

ORDINANCE NO. 75
CAFO

AN ORDINANCE DEFINING AND ESTABLISHING CONFINED ANIMAL FEEDING OPERATIONS; PROVIDING FOR TITLE, INTERPRETATION AND ENACTMENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXISTING CONFINED ANIMAL FEEDING OPERATIONS; PROVIDING FOR A CAFO SITE ADVISORY TEAM; PROVIDING FOR ZONES IN WHICH CAFO'S ARE ALLOWED; PROVIDING FOR SITING PERMITS; PROVIDING FOR SITING PERMIT CHANGE, AND THE CONTENTS OF APPLICATIONS THEREFORE; PROVIDING FOR NOTICE AND HEARING ON SITING PERMITS; SETTING FORTH THE CRITERIA FOR APPROVAL FOR SITING PERMITS; PROVIDING FOR THE GRANT OR DENIAL OF SITING PERMITS, PROVIDING FOR CONTENTS OF APPLICATION FOR VARIANCE AND FOR THE GRANT OR DENIAL OF VARIANCE, AND THE CONTENTS OF APPLICATIONS THEREFORE; SETTING THE PROCESS FOR OCCUPANCY CERTIFICATES; PROVIDING FOR GRANT OR DENIAL OF OCCUPANCY CERTIFICATES; PROVIDING FOR NUTRIENT MANAGEMENT PROGRAMS; PROVIDING FOR SWINE/POULTRY FACILITIES IN ACCORDANCE WITH IDAHO CODE §39-104A, INCORPORATED HEREIN, PROVIDING FOR APPEAL; PROVIDING FOR ENFORCEMENT; AND, PROVIDING FOR EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, IDAHO, AS FOLLOWS:

GOODING COUNTY COMMISSIONERS:

Tom Faulkner, Chairman
Carolyn Elexpuru
Rob Sauer

GOODING COUNTY PLANNING AND ZONING COMMISSION:

Bill Stouder, Chairman
Pam Wascher, Vice-Chairman
Shirley Tschannen
Joe D. Pavkov
Tom Mattice
Judy Daubner, Administrator
Lori Capps, Secretary
Rocford Becker, Building Inspector

LEGAL COUNSEL:

Phillip A. Brown, Prosecuting Attorney

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TABLE OF CONTENTS

	page
ARTICLE I:	TITLE, INTERPRETATION AND ENACTMENT-----2
ARTICLE II:	DEFINITIONS-----2
ARTICLE III:	EXISTING CAFO's-----5
ARTICLE IV:	ZONES IN WHICH CAFO's ARE ALLOWED-----6
ARTICLE V:	SITING PERMIT REQUIRED-----6
ARTICLE VI:	SITING PERMIT CHANGE:-----7
ARTICLE VII:	CONTENTS OF APPLICATION FOR SITING PERMIT-----7
ARTICLE VIII:	PROCESS OF APPLICATION AND NOTICE OF HEARING-----9
Section A:	Application Review-----9
Section B:	Receipt of CAFO Site Advisory Team Summary-----9
Section C:	Hearing Notice-----9
ARTICLE IX:	CRITERIA FOR APPROVAL-----10
Section A:	General Requirements-----10
Section B:	Waste Management-----10
Section C:	Water Quality-----11
Section D:	Property Rights-----12
ARTICLE X:	GRANT OR DENIAL OF SITING PERMIT-----13
ARTICLE XI:	VARIANCE-----13
ARTICLE XII:	OCCUPANCY CERTIFICATE REQUIRED-----13
ARTICLE XIII:	PROCESS FOR OCCUPANCY CERTIFICATE-----13
ARTICLE XIV:	NUTRIENT MANAGEMENT PROGRAMS-----15
ARTICLE XV:	POULTRY OR SWINE CAFO-----15
ARTICLE XVI:	APPEAL-----15
ARTICLE XVII:	ENFORCEMENT-----15

I. TITLE, INTERPRETATION 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. Should any section or provision of this Ordinance be declared by the Courts 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.
- C. All ordinances or parts of ordinances 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. This Ordinance shall become effective from and after the date of its approval and adoption, as provided by law.
- D. 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 rivers located in Gooding County by the locating of CAFO's on or near rivers, flood plains and canyon rims. The locating of CAFO's near these areas increases the chances of pollution to the waters in Gooding County.
- E. The Board of County Commissioners of Gooding County specifically find that this ordinance conforms with and is in compliance with the division and dictates of the Gooding County Comprehensive Plan.

II. DEFINITIONS:

- A. **ADMINISTRATOR:** An official, having knowledge in the principles and practices of zoning, who is appointed by the Board to administer Gooding County's zoning ordinance.
- B. **AFFECTED PERSON:** A person or legal entity owning property or residing within one (1) mile of the CAFO, or a resident or real property owner of Gooding County which will be materially affected in their health, safety or property rights by the CAFO facility.

C. ANIMAL UNITS: Multiply the number of animals by the animal equivalency factor to determine animal units:

ANIMAL TYPES		ANIMAL EQUIVALENCY FACTOR
DAIRY CATTLE		
	Milking and dry cows	1.4
	Heifers (1 year and older)	1.0
	Calves (3 months to 1 year)	0.7
	Calves (under three months)	0.4
BEEF CATTLE/BISON		
	Bull (each)	1.0
	Steers/Cows (over 1,000 lbs)	1.0
	Steers/Cows (600-1,000 lbs)	0.6
	Calves (under 600 lbs)	0.4
SWINE		
	Pigs (55 lbs-market)	0.4
	Pigs (up to 55 lbs)	0.1
	Sows (each)	0.4
	Boars (each)	0.5
SHEEP	(each)	0.15
HORSES	(each)	1.0
FISH	(1,000 lbs)	1.0
CHICKENS		
	Layers (each)	0.033
	Broilers (each)	0.033
FOR SPECIES NOT SPECIFICALLY IDENTIFIED	(350 pounds)	1.0

- D. **APPLICANT:** A person or legal entity seeking approvals or permits pursuant to this ordinance which has an ownership interest in real property of a nature sufficient to require the use to which the real property will be put as proposed in the applications for approvals or permits.
- E. **BOARD:** The Board of County Commissioners.
- F. **CAFO:** An area or parcel of land or the use of an area or parcel of land, with said land being under one ownership, upon which there are confined livestock, fish or birds for six (6) months of the year, defined as follows:
1. Any combination of animal units, which total 70 animal units or any facility with a milk shipping permit; or,
 2. A waste treatment system.
- G. **CAFO FACILITY:** Barns, corrals, feed storage and waste lagoons, and where there are confined livestock, fish or birds for six (6) months of the year, defined as follows:
1. Any combination of animal units, which total 70 animal units.
 2. Any facility with a milk shipping permit.
 3. A waste treatment system.
- H. **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 official designee of Gooding County.
- I. **COMMISSION:** The Zoning, Planning and Zoning, Joint Zoning, or Joint Planning and Zoning Commission appointed by the Board.
- J. **CONFORMING USE:** Any use existing at the effective date of the ordinance or any amendment thereto, which meets the criteria of this ordinance.
- K. **MCL:** Maximum Contaminant Level in the Idaho Department of Health and Welfare's Water Quality Standards and Wastewater Treatment Requirements.
- L. **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 Section VII: O. Once the CAFO facility application is complete and submitted to the Team, the Team (or their designee(s)) shall conduct an on-site evaluation. Unless specifically waived in writing, the applicant and/or owners and county officials (or their designees) shall always be present during evaluations of the Team. If the designated county official is unable to participate, then an alternate county official shall be appointed. The completed CAFO applications shall be reviewed and a

Suitability Determination shall be submitted to the County's Planning and Zoning Commission by the Team coordinator within thirty (30) days of the Teams' receipt of the application, together with the supporting data for their findings. The Suitability Determination shall: A. Identify which of the following environmental risk categories a proposed CAFO sites fall into: 1 - high risk, 2 - moderate risk, 3 - low risk or 4 - insufficient information to make a determination. B. Describe which technical factors contribute to high, moderate and low, or insufficient risk categories. Along with designation of a risk category, the Suitability Determination shall indicate whether or not mitigation of risk is possible based on available technology, BMP's, etc. The Suitability Determination shall be signed by the Team members or their designees.

- M. NON-CONFORMING USE: Any use existing at the effective date of the ordinance or any amendment thereto, which does not conform to the use regulations of this ordinance.
 - N. NUTRIENT MANAGEMENT PLAN: Per Idaho NRCS Nutrient Management Standard 590.
 - O. ODOR ABATEMENT PLAN: Idaho Code 25-3803(2) Best Management Practices and Idaho Code 25-3804 Design and Construction.
 - P. OTHER AGENCIES: The CAFO Site Advisory Team, as defined above, may invite representatives of the State Universities of Idaho and the following federal agencies; U.S. Environmental Protection Agency (EPA), U.S. Natural Resources Conservation Service (NRCS), U.S. Geological Survey (USGS), and the United States Department of Agricultural Research Services (USDA), to participate as advisors/consultants to the Team.
 - Q. WASTE: Waste is the presence of:
 - 1. Liquid Waste: Waste water and other waste material in liquid form, which is generated as a by-product of a CAFO.
 - 2. Solid Waste: Waste material in solid form, which is generated as a by-product of a CAFO.
 - R. WASTE TREATMENT SYSTEM: The process, area, or mechanism employed for the retention, storage, or treatment of waste.
- III. EXISTING CAFO'S: This does not relieve any non-registered CAFO's of any obligations or penalties for non-compliance therewith.
- A. All CAFOs operating in the county shall be registered or hold a siting permit.
 - B. Any existing CAFO, which is enlarging, modifying or adding corrals or freestalls, but not increasing combined animal units or violating current ordinance setbacks, shall be

required to report these changes to the administrator for approval, which would then be reported to the Planning and Zoning Commission at the next regular meeting. Any changes to an existing siting permit within the footprint of the CAFO facility, which does not substantially change the facility planned, needs to submit the changes to the Planning and Zoning administrator for approval.

- C. 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. A non-conforming CAFO located in an area where CAFO's are not permitted shall lose its siting permits and grandfather rights if operation ceases for one hundred eighty (180) days. Any non-conforming CAFO, which is destroyed by more than fifty percent (50%) of its value, shall not be allowed to be rebuilt as a non-conforming CAFO. Non-conforming CAFO's shall not increase in combined animal units without first conforming to the requirements of this ordinance and obtaining a New Siting Permit. A CAFO shall not be deemed to cease operations for purposes of its grandfather rights if its operation is stopped because of governmental action, with the exception of complying with the Idaho Code and the Department of Agriculture requirement to have a Nutrient Management Plan timely in place or other Idaho State agency requirements.
- D. Registered, Conforming and Non-Conforming CAFO's 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 facility. 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. ZONES IN WHICH CAFOS ARE ALLOWED: New CAFO's will only be allowed in agricultural zoning districts with the exception of aquaculture CAFOs will be allowed in all zones, except residential zones.

V. SITING PERMIT REQUIRED:

- A. Prior to commencing construction of improvements:
1. To operate a new CAFO.
 2. To expand the animal unit capacity of a sited or registered CAFO.
 3. Construction on waste treatment system to change location or capacity.

- B. Repairs to existing improvements, which do not result in a change to the location or capacity, will not require a siting permit.
- C. Unless a longer time shall be specifically established as a condition of approval, a CAFO siting permit shall lapse and become void one (1) year following the date on which such permit becomes effective, unless prior to expiration, a building permit is issued and construction is commenced and pursued toward completion or a certificate of occupancy is issued for the use. A CAFO siting permit, which is due to lapse, may be renewed by the Commission for a one (1) time extension of an additional period of one (1) year is provided prior to the expiration date. If the CAFO operator is working towards obtaining other permits, i.e. water, an additional extension may be allowed or looked at on an individual basis. A written request for an extension is filed with the Administrator.

VI. SITING PERMIT CHANGE:

Any changes to an existing siting permit within the footprint of the CAFO facility, which does not substantially change the facility planned, needs to be submitted before 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 relocation of improvements, or waste treatment system, or increase in capacity, notice of the change shall be given to affected persons and a hearing will be scheduled.

VII. CONTENTS OF APPLICATION FOR SITING PERMIT: Each application for a siting permit shall contain the following:

- A. Name, address, and telephone number of applicant and CAFO facility location.
- B. Legal description of CAFO facility and real property, and legal owner of real property.
- C. Existing use.
- D. Proposed use.
- E. Zoning district.
- F. A vicinity map of a radius of one mile from the CAFO, at 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.
 - 4. Designate/outline the area where the CAFO Facility, as defined in this ordinance, is or will be located.

- G. A site plan, of a minimum size of eighteen (18) inches, by twenty-four (24) inches to scale, showing the following:
 - 1. Topography at intervals of twenty (20) feet.
 - 2. Dimensions, size and location of existing improvements on the CAFO, if any, including setbacks.
 - 3. Dimensions, size and location of proposed improvements, including setbacks.
 - 4. Feed storage areas.
 - 5. Confinement areas.
 - 6. Waste storage areas – liquids and solids.
 - 7. Wells.
 - 8. Springs and surface water courses.
 - 9. Traffic access: ingress, egress, and road widths to conform to Uniform Fire Code (20' minimum) for emergency access.
 - 10. Public thoroughfares.

- H. A written description of the waste treatment system, including a site criteria for land where the waste water and solid waste will be stored and/or applied.

- I. Letter from any affected canal company relative to the CAFO.

- J. Letter from IDWR relative to water right permit or license from the State of Idaho including amount of water per animal units required.

- K. Letter from local fire protection district, approving roads on the Site Plan.

- L. Letter from local highway district, approving ingress and egress points on Site Plan.

- M. Preliminary Nutrient Management Plan.

- N. Odor abatement plan.

- O. Siting Advisory Team Information:
 - 1. Legal description and address of the proposed CAFO facility; and
 - 2. The animal unit capacity of the proposed CAFO facility; and
 - 3. The type of animals to be confined at the proposed CAFO facility; and
 - 4. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with IDWR, which if approved, will supply adequate water for the proposed facility.
 - 5. Vicinity map with the site location. If available, a detailed sketch of the site location on an aerial photograph with the following:
 - a. Building locations; and
 - b. Waste storage facilities, liquid and solid, and/or general areas for land application (including a narrative description of the waste system); and
 - c. FEMA flood zones or other appropriate flood data for the facility site and land

- application sites owned or leased by the applicant; and
- d. Private and community domestic water wells, irrigation wells, and existing monitoring wells, existing injection wells as documented by the IDWP; irrigation canals and laterals, rivers, designated wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the proposed facility.
6. A characterization of the proposed CAFO facility and any land application site(s) owned or operated by the applicant, and any land application site which is contracted by CAFO operator, which land is part of the Nutrient Management Plan and all inclusive in the required acreage to comply with the Nutrient Management Plan that, if available, includes the following information:
- a. Annual precipitation as contained in the Idaho Waste Management Guidelines; and
 - b. Soil characteristics from NRCS.
 - c. Hydrogeological factors from IDWR, ISDA and USGS including:
 - i. Depth to first water-yielding zone and first encountered water; and
 - ii. Direction of ground-water movement and gradient; and
 - iii. Sources and estimates of recharge; and
 - iv. Seasonal variations in water level and recharge characteristics; and
 - v. Susceptibility to contamination; and
 - vi. Ground water/surface water relationships.
 - d. Water quality data from IDEQ, ISDA and USGS, including:
 - i. Microorganisms (bacteria or single-cell); and
 - ii. Nutrients, including, but not limited to nitrates and phosphorous; and
 - iii. Pharmaceuticals and organic compounds.

P. Phasing of facility may be applied for. Each phase must stand alone.

Q. A fee shall be submitted with the application in an amount based upon the following formula:

1. New Permits: \$300.00 plus .25 per animal unit.
2. All Other Siting Permits: \$150.00 plus .25 per additional animal unit.
3. Applications accompanied with a variance request shall include additional One Hundred dollar (\$100.00) fee.

The application fees shall be reviewed annually and will be set by resolution of the Board.

VIII. PROCESS OF APPLICATION AND NOTICE OF HEARING:

- A. Application Review: The Administrator shall review the application for completeness within 10 business days. Upon determining that the application is complete, the Administrator shall submit the application to the CAFO Site Advisory Team for review.
- B. Receipt of CAFO Site Advisory Team Summary: The CAFO Site Advisory Team summary shall be received within 30 days of the date of submission to the Team.
- C. Hearing Notice: The Administrator shall submit the same 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 shall be published in the counties official newspaper. 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 affected person that has made written request to the Administrator for notice.

IX. CRITERIA FOR APPROVAL: Prior to approval of a siting permit for a CAFO, the Commission must find that the new CAFO meets the following requirements:

A. General requirements:

1. The CAFO must comply with and not be in violation of any federal, state or county law or county ordinance.
2. The operator must not have begun construction of new improvements for a CAFO upon land to be used as a CAFO. If it is determined during the CAFO Site Advisory Team inspection that construction has commenced, penalties will be imposed in accordance with Section XVII: Enforcement of this Ordinance.

B. Waste management:

1. All CAFO's, which fall under the jurisdiction of a State of Idaho agency, shall follow and be in compliance with any nutrient management plan, which has been adopted by said agency.
2. For the purpose of distribution or application of waste, the setbacks contained herein shall not apply.
3. The waste treatment system shall not be located or operated closer than one thousand three hundred twenty (1,320) feet from a residence belonging to someone other than the applicant, or be located and/or operated closer than three hundred (300) feet from property lines. No new residence located in an agricultural zone shall be built within one thousand three hundred twenty (1,320) feet of a waste treatment system.
4. No waste treatment system shall 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 treatment system.
5. The waste treatment system shall have a fifty (50) foot setback from the public right of way.
6. That a CAFO facility shall have a rating of "3" by the CAFO Site Advisory Team or a letter from NRCS or a comparable agency or firm, showing the detail for the mitigation of a rating less than 3, prior to commencement of operation, and have a compliance certification from the Idaho Department of Agriculture. All other CAFO

sites shall have a compliance certification from the appropriate state agency.

7. That considering the Site Limitations Rating Criteria for Land-Applied Wastewater as set forth in Exhibit A, there shall be no rating of very severe or severe in any of the 10 factors. If either severe or very severe ratings appear, the applicant shall have a detailed environmental plan setting forth how this factor will be resolved, not merely a letter stating that it can be mitigated.
8. A new dairy siting permit will require applicant to provide a letter confirming approval of a Nutrient Management Plan prepared in accordance with Idaho Code 37-401 (4) (3) from the appropriate state agency.
9. As per Idaho Code 25-3803(2) "Best Management Practices" means practices, techniques or measures which are determined by the department to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.
10. As per 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 director for management of odors 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 for approval. No person shall begin construction of a liquid waste system prior to approval of plans and specifications by the director. (Idaho Code 25-3805)
11. Aquaculture CAFO's are exempt from the waste treatment setbacks except for the storage of solid waste on land.

C. Water quality:

1. All existing CAFOs must be in compliance with the Clean Water Act.
2. There will be no discharge of pollutants into surface or ground water except as permitted by the appropriate state and federal agency with jurisdiction. A copy of any permit from any agency relative to discharge of pollutants must be on file with the Siting Permit file of the applicant.
3. That the CAFO enjoys adequate potable water to operate, which 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 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 maximum density of animals shall not exceed ten (10) animal units per acre.
2. Corrals shall be located at least seven hundred fifty (750) feet away from any residence not belonging to the owner of the CAFO. Residences shall be constructed at least seven hundred fifty (750) feet away from existing corrals not belonging to the owner constructing the residence. Corrals shall have a fifty (50) foot setback from a public right-of-way and property lines.
3. 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 feed. 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. All feed storage areas shall have a fifty (50) foot setback from a public right-of-way and three hundred (300) feet from an existing residence not owned by operator.
5. Lights from CAFO's shall be placed and shielded to prevent the light source from becoming a nuisance or hazard outside the property lines of the CAFO.
6. No CAFO facility shall 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 facility with improvements.
7. No CAFO facility shall be located within two thousand six hundred forty (2,640) feet of the rims of the Snake River Canyon and the Malad River Canyon and Zone "A" flood plains as set out on the Federal Emergency Management Agency's 1985 Flood Insurance Rate Map for Gooding County. However, this setback can be adjusted on an individual basis if the operator can establish that they have taken the appropriate steps to mitigate or eliminate the possibility of polluting the water sources or the neighboring property. No variance shall be granted to this setback if it would cause an adverse impact to the neighboring property owners.
8. CAFO's, which are in excess of one thousand (1,000) animal units, shall have an incremental increase to the setbacks contained herein, except there shall be no 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. By way of an example, seven hundred fifty (750) foot setback from a residence, not belonging to the CAFO for a fifteen hundred (1,500) head CAFO would be increased to seven hundred eighty-eight (788), $(1.05\% \times 750 = 788)$. An existing CAFO wishing to expand with animal units in excess of one thousand (1,000) units must meet the increase in the setbacks for a new construction, except for the setbacks from the existing barn and facility.

9. Aquaculture CAFO's are exempt from the setbacks contained herein except for storage of solid waste on the land.

10. Setbacks contained in this section shall not apply to the construction of any residence and/or residential subdivisions located in any transitional zones that are established as of the date of this Ordinance.

X. 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.

XI. VARIANCE: A variance can be sought to the setbacks contained in this ordinance by making a written request for a variance at the time of the filing of the application for the siting permit. A variance is a modification of the requirements of the ordinance as to the setbacks and no variance shall be granted to the requirements to the animal density numbers for any CAFO. A variance shall not be considered a right or special privilege but shall be granted to an applicant only upon his showing of undue hardship because of the characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance notice an opportunity to be heard shall be provided to property owners joining the parcel under consideration and to those 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.

XII. OCCUPANCY CERTIFICATE REQUIRED: Prior to use of the expanded facilities of an existing CAFO or occupation of a new CAFO by livestock, fish, or birds, an Occupancy Certificate is required.

XIII. PROCESS FOR OCCUPANCY CERTIFICATE:

A. After grant of the siting permit ("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. Any changes to an existing siting permit within the footprint of the CAFO facility, which does not substantially change the facility planned, needs to submit the changes 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 relocation of improvements, or waste treatment system, or increase in capacity, notice of the change shall be given to those affected persons noticed in the initial hearing.
- C. 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.
- D. 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 or the Board, as necessary, in accordance with the provisions of the Gooding County Zoning Ordinance.
- E. Before issuance of an occupancy permit, the CAFO must provide a copy of a water permit or license approved by the State of Idaho Department of Water Resources.
- F. Prior to the commencement of operation, the 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.
- G. 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.
- H. If the Administrator denies issuance of an occupancy certificate, such denial may be appealed to the Commission or the Board, as necessary, in accordance with the provisions of the Gooding County Zoning Ordinance.

- XIV. **NUTRIENT MANAGEMENT PROGRAMS:** All CAFO's under jurisdiction of the Idaho Department of Agriculture shall follow and be in compliance with nutrient management programs, which have been adopted by state and federal agencies.
- XV. **POULTRY OR SWINE CAFO:** A poultry or swine CAFO shall apply for a Special Use Permit for the placement and operation of a CAFO. Idaho Code §39-104A, as amended by House Bill No. 696, and shall apply in all applications for a Special Use Permit for the placement of a Poultry or Swine CAFO. Special Use Permits shall follow procedures set forth in the Gooding County Planning and Zoning Ordinance.
- XVI. **APPEAL:** Any applicant or affected person aggrieved by a decision of the Commission shall have the right to appeal to the Board. Appeals shall be governed and processed in accordance with the provisions of the Gooding County Zoning Ordinance.
- XVII. **ENFORCEMENT:**
- A. **VIOLATIONS:** In order to carry out the intent and purposes of this ordinance, any authorized representative of Gooding County, selected by the Gooding County Board of Commissioners, 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. (i.e. – letter of non-compliance of siting permit or refer to appropriate agency)
 2. Information from the inspection report, or the report itself, shall be delivered to the Administrator of Gooding County and filed in the siting permit file and a copy sent to the facility owner and/or operator.
 3. If the Administrator receives a signed written complaint of alleged non-compliance with the terms of a siting permit, the Administrator shall give notice of the complaint to the permit owner and shall determine the validity of the complaint within ten (10) business days of its receipt. The permit owner can submit, rebuttal evidence to the Administrator concerning the complaint. Written notice of the Administrator's decision shall be given to the permit owner and the complaining party. The permit owner can appeal any of the Administrator's decisions to the Commission. The permit owner shall be required to correct the non-compliance or appeal the Administrator's decision within twenty (20) days of the date of the Administrator's determination. If no appeal is filed, the correction must be completed within thirty (30) days of the date of the Administrator's written determination unless the Administrator has granted a written extension. If a longer period of time is needed to make the corrections, the applicant can request a longer extension from the Commission.
- B. Violations of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor as defined by Idaho Code §18-113, and is

EXHIBIT A
Site Limitations

Rating Criteria for Land-Applied Wastewater

Site Characteristics	VERY SEVERE	SEVERE	MODERATE	SLIGHT
AWC in /60 in. (available water capacity)	< 1"	1-3"	3"-6"	> 6"
Bedrock Characteristics if >5' depth		Highly fractured columnar	Fractures 1 - 2" apart	Fractures > 2' apart
Cation Exchange Capacity (Surface 10")	<5 meq/100gr	5 - 10 meq/100gr	5 - 10 meq/100gr	>20 meq/100gr
Coarse Fragment (>3") (0 - 40 depth)	>60%	35 - 60%	15 - 35%	<15 %
Depth of Bedrock	<2'	2 - 3'	3 - 5'	>5'
Drainage Class	Very poorly	Poorly Somewhat Poorly	Moderately Well Excessive	Well Somewhat Excessive
Erodibility (Water) K Factor X Slope	>6	4 - 6	2 - 4	>2
Flooding Potential	More than 1x per year	1 - 2 years	2 - 5 years	> 5 years
Frost free season (32F)	< 60 days	60 - 90 days	90 - 120 days	> 120 days
Limiting Layer Depth (duripan) (fragipan)	< 3'	3 - 4'	4 - 5'	>5'
Organic Matter (0 - 10" depth)	< . 5%	. 5-1%	1 - 3%	>3%
Oxides Sesquioxides Carbonates		All uncoated sand grains no Ca accumulation or Fe Exchange sets	Partially coated sand grains (Ca or Fe)	Sand grain coated with Fe or Carbonates, allophone layers, Ca horizons present

Permeability (Slowest layer within 5' depth)	> 20" per/hr < 0.06" per/hr	10-20" per/hr 0.06 - 0.2" per/hr	6 - 10" per/hr 0.2 - 0.6" per/hr	0.6 - " per/hr
pH 0 - 40" depth	<4 >9	4.0 - 4.5 8.5 - 9.0	4.5 - 5.6 7.9 - 8.5	5.6 - 7.9
Salinity 0 - 40" depth	Salt on Surface	> 8 MMHos/cm	4 - 8 MMHos/cm	< 4 MMHos/cm
SAR (Sadium Adsorption Ratio)	>12	8 - 12	4 - 3	<4
Slopes	>12	6-12	2 - 6	<2
Soil Texture Surface	Clays >50% Extremely Gravelly Textures, Stony Soils, Very & Extremely Cobbly	Clays, Silty Clays Cobbly Soils, Very Gravelly Textures	Silty Clay Loams, Clay Loams, Gravelly Testrues, Sandy Clay Loam, Sands	Sandy Loams Silt Loams Loams Sandy Loams
Soil Temperature Regime			Cryic	Frigid or warmer
Soil Moisture Regime		Aquic	Aquic Intergrade	Xeric Udic Aridic
Subsurface Structure 3-24" depth		Massive Platy Columnar	Weak Granular Weak Prismatic	Mod & Strong Blocky Mod & Strong Prismatic
Surface Structure 0 - 10 " Depth Cultivated 0 - 3" depth, native		Cloddy Massive Platy	Weak Granular Weak Blocky	Mod & Strong Granular, Mod & Strong Blocky
Water Table Depth	<2'	2 - 3'	3 - 5'	>5'
Wind Erodibility Group (SCS)		6, 7, 8,	1, 2	3, 4, 4, <5

- 1 Land that is established in forests can be acceptable in the very severe range
- 2 Summer application can be considered if classified very severe

fine, or both. Each day such violation continues shall be considered a separate offense.

C. In the event any affected person alleges that the CAFO no longer meets the criteria 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 6, Idaho Code, Idaho's 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:

- a. Find in favor of the CAFO; or,
- b. Find in favor of the complainant, and
- c. Revoke the occupancy certificate;
- d. Suspend the occupancy certificate for a definite period;
- e. Modify the occupancy certificate; or,
- f. Provide conditions upon the occupancy certificate.

D. 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 21 day of May, 2002.

APPROVED

Tom Faulkner
Tom Faulkner, Chairman

(Opposed)

Carolyn Elexpuru
Carolyn Elexpuru, Commissioner

Rob Sauer
Rob Sauer, Commissioner



ATTEST:

Helen Edwards
Helen Edwards, Clerk