty (3,960) feet of a transitional zone, residential zone or an existing platted subdivision with improvements constructed as of the effective date of this ordinance. Residential subdivisions proposed after the effective date of this ordinance shall be located no closer than three thousand nine hundred sixty (3,960) feet to any existing CAFO footprint.
6. A new CAFO footprint shall not be located within one (1) mile of the rim of either the Snake River Canyon or the Malad River Canyon.
7. A new CAFO footprint shall not be located within two thousand six hundred forty feet (2,640) Zone "A" flood plain as set out on the Federal Emergency Management Agency's 1985 Flood Insurance Rate Map for Gooding County.
8. A CAFO in excess of one thousand (1,000) animal units shall have an incremental increase to the setbacks contained herein, except there shall not be incremental increase to the setback from a public right of way or to the setbacks from the canyon rims. There shall be a one percent (1%) increase per one hundred (100) animal units, to a maximum of one hundred percent (100%) increase to the setback distance.
9. Dead animals awaiting disposal must be shielded from public view and disposed of within 72 hours per IDAPA 02-04-17-030.

#### E. EXCEPTIONS TO SETBACK REQUIREMENTS.

1. The setbacks contained in this Article VII. Criteria for Approval, Sections B and D do not apply if the affected property owner executes a written waiver with the CAFO owner, under terms and conditions that the parties may negotiate. The written waiver must legally describe both the CAFO property and the affected property and be in recordable form when initially submitted to the Administrator; and must be recorded if the application is approved. The recorded waiver shall preclude enforcement of the setback distances described therein. A change in ownership of the affected property or the CAFO shall not affect the validity of the waiver.
2. Aquaculture CAFOs are exempt from the setbacks contained in Article VII. Criteria for Approval, Section D.
3. Setbacks contained in Article VII Criteria for Approval, Section D shall not apply to the construction of any residence and/or residential subdivisions located in any transitional zones that are established as of the effective date of this Ordinance.

- F. **POULTRY OR SWINE CAFO:** If required by state law or regulation, a poultry or swine CAFO shall also obtain site approval from the Idaho Department of Environmental Quality or other appropriate state agency having jurisdiction.

VIII. **VARIANCE:**

- A. A variance is a modification of the requirements of the ordinance and may be sought by making a written request for a variance at the time of the filing of the application for the siting permit.
- B. A variance shall not be considered a right or special privilege but shall be granted to an applicant only upon his showing that the variance is not in conflict with the public interest and will not cause an adverse impact to the neighboring property owners.
- C. A variance may be granted to the setbacks contained in this ordinance only upon a showing of undue hardship because of the characteristics of the site.
- D. A variance may be sought to the requirements of the ordinance to increase the animal density to a maximum of seven (7) animal units per irrigated tillable acre. Consideration will be given to such a variance if the CAFO operator employs multiple, proven, environmental technologies or methods to enhance or improve air, soil, and water quality including but not limited to methane or anaerobic digesters, berms with growing hedges and trees, etc. If approved, such variance may be revoked if the CAFO operator discontinues the employment of the technology or method upon which the grant of the variance was based.
- D. Prior to granting a variance notice an opportunity to be heard shall be provided to property owners within one mile of the parcel under consideration and to those affected persons who have previously requested a notice. The procedure considering a variance shall follow the provisions as set out in the Gooding County Zoning Ordinance for variances.

IX. **GRANT OR DENIAL OF SITING PERMIT:** The Commission shall specify:

- A. The standards used in evaluating the application;
- B. The reasons for approval or denial; and
- C. The actions, if any, that the applicant could take to obtain a permit.
- D. If construction is not commenced within one (1) year of issuance of the New or Expanding CAFO Siting Permit, the Applicant shall appear before the Commission to show documentation of measurable progress toward a completed project. The Applicant shall reappear on a yearly basis thereafter to show cause why the New or Expanding CAFO has not been completed. If the CAFO is not a working CAFO within five years of the CAFO permit being issued, the Commission shall revoke the permit if it finds that the construction of the facilities and improvements has not progressed to an extent that reflects the original intent of the permit.
- E. **CHANGES DURING CONSTRUCTION:**  
Any changes to the CAFO footprint proposed during construction, which do not

substantially change the approved footprint, must be submitted to the Planning and Zoning Administrator for approval. The request must clearly specify the change(s) and provide an explanation or justification for the change(s). If the change causes substantial relocation of improvements or waste management system, notice of the change shall be given to affected persons and a hearing will be scheduled.

- X. OCCUPANCY CERTIFICATE REQUIRED: Prior to use of the expanded facilities of an existing CAFO or occupation of a new CAFO by animals, an Occupancy Certificate is required.
- A. After approval of the siting permit, but prior to commencing construction of improvements, the permit owner shall notify the Administrator of the commencement of the construction. Additionally, if construction of a liquid waste storage lagoon commences after the initial commencement of construction notice, the permit owner shall provide the Administrator with separate notice of the lagoon construction commencement.
  - B. Inspection of the construction progress of the facilities authorized by the permit shall occur at regular intervals or at the request of the permit owner. The Building Inspector or the Administrator, as appropriate under the circumstances, shall perform the inspections.
  - C. The Building Inspector or the Administrator shall have the authority to issue and post on the premises of the CAFO a "STOP WORK" order if an inspection reveals a material violation of the terms of the permit. All work must STOP after posting the order. The permit owner may appeal such an order to the Commission and the Board, as necessary, in accordance with the provisions of the Gooding County Zoning Ordinance.
  - D. Before issuance of a certificate of occupancy, the CAFO must provide a copy of a water permit or license approved by the State of Idaho Department of Water Resources.
  - E. Before issuance of a certificate of occupancy, a dairy CAFO shall have a compliance certificate issued from the Idaho Department of Agriculture, all other CAFO sites shall have a compliance certification from the appropriate Idaho State agency.
  - F. After completion of the construction of the facilities authorized by the permit, or any approved change requests or non-compliance corrections, the Administrator shall issue an occupancy certificate to the permit owner. The certificate shall certify that all facilities have been inspected and conform to the terms of the permit, with approved changes, and the permit owner is fully authorized to occupy and operate the CAFO facilities, in accordance with the terms of the approved CAFO siting permit.
  - G. If the Administrator denies issuance of an occupancy certificate, such denial may be appealed to the Commission and the Board, as necessary, in accordance with the provisions of the Gooding County Zoning Ordinance.
- XI. OPERATING CRITERIA: A CAFO must operate within the parameters contained in the approved siting permit and in accordance with the criteria for approval set forth in Article VII. Criteria for Approval of this ordinance, except where those criteria for approval may have been varied pursuant to the procedure set forth in Article VIII. Variance, or pertain to setbacks which conflict with the setbacks in effect at the time a CAFO siting permit was approved.

- A. **NUTRIENT MANAGEMENT PROGRAMS:** A CAFO shall continue to be in compliance with nutrient management program requirements established by state and federal agencies.
  - B. **WASTE STORAGE, APPLICATION and/or COMPOSTING:** A site for composting solid waste from a CAFO must provide the required area and conditions for all weather composting as well as limit the environmental risk associated with odor, noise, dust, leaching and surface water runoff. Site planning involves finding an acceptable location, within required setbacks, adapting the composting method to the site, providing sufficient land area (allow for future expansion) and implementing surface water runoff and pollution control measures as needed. The materials being composted and system management will also impact these environmental concerns. Solid waste shall be removed from storage areas at least annually.
    - 1. Waste storage and/or composting must be in compliance with state and local regulations pertaining to surface water, ground water and odors.
    - 2. Commercial composting or storage of solid waste for longer than one (1) year requires a Special Use Permit pursuant to the provisions of the Gooding County Zoning Ordinance.
    - 3. Distribution or application of waste from a CAFO:
      - a. Liquid waste shall not be applied on snow, ice or frozen soil. This is for lands that are under direct control on the CAFO facility.
      - b. Liquid or solid waste applied to tillable ground must be incorporated within 96 hours with the exception of application on irrigated growing or established crops or on frozen ground.
      - c. Runoff from application of waste or unincorporated waste resulting in pooling of waste in a field shall be removed within two weeks. The time period may be extend upon approval of the administrator and the appropriate state agency.
      - d. During time period from May 15 through September 15, liquid land application shall contain no more than .25% solids.
      - e. There will not be any application on public rights-of-way.
- XII. **DISCONTINUED CAFOs:** In addition to fulfilling the requirements of Article III. Existing CAFOs, Section E above, the owner of a CAFO ceasing or suspending operations shall remove all solid and liquid waste from the CAFO property within 180 days of ceasing or suspending operations.
- A. Land application and incorporation of the waste into the irrigated, tillable acreage of the CAFO property in compliance with the CAFO's approved Nutrient Management Plan and other requirements of law or rule shall be considered to be removal of the waste.
  - B. Waste not removed within said amount of 180 days shall be considered to be a nuisance and may be abated by Gooding County in accordance with provisions of Idaho Code 52-201, *et seq.*, and the cost thereof assessed against the property and added to the taxes and certified by the county clerk and the tax assessor.
- XIII: **APPEAL:** Any applicant or affected person aggrieved by a decision of the Commission who appeared in person or in writing before the Commission may appeal the decision of the Commission to the Board. Appeals shall be governed and processed in accordance with the provisions of the Gooding County Zoning Ordinance.

#### XIV. VIOLATIONS AND ENFORCEMENT.

- A. The following acts are unlawful:
1. Failure to comply with the requirements of this ordinance.
  2. Knowingly making a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to this ordinance or rule of any State of Idaho agency having jurisdiction of a CAFO.
- B. A violation of the provisions of the requirements of this ordinance, rule of any State of Idaho agency having jurisdiction of a CAFO, or valid siting permit issued by Gooding County shall constitute a misdemeanor and be punishable by up to six (6) months in jail and up to a One Thousand Dollar (\$1000.00) fine, or both. Each day a violation continues shall be considered a separate offense.
- C. The Board, following notice and hearing in accordance with the provisions of Chapter 52, Title 67, Idaho Code, may revoke a siting permit:
1. For a material violation of any criteria for approval or continued operation of the CAFO;
  2. If an approval was obtained by misrepresentation or failure to disclose all relevant facts; or
  3. If approval for adequate water rights cannot be obtained from the Idaho Department of Water Resources.
- D. In order to carry out the intent and purpose of this ordinance, any authorized representative of Gooding County, selected by the Board of County Commissioners of Gooding County, or agency authorized to review alleged violations in order to allow the county to enforce this ordinance is hereby authorized to do any of the following within their jurisdiction:
1. Carry out any activities necessary to insure compliance of this ordinance to protect the health, safety and welfare of the residents of Gooding County.
  2. If an inspection report including a violation has been issued, a copy shall be delivered to the Planning and Zoning Administrator of Gooding County, ISDA and the CAFO operator and filed in the siting permit file.
  3. Animal unit numbers will be randomly assessed annually utilizing current Idaho Department of Agriculture production records with owner/operator verification of animal unit numbers on the CAFO (aquaculture is exempt from this requirement). If the owner/operator fails to provide verifiable numbers, the Administrator will estimate using average industry replacement numbers. Any CAFO found to be in violation of permitted animal units will be given fourteen (14) working days from the date of receipt of notice by the Administrator to remove the excess animals. Failure to remove may result in civil enforcement action by the county which may include a fine up to \$100.00 per day per animal unit over the permitted number.
  4. The Administrator or his designee is authorized to enter and inspect any CAFO and have access to or copy any CAFO animal or production records deemed necessary to ensure compliance with the provisions of this ordinance. All records copied or obtained by the Administrator or his designee as a result of an inspection pursuant to this paragraph shall be considered exempt from disclosure under Idaho Code Section 9-301, *et seq.*, unless otherwise deemed to be public records not exempt from disclosure pursuant to Idaho Code Sections 9-337 through 9-346, or other provisions of Idaho law. Any inspection report, determination of compliance or non-

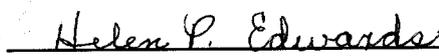
compliance or other record created by the Administrator or his designees as a result of an inspection conducted pursuant to this section shall not be exempt from disclosure unless otherwise exempt from disclosure under Idaho Code Sections 9-301 through 9-346, or other provision of Idaho law.

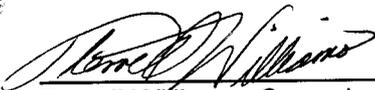
- E. Whenever the Administrator validates a CAFO ordinance violation, a record thereof will be placed in the owner/operator's file with the county Administrator.
- F. In the event any affected person alleges that the CAFO no longer meets the requirements set forth herein and in the occupancy certificate, the affected person may initiate a contested case before the Board as governed by Chapter 52, Title 67, Idaho Code, the Administrative Procedure Act. The Board shall conduct a hearing in accordance with the provisions of Chapter 52, Title 67, Idaho Code. Following the hearing, the Board may:
1. Find in favor of the CAFO; or,
  2. Find in favor of the complainant, and
  3. Revoke the occupancy certificate;
  4. Suspend the occupancy certificate for a definite period;
  5. Modify the occupancy certificate; or,
  6. Provide conditions upon the occupancy certificate.
- G. Further, the Board may at any time take immediate action to protect the public in accordance with the process set forth in Idaho's Administrative Procedure Act, specifically Idaho Code § 67-5247.

This ordinance shall be in full force and effect upon publication following passage and approval. Regularly passed and approved by the Board of County Commissioners of Gooding County, Idaho, on this 12th day of JUNE, 2007.

APPROVED

  
Tom Faulkner, Chairman

  
Helen Edwards, Commissioner

  
Terrell Williams, Commissioner

ATTEST:

  
Denise Gill, Clerk