

TITLE 67  
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 65  
LOCAL LAND USE PLANNING

67-6501. SHORT TITLE. This act shall be known as the "Local Land Use Planning Act."

[67-6501, added I.C., sec. 67-6501, as added by 1975, ch. 188, sec. 2, p. 515; am. 1995, ch. 181, sec. 2, p. 665; am. 1999, ch. 396, sec. 1, p. 1100.]

67-6502. PURPOSE. The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

(m) To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of the state.

[67-6502, added 1975, ch. 188, sec. 2, p. 515; am. 1992, ch. 269, sec. 1, p. 831; am. 1994, ch. 245, sec. 1, p. 764; am. 1999, ch. 396, sec. 2, p. 1100; am. 2011, ch. 89, sec. 1, p. 192; am. 2014, ch. 93, sec. 3, p. 254.]

67-6503. PARTICIPATION OF LOCAL GOVERNMENTS. Every city and county shall exercise the powers conferred by this chapter.

[67-6503, added I.C., sec. 67-6503, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6504. PLANNING AND ZONING COMMISSION -- CREATION -- MEMBERSHIP -- ORGANIZATION -- RULES -- RECORDS -- EXPENDITURES -- STAFF. A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. If a governing board chooses to exercise the powers required and authorized by this chapter it need not follow the procedural requirements established hereby solely for planning and zoning commissions. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code, a planning commission and a zoning commission or a planning and zoning commission acting in both capacities, which may act with the full authority of the governing board, excluding the authority to adopt ordinances or to finally approve land subdivisions. The powers of the board of county commissioners conferred by this chapter shall apply to the unincorporated area of the county. Legally authorized planning, zoning, or planning and zoning commissions existing prior to enactment of this chapter shall be considered to be duly constituted under this chapter. Within this chapter use of the term "planning and zoning commission" shall include the term "planning commission," "zoning commission" and "planning and zoning commission."

(a) Membership -- Each commission shall consist of not less than three (3) nor more than twelve (12) voting members, all appointed by a mayor or chairman of the county board of commissioners and confirmed by majority vote of the governing board. An appointed member of a commission must have resided in the county for at least two (2) years prior to his appointment, and must remain a resident of the county during his service on the commission.

(1) Not more than one-third (1/3) of the members of any commission appointed by the chairman of the board of county commissioners may reside within an incorporated city of one thousand five hundred (1,500) or more population in the county; provided however, that any appointment from within an incorporated city with a population of one thousand five hundred (1,500) or more must occur on a rotating basis between all the incorporated cities with a population of one thousand five hundred (1,500) or more within the county.

(2) At least one-half (1/2) of the members of any commission appointed by the chairman of the board of county commissioners must reside outside the boundaries of any city's area of impact; provided however, if the requirements of this paragraph cannot be met the following may occur: if a vacancy occurs for a commission member residing outside the boundaries of any city's area of impact, after public notice of such vacancy on the commission and solicitation of applicants to fill the position from outside the boundaries of any city's area of impact, and if the governing board is unable to obtain applicants outside the boundaries of any city's area of impact, then the governing board may appoint from within a city's area of impact; provided however, that any appointment occurring within a city's area of impact must occur on a rotating basis between all the cities' areas of impact in the county.

(3) The ordinance establishing a commission to exercise the powers under this chapter shall set forth the number of members to be appointed. The term of office for members shall be not less than three (3) years, nor more than six (6) years, and the length of term shall be prescribed by ordinance. No person shall serve more than two (2) full consecutive

terms without specific concurrence by two-thirds (2/3) of the governing board adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the governing board. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the governing board. If a governing board exercises these powers, its members shall be entitled to no additional mileage or per diem compensation.

(b) Organization -- Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this chapter. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

(c) Rules, Records, and Meetings -- Written organization papers or by-laws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in a year. A majority of currently appointed voting members of the commission shall constitute a quorum.

(d) Expenditures and Staff -- With approval of a governing board through the legally required budgetary process, the commission may receive and expend funds, goods, and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by a governing board. Within such limits, any commission is authorized to hire or contract with employees and technical advisors, including, but not limited to, planners, engineers, architects and legal assistants.

[67-6504, added 1975, ch. 188, sec. 2, p. 515; am. 1982, ch. 130, sec. 1, p. 372; am. 1992, ch. 96, sec. 1, p. 310; am. 1995, ch. 181, sec. 3, p. 665; am. 1999, ch. 396, sec. 3, p. 1101; am. 2003, ch. 84, sec. 1, p. 259; am. 2015, ch. 205, sec. 1, p. 632.]

67-6505. JOINT PLANNING AND ZONING COMMISSION -- FORMATION -- DUTIES. The boards of county commissioners of two (2) or more adjoining counties, alone or together with the council of one (1) or more cities therein, or the board of county commissioners of a county together with the council of one (1) or more cities within the county, or the councils of two (2) or more adjoining cities, are empowered to cooperate in the establishment of a joint planning, zoning, or planning and zoning commission, hereafter referred to as a joint commission, and may provide for participation by invitation of other public agencies deemed necessary to exercise the powers conferred in this chapter. The number of members of a joint commission, the method of appointment, and the allocation of costs for activities to be borne by the participating governing boards shall be agreed upon by the governing boards and agencies involved. A joint commission is further authorized and empowered to perform any of the duties for any local member's governing board when the duties have been authorized by that member government.

[67-6505, added I.C., sec. 67-6505, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6506. CONFLICT OF INTEREST PROHIBITED. A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A knowing violation of this section shall be a misdemeanor.

[67-6506, as added by 1975, ch. 188, sec. 2, p. 515; am. 1999, ch. 396, sec. 4, p. 1102; am. 2006, ch. 213, sec. 1, p. 644.]

67-6507. THE PLANNING PROCESS AND RELATED POWERS OF THE COMMISSION. As part of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation. The commission may also conduct informational meetings and consult with public officials and agencies, public utility companies, and civic, educational, professional, or other organizations. As part of the planning process, the commission shall endeavor to promote a public interest in and understanding of the commission's activities.

The commission may, at any time, make recommendations to the governing board concerning the plan, planning process, or implementation of the plan.

With the consent of the owner, the commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon.

The commission may perform such additional duties as may be assigned by the governing board.

The commission shall have the right to seek judicial process, as may be necessary to enable it to fulfill its functions.

[67-6507, added I.C., sec. 67-6507, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following com-

ponents as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) Property Rights -- An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in [chapter 80, title 67](#), Idaho Code.

(b) Population -- A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) School Facilities and Transportation -- An analysis of public school capacity and transportation considerations associated with future development.

(d) Economic Development -- An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) Land Use -- An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) Natural Resources -- An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines.

(g) Hazardous Areas -- An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) Public Services, Facilities, and Utilities -- An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) Transportation -- An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor and other related transportation facilities.

(j) Recreation -- An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) Special Areas or Sites -- An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) Housing -- An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, san-

itary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) Community Design -- An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) Agriculture -- An analysis of the agricultural base of the area including agricultural lands, farming activities, farming-related businesses and the role of agriculture and agricultural uses in the community.

(o) Implementation -- An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

(p) National Interest Electric Transmission Corridors -- After notification by the public utilities commission concerning the likelihood of a federally designated national interest electric transmission corridor, prepare an analysis showing the existing location and possible routing of high voltage transmission lines, including national interest electric transmission corridors based upon the United States department of energy's most recent national electric transmission congestion study pursuant to sections 368 and 1221 of the energy policy act of 2005. "High-voltage transmission lines" means lines with a capacity of one hundred fifteen thousand (115,000) volts or more supported by structures of forty (40) feet or more in height.

(q) Public Airport Facilities -- An analysis prepared with assistance from the Idaho transportation department division of aeronautics, if requested by the planning and zoning commission, and the manager or person in charge of the local public airport identifying, but not limited to, facility locations, the scope and type of airport operations, existing and future planned airport development and infrastructure needs, and the economic impact to the community.

Nothing herein shall preclude the consideration of additional planning components or subject matter.

[67-6508, added 1975, ch. 188, sec. 2, p. 515; am. 1992, ch. 269, sec. 2, p. 831; am. 1994, ch. 212, sec. 1, p. 669; am. 1994, ch. 245, sec. 2, p. 765; am. 1995, ch. 181, sec. 4, p. 666; am. 1995, ch. 305, sec. 1, p. 1054; am. 1996, ch. 201, sec. 1, p. 622; am. 2007, ch. 186, sec. 2, p. 543; am. 2011, ch. 89, sec. 2, p. 193; am. 2014, ch. 93, sec. 4, p. 255.]

67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE PLAN. (1) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio, and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal, or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school

districts and the manager or person in charge of the local public airport, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan that was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(2) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing or hearings conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission.

(3) No plan shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.

(4) Any person may petition the commission or, in absence of a commission, the governing board for a plan amendment at any time, unless the governing board has established by resolution a minimum interval between consideration of requests to amend, which interval shall not exceed six (6) months. The commission may recommend amendments to the comprehensive plan and to other ordinances authorized by this chapter to the governing board at any time.

[67-6509, added 1975, ch. 188, sec. 2, p. 515; am. 1992, ch. 269, sec. 3, p. 832; am. 1999, ch. 396, sec. 5, p. 1103; am. 2010, ch. 253, sec. 1, p. 643; am. 2014, ch. 93, sec. 5, p. 256; am. 2024, ch. 227, sec. 1, p. 795.]

67-6509A. SITING OF MANUFACTURED HOMES IN RESIDENTIAL AREAS -- PLAN TO BE AMENDED. (1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section [67-6509](#), Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section [67-4607](#), Idaho Code, to allow for siting of manufactured homes as defined in section [39-4105](#), Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade, except when placed on a basement foundation;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

[67-6509A, added 1994, ch. 212, sec. 2, p. 670; am. 1995, ch. 305, sec. 2, p. 1056; am. 1999, ch. 396, sec. 6, p. 1104; am. 2001, ch. 102, sec. 1, p. 252; am. 2002, ch. 345, sec. 36, p. 980; am. 2007, ch. 56, sec. 1, p. 138.]

67-6509B. MANUFACTURED HOUSING COMMUNITY -- EQUAL TREATMENT REQUIRED. A city or a county shall not adopt or enforce zoning, community development or subdivision ordinance provisions which disallow the plans and specifications of a manufactured housing community solely because the housing within the community will be manufactured housing. Applications for development of manufactured home communities shall be treated the same as those for site-built homes. For purposes of this section, "manufactured housing community" means any site, lot or tract of land upon which ten (10) or more manufactured homes may be sited. The manufactured housing community may feature either fee simple land sales or land leased or rented by the homeowner.

[67-6509B, added 1998, ch. 84, sec. 1, p. 293; am. 1999, ch. 396, sec. 7, p. 1105.]

67-6510. MEDIATION -- TIME LIMITATIONS TOLLED. (1) The procedure established for the processing of applications by this chapter or by local ordinance shall include the option of mediation upon the written request of the



applicant, an affected person, the zoning or planning and zoning commission or the governing board. Mediation may occur at any point during the decision-making process or after a final decision has been made. If mediation occurs after a final decision, any resolution of differences through mediation must be the subject of another public hearing before the decision-making body.

(2) The applicant and any other affected persons objecting to the application shall participate in at least one (1) mediation session if mediation is requested by the commission or the governing board. The governing board shall select and pay the expense of the mediator for the first meeting among the interested parties. Compensation of the mediator shall be determined among the parties at the outset of any mediation undertaking. An applicant may decline to participate in mediation requested by an affected person, and an affected person may decline to participate in mediation requested by the applicant, except that the parties shall participate in at least one (1) mediation session if directed to do so by the governing board.

(3) During mediation, any time limitation relevant to the application shall be tolled. Such tolling shall cease when the applicant or any other affected person, after having participated in at least one (1) mediation session, states in writing that no further participation is desired and notifies the other parties, or upon notice of a request to mediate wherein no mediation session is scheduled for twenty-eight (28) days from the date of such request.

(4) The mediation process may be undertaken pursuant to the general limitations established by this section or pursuant to local ordinance provisions not in conflict herewith.

(5) The mediation process shall not be part of the official record regarding the application.

[67-6510, added 2000, ch. 199, sec. 2, p. 491.]

67-6511. ZONING ORDINANCE. (1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section [67-6509](#), Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

(a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute a regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission, which shall evaluate the request to determine the extent and nature of the amendment re-

requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section [67-8003](#), Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section [67-6509](#), Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be given to a pipeline company operating any existing interstate natural gas transmission pipeline or interstate petroleum products pipeline, as recognized by the pipeline and hazardous materials safety administration, with a center point within one thousand (1,000) feet of the external boundaries of the land being considered, provided that the pipeline company is in compliance with section [62-1104](#), Idaho Code. Notice shall also be posted on the premises no less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures that would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section [67-6509](#), Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

[67-6511, added 1975, ch. 188, sec. 2, p. 515; am. 1983, ch. 121, sec. 1, p. 314; am. 1985, ch. 141, sec. 1, p. 384; am. 1987, ch. 329, sec. 1, p. 688; am. 1992, ch. 269, sec. 4, p. 833; am. 1999, ch. 396, sec. 8, p. 1105; am. 2003, ch. 142, sec. 1, p. 411; am. 2011, ch. 89, sec. 3, p. 194; am. 2013, ch. 216, sec. 1, p. 507; am. 2023, ch. 140, sec. 3, p. 386.]

67-6511A. DEVELOPMENT AGREEMENTS. Each governing board may, by ordinance adopted or amended in accordance with the notice and hearing provisions provided under section [67-6509](#), Idaho Code, require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel. The governing board shall adopt ordinance provisions governing the creation, form, recording, modification, enforcement and termination of conditional commitments. Such commitments shall be recorded in the office of the county recorder and shall take effect upon the adoption of the amendment to the zoning ordinance. Unless modified or terminated by the governing board after a public hearing, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section [67-6509](#), Idaho Code. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of the requirements in the commitment after a reasonable time as determined by the governing board or upon the failure of the owner; each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions in the commitment and after complying with the notice and hearing provisions of section [67-6509](#), Idaho Code. By permitting or requiring commitments by ordinance the governing board does not obligate itself to recommend or adopt the proposed zoning ordinance. A written commitment shall be deemed written consent to rezone upon the failure of conditions imposed by the commitment in accordance with the provisions of this section.

[67-6511A, added 1991, ch. 146, sec. 1, p. 346; am. 1999, ch. 396, sec. 9, p. 1107.]

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing

procedures provided under section [67-6509](#), Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section [67-8003](#), Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;

- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Requiring more restrictive standards than those generally required in an ordinance;
- (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in section [21-501](#) (2), Idaho Code, of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section [67-6516](#), Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.

[67-6512, added 1975, ch. 188, sec. 2, p. 515; am. 1985, ch. 141, sec. 2, p. 385; am. 1992, ch. 269, sec. 5, p. 835; am. 1999, ch. 396, sec. 10, p. 1107; am. 2003, ch. 142, sec. 2, p. 412; am. 2011, ch. 89, sec. 4, p. 195; am. 2012, ch. 334, sec. 1, p. 926; am. 2012, ch. 334, sec. 2, p. 928; am. 2014, ch. 93, sec. 6, p. 257.]

67-6513. SUBDIVISION ORDINANCE. Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section [67-6509](#), Idaho Code, for standards and for the processing of applications for subdivision permits under sections [50-1301](#) through [50-1329](#), Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of [chapter 82, title 67](#), Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section [67-8003](#), Idaho Code, consistent with the requirements established thereby.

[67-6513, added I.C., sec. 67-6513, as added by 1975, ch. 188, sec. 2, p. 515; am. 1992, ch. 269, sec. 6, p. 836; am. 1999, ch. 396, sec. 11, p. 1109; am. 2003, ch. 142, sec. 3, p. 414.]

67-6514. EXISTING ZONING OR SUBDIVISION ORDINANCES. A governing board, using any zoning or subdivision ordinance in existence on the effective date of this chapter, shall conduct a review of those ordinances and shall make

necessary amendments in accordance with this chapter prior to January 1, 1978, following notice and hearing pursuant to section [67-6509](#), Idaho Code.

[67-6514, added I.C., sec. 67-6514, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6515. PLANNED UNIT DEVELOPMENTS. As part of or separate from the zoning ordinance, each governing board may provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section [67-6509](#), Idaho Code, for the processing of applications for planned unit development permits.

A planned unit development may be defined in a local ordinance as an area of land in which a variety of residential, commercial, industrial, and other land uses are provided for under single ownership or control. Planned unit development ordinances may include, but are not limited to, requirements for minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, and permit processing. Planned unit developments may be permitted pursuant to the procedures for processing applications for special use permits following the notice and hearing procedures provided in section [67-6512](#), Idaho Code. Denial of a planned unit development permit or approval of a planned unit development permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section [67-8003](#), Idaho Code, consistent with the requirements established thereby.

[67-6515, added I.C., sec. 67-6515, as added by 1975, ch. 188, sec. 2, p. 515; am. 1999, ch. 396, sec. 12, p. 1109; am. 2003, ch. 142, sec. 4, p. 414.]

67-6515A. TRANSFER OF DEVELOPMENT RIGHTS. (1) Any city or county governing body may, by ordinance and following notice and hearing procedures provided for under section [67-6509](#), Idaho Code, create development rights and establish procedures authorizing landowners to voluntarily transfer said development rights subject to:

(a) Such conditions as the governing body shall determine to fulfill the goals of the city or county to preserve open space, protect wildlife habitat and critical areas, enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations and avoid creation of aviation hazards as defined in section [21-501](#) (2), Idaho Code; and

(b) Voluntary acceptance by the landowner of the development rights and any land use restrictions conditional to such acceptance.

(2) Before designating sending areas and receiving areas, a city or county shall conduct an analysis of the market in an attempt to assure that areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas.

(3) Ordinances providing for a transfer of development rights shall not require a property owner in a sending area to sell development rights. Once a transfer of development rights has been exercised it shall constitute a restriction on the development of the property in perpetuity, unless the city or county elects to extinguish such restriction pursuant to the provisions of this chapter.

(4) A city or county may not condition an application for a permit to which an applicant is otherwise entitled under existing zoning and subdivision ordinances on the acquisition of development rights. A city or county may not condition an application for a zoning district boundary change which is consistent with the comprehensive plan on the acquisition of development rights. A city or county may not reduce the density of an existing zone and thereafter require an applicant to acquire development rights as a condition of approving a request for a zoning district boundary change which would permit greater density.

(5) It shall be at the discretion of the persons selling and buying a transferable development right to determine whether a right will be transferred permanently without being exercised in a designated receiving area or whether a right will have requirements to be exercised within a designated receiving area within a set time period. If the development right is not used before the end of the time period provided by written contract and any extension thereof, the development right will revert to the owner of the property from which it was transferred.

(6) No transfer of a development right, as contemplated herein, shall affect the validity or continued right to use any water right that is appurtenant to the real property from which such development right is transferred. The transfer of a water right shall remain subject to the provisions of [title 42](#), Idaho Code.

(7) (a) Ordinances providing for the transfer of development rights shall prescribe procedures for the issuance and recording of the instruments necessary to sever development rights from the sending property and to affix the development rights to the receiving property. These instruments shall specifically describe the property, shall be executed by all lienholders and other parties with an interest of record in any of the affected property, and shall be recorded with the county recorder. Transfers of development rights without such written and recorded consent shall be void.

(b) A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, his heirs, successors and assigns. An unexercised development right shall not be taxed as real or personal property.

(8) For the purposes of this section:

(a) "Development rights" shall mean the rights permitted to a lot, parcel or area of land under a zoning or other ordinance respecting permissible use, area, density, bulk or height of improvements. Development rights may be calculated and allocated in accordance with such factors as area, floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

(b) "Receiving area" shall mean one (1) or more designated areas of land to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

(c) "Sending area" shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas.

(d) "Transfer of development rights" shall mean the process by which development rights are transferred from one (1) lot, parcel or area of land in any sending area to another lot, parcel or area of land in one (1) or more receiving areas.

[67-6515A, added 1999, ch. 363, sec. 1, p. 959; am. 2003, ch. 224, sec. 1, p. 576; am. 2014, ch. 93, sec. 7, p. 259.]

67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section [21-501](#), Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section [67-8003](#), Idaho Code, consistent with the requirements established thereby.

[67-6516, added 1975, ch. 188, sec. 2, p. 515; am. 1999, ch. 396, sec. 13, p. 1109; am. 2003, ch. 142, sec. 5, p. 414; am. 2014, ch. 93, sec. 8, p. 260.]

67-6517. FUTURE ACQUISITIONS MAP. Upon the recommendation of the planning or planning and zoning commission each governing board may adopt, amend, or repeal a future acquisitions map in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code. The map shall designate land proposed for acquisition by a public agency for a maximum twenty (20) year period. Lands designated for acquisition may include land for:

- (a) Streets, roads, other public ways, or transportation facilities proposed for construction or alteration;
- (b) Proposed schools, airports, or other public buildings;
- (c) Proposed parks or other open spaces; or
- (d) Lands for other public purposes.

Upon receipt of a request for a permit as defined in this chapter, or a building permit as defined in a local ordinance, for a development on any lands designated upon the future acquisitions map, the zoning or planning and zoning commission or the governing board shall notify the public agency proposing to acquire the land. Within thirty (30) days of the date of that notice, the public agency may, in writing, request the commission or governing board to suspend consideration of the permit for sixty (60) days from the date of the request to allow the public agency to negotiate with the land owner to obtain an option to purchase the land, acquire the land, or institute condemnation proceedings as may be authorized in the Idaho Code. If the public agency fails to do so within the sixty (60) days, the commission or



governing board shall resume consideration of the permit. Nothing in this chapter shall limit a governing board from adopting local ordinances as required or authorized which include lands on the future acquisitions map.

[67-6517, added I.C., sec. 67-6517, as added by 1975, ch. 188, sec. 2, p. 515; am. 1994, ch. 90, sec. 1, p. 206.]

67-6518. STANDARDS. Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development.

Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code.

Whenever the ordinances made under this chapter impose higher standards than are required by any other statute or local ordinance, the provisions of ordinances made pursuant to this chapter shall govern.

[67-6518, added I.C., sec. 67-6518, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6519. APPLICATION GRANTING PROCESS. (1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for zoning changes, subdivisions, variances, special use permits and such other applications required or authorized pursuant to this chapter for which a reasonable fee may be charged.

(2) Where the commission hears an application, the commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the application or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any application that relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.

(3) When considering an application that relates to a public school facility, the commission shall specifically review the application for the effect it will have on increased vehicle, bicycle and pedestrian volumes on adjacent roads and highways. To ensure that the state highway system or the local highway system can satisfactorily accommodate the proposed school project, the commission shall request the assistance of the Idaho transportation department if state highways are affected, or the local highway district with jurisdiction if the affected roads are not state highways. The Idaho transportation department, the appropriate local highway jurisdiction, or both as determined by the commission, shall review

the application and shall report to the commission on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic circulation; anticipated development on surrounding undeveloped parcels; zoning in the vicinity; access control on adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(4) Whenever a county or city considers a proposed subdivision or any other site-specific land development application authorized by this chapter, it shall provide written notice concerning the development proposal by mail, or electronically by mutual agreement, to all irrigation districts, ground water districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations and drainage districts that have requested, in writing, to receive notice. Any irrigation districts, ground water districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations and drainage districts requesting notice shall continue to provide updated and current contact information to the county or city in order to receive notice. Notice shall also be given to a pipeline company operating any existing interstate natural gas transmission pipeline or interstate petroleum products pipeline, as recognized by the pipeline and hazardous materials safety administration, with a center point within one thousand (1,000) feet of the external boundaries of the land being considered, provided that the pipeline company is in compliance with section [62-1104](#), Idaho Code. Any notice provided under this subsection shall be provided no less than fifteen (15) days prior to the public hearing date concerning the development proposal as required by this chapter or local ordinance. Any notice provided under this subsection shall not affect or eliminate any other statutory requirements concerning delivery of water, including those under sections [31-3805](#) and [67-6537](#), Idaho Code.

(5) Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify:

- (a) The ordinance and 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 approval.

(6) Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section [67-8003](#), Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section [67-6521](#)(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by [chapter 52, title 67](#), Idaho Code.

[67-6519, added 1975, ch. 188, sec. 2, p. 515; am. 1993, ch. 216, sec. 111, p. 678; am. 2000, ch. 431, sec. 1, p. 1388; am. 2003, ch. 123, sec. 1, p. 373; am. 2010, ch. 175, sec. 1, p. 359; am. 2011, ch. 279, sec. 1, p. 759; am. 2018, ch. 246, sec. 1, p. 572; am. 2023, ch. 140, sec. 4, p. 388.]

67-6520. HEARING EXAMINERS. (1) Hearing examiners include professionally trained or licensed staff planners, attorneys, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section [67-6509](#), Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he may, pursuant to local ordinance, grant or deny the application or submit a recommendation to the governing board or zoning or planning and zoning commission. His decision or recommendation shall specify:

- (a) The ordinance and standards used in evaluating the application;
- (b) The reasons for the recommendation or decision; and
- (c) The actions, if any, that the applicant could take to obtain an approval.

(2) Every final decision shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section [67-8003](#), Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section [67-6521](#)(1)(a), Idaho Code, may within twenty-eight (28) days after all appellate remedies have been exhausted under local ordinance seek judicial review as provided by [chapter 52, title 67](#), Idaho Code.

[67-6520, added I.C., sec. 67-6520, as added by 1975, ch. 188, sec. 2, p. 515; am. 1992, ch. 269, sec. 7, p. 836; am. 1993, ch. 216, sec. 112, p. 678; am. 1996, ch. 150, sec. 1, p. 488; am. 1999, ch. 396, sec. 14, p. 1110; am. 2010, ch. 175, sec. 2, p. 360.]

67-6521. ACTIONS BY AFFECTED PERSONS.

(1) (a) As used herein, an affected person shall mean one having a bona fide interest in real property which may be adversely affected by:

- (i) The approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter;
- (ii) The approval of an ordinance first establishing a zoning district upon annexation or the approval or denial of an application to change the zoning district applicable to specific parcels or sites pursuant to section [67-6511](#), Idaho Code; or
- (iii) An approval or denial of an application for conditional rezoning pursuant to section [67-6511A](#), Idaho Code.

(b) Any affected person may at any time prior to final action on an application required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section [67-6512](#), Idaho Code; provided however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

- (i) Grant or deny an application; or
- (ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by ordinance or resolution a time period within which a recommendation or decision must be made.

(d) Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section [67-8003](#), Idaho Code. An affected person aggrieved by a final decision concerning matters identified in section [67-6521](#)(1)(a), Idaho Code, may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by [chapter 52, title 67](#), Idaho Code.

(2) (a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and [chapter 7, title 7](#), Idaho Code.

(b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a final action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide "just compensation" under the provisions of section 14, article I, of the constitution of the state of Idaho and [chapter 7, title 7](#), Idaho Code.

[67-6521, added I.C., sec. 67-6521, as added by 1975, ch. 188, sec. 2, p. 515; am. 1993, ch. 216, sec. 113, p. 679; am. 1996, ch. 199, sec. 1, p. 620; am. 2010, ch. 175, sec. 3, p. 361.]

67-6522. COMBINING OF PERMITS -- PERMITS TO ASSESSOR. Where practical, the governing board or zoning or planning and zoning commission may combine related permits for the convenience of applicants. State and federal agencies should make every effort to combine or coordinate related permits with the local governing board or commission. In no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency. Appropriate permits as defined by local ordinance shall be forwarded to the county assessor.

[67-6522, added 1975, ch. 188, p. 515; am. 2013, ch. 216, sec. 2, p. 509.]

67-6523. EMERGENCY ORDINANCES AND MORATORIUMS. If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred eighty-two (182) days. Restrictions established by an emergency ordinance or moratorium may not be imposed for consecutive periods. Further, an intervening period of not less than one (1) year shall exist between an emergency ordinance or moratorium

and reinstatement of the same. To sustain restrictions established by an emergency ordinance or moratorium beyond the one hundred eighty-two (182) day period, a governing board must adopt an interim or regular ordinance, following the notice and hearing procedures provided in section [67-6509](#), Idaho Code.

[67-6523, added I.C., sec. 67-6523, as added by 1975, ch. 188, sec. 2, p. 515; am. 2003, ch. 142, sec. 6, p. 415.]

67-6524. INTERIM ORDINANCES AND MORATORIUMS. If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section [67-6509](#), Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one (1) calendar year, when it shall be in full force and effect. To sustain restrictions established by an interim ordinance or moratorium, a governing board must adopt a regular ordinance, following the notice and hearing procedures provided in section [67-6509](#), Idaho Code.

[67-6524, added I.C., sec. 67-6524, as added by 1975, ch. 188, sec. 2, p. 515; am. 2003, ch. 142, sec. 7, p. 415.]

67-6525. PLAN AND ZONING ORDINANCE CHANGES UPON ANNEXATION OF UNINCORPORATED AREA. Prior to annexation of an unincorporated area, a city council shall request and receive a recommendation from the planning and zoning commission, or the planning commission and the zoning commission, on the proposed plan and zoning ordinance changes for the unincorporated area. Each commission and the city council shall follow the notice and hearing procedures provided in section [67-6509](#), Idaho Code. Concurrently or immediately following the adoption of an ordinance of annexation, the city council shall amend the plan and zoning ordinance.

[67-6525, added I.C., sec. 67-6525, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6526. AREAS OF IMPACT. (1) Legislative findings and intent.

(a) The legislature finds that areas of impact are properly under the jurisdiction of the county because the elected representatives of citizens in areas of impact are county officials, not city officials. While cities should receive notice of, and may provide input on, applications brought to the county in an area of impact, cities do not govern or control decisions on those applications. County commissioners make the final determination regarding area of impact boundaries within their county.

(b) An area of impact is where growth and development are expected to occur. Areas of impact should be planned for growth and development and should not be used to stop growth and development that conforms to applicable plans and ordinances. Areas of impact should be established, modified, or confirmed based on the ability and likelihood of a city or

cities to annex lands within that area of impact in the near future. A city may adopt a comprehensive plan and conduct infrastructure, capital improvement, and other planning activities that extend beyond its current area of impact. Counties and cities shall review their area of impact boundaries at least every five (5) years to determine if modifications are needed or to confirm existing boundaries and may pursue modification of an established area of impact more frequently than every five (5) years.

(c) Prior to conducting the public hearings required under this chapter to establish, modify, or confirm an area of impact, cities and counties should work together to develop a proposed area of impact to be considered at the public hearing.

(d) Decisions regarding the establishment, modification, or confirmation of areas of impact are legislative actions and are not subject to judicial review or challenge except as provided in subsection (5) of this section.

(2) Establishing an area of impact.

(a) Following the notice and hearing procedures provided in section [67-6509](#), Idaho Code, and in accordance with the provisions of subsection (4) of this section, the board of county commissioners of each county shall adopt by ordinance a map identifying the area of impact within the unincorporated area of the county for each city located in the county. Written notice of the hearing to be conducted under this subsection shall be provided by the county to each owner of property located within a proposed area of impact. If notice is also published pursuant to section [67-6509](#), Idaho Code, individual property owners may not challenge the proceeding on the basis that they did not actually receive notice by mail. The cost of the notice shall be reimbursed to the county by the city whose area of impact is under consideration. The board of county commissioners is not required to receive a recommendation from the planning and zoning commission prior to enacting an ordinance establishing an area of impact. An area of impact must be established before a city may annex adjacent territory pursuant to the provisions of section [50-222](#), Idaho Code.

(b) If the requirements of paragraph (a) of this subsection are not met in establishing an area of impact, the city may demand compliance with this subsection by providing notice to the board of county commissioners of the demand for compliance. Once a demand has been made, a recommendation committee shall be established. The city and county shall each select a representative to participate on the committee within thirty (30) days of the demand for compliance and the process set forth in this paragraph shall commence.

(i) After the city and county representatives have been selected, they shall in turn select another city representative living within the applicable city and another county representative living in the county and not within any city to serve on the recommending committee. Meetings of the recommending committee may be hosted by the city or county and shall be conducted in accordance with Idaho open meetings law. These four (4) persons shall, by majority vote, provide a written recommendation to the board of county commissioners for an area of impact. The written recommendation shall be submitted to the governing boards within one

hundred eighty (180) days after the selection of the recommending committee members.

(ii) If the board of county commissioners fails to enact an ordinance providing for an area of impact within ninety (90) days of receipt of the committee recommendation or expiration of the one hundred eighty (180) days for the committee to make its recommendation, the city may file a petition with the district court to identify the area of impact pursuant to subsection (5) of this section and in accordance with other applicable provisions of this section.

(3) Modification or confirmation of area of impact boundaries.

(a) Modification or confirmation of an existing area of impact boundary may be initiated by a city or cities or the county. If a county is initiating a modification or confirmation of an area of impact, the county shall provide at least thirty (30) days written notice to the applicable city or cities of the hearing on the proposed modification or confirmation. Any modifications to or confirmation of an area of impact boundary must be adopted by an ordinance approved by the board of county commissioners of the applicable county, following the notice and hearing procedures provided in section [67-6509](#), Idaho Code, and in accordance with the requirements for defining an area of impact as set forth in subsection (4) of this section. At least fifteen (15) days prior to the hearing, written notice of the hearing to be conducted under this paragraph shall be provided by the county to each owner of property located within the portion of the area of impact that is proposed to be modified. If notice is also published pursuant to section [67-6509](#), Idaho Code, individual property owners may not challenge the proceeding on the basis that they did not actually receive notice by mail. If the modification or confirmation is proposed by a city, then the cost of the notice shall be reimbursed to the county by such city. If the county is pursuing the modification or confirmation, then the cost of notification shall be borne by the county. The board of county commissioners is not required to receive a recommendation from the planning and zoning commission prior to enacting an ordinance modifying or confirming an area of impact.

(b) Where areas of impact abut each other and adjustments are being proposed, or where areas of impact are proposed to abut each other, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. The city council of each city must approve the area of impact or modifications thereto to be proposed to the board of county commissioners. These decisions by the city councils are proposals and not subject to judicial review or challenge. If the cities with impact area boundaries that abut or are proposed to abut each other reach agreement on the proposed boundaries or adjustments thereto, the requested boundaries or adjustments shall be collectively submitted by the cities to the county for consideration in accordance with paragraph (a) of this subsection. If the cities cannot reach agreement, then any or all of the cities involved may submit their requests to the board of county commissioners for consideration pursuant to paragraph (a) of this subsection. In either case, the county shall conduct at least one (1) consolidated public hearing where it considers all such requests together.

(c) The county may accept, reject, or modify a city's requested modification or confirmation regarding an impact area boundary, but if the county does not make a final decision on the request within ninety (90) days of submission of the request, the city may petition the court to make a determination on the request pursuant to subsection (5) of this section.

(4) Provisions applicable to areas of impact.

(a) In defining an initial area of impact or in modifying or confirming an existing area of impact, the criteria set forth in this subsection shall be considered:

(i) Anticipated commercial and residential growth;

(ii) Geographic factors;

(iii) Transportation infrastructure and systems, including connectivity;

(iv) Areas where municipal or public sewer and water are expected to be provided within five (5) years; and

(v) Other public service district boundaries.

(b) In addition to the criteria set forth in paragraph (a) of this subsection, an area of impact shall not exceed the areas that are very likely to be annexed to the city within the next five (5) years. Except as otherwise provided in this paragraph, an area of impact shall not extend more than two (2) miles from existing city limits. An area of impact boundary shall not divide county recognized parcels of land. If only a portion of a recognized parcel falls within the two (2) mile limit, then the boundary may extend beyond two (2) miles on that parcel so that it encompasses the entire parcel. Adjustments to an area of impact may be proposed and considered at any time following the initial establishment of the area of impact.

(c) Areas of impact may cross county boundaries only by approval of the governing board of county commissioners after following the procedures and complying with the requirements for modification or confirmation of an area of impact boundary.

(d) Areas of impact shall not overlap.

(e) The applicable county's comprehensive plan and zoning and subdivision ordinances shall apply in the area of impact. The county may adopt individual county comprehensive plan and zoning and subdivision ordinance provisions regarding a specific area of impact.

(f) Following adoption of an area of impact, the board of county commissioners shall provide the city with written notice at least fifteen (15) days in advance of any county public hearings held pursuant to this chapter or to [chapter 13, title 50](#), Idaho Code, involving land within that area of impact.

(g) Areas of impact shall remain fixed until modifications are made pursuant to subsection (3) of this section.

(h) Prior to considering a request to establish, modify, or confirm an area of impact, the governing boards may, but are not required to, submit the request to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by its governing board in compliance with all required timelines set forth in this section to make its recommendation to the governing board. The county and the city shall undertake a review of the area of impact at least once every five (5) years and shall consider whether adjustments are in the best interests of the citizenry.



(i) This section shall not preclude annexation or other growth and development in areas of any county within the state of Idaho that are not within the areas of impact provided for herein.

(j) The county's decision establishing, modifying, or confirming the boundaries for an area of impact shall be made in writing and shall contain the reasoning of the board of county commissioners, including application of the facts relied upon by the commissioners and the application of the pertinent requirements and criteria to establish or modify an area of impact.

(k) If the area of impact has been properly established, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section [67-6504](#), Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of section [67-6504](#)(a), Idaho Code.

(5) Petitions for review of establishment, modification, or confirmation of area of impact. The decisions by the board of county commissioners regarding the establishment, modification, or confirmation of areas of impact are legislative actions and are not subject to judicial review, declaratory action, or other legal challenge, except as specifically provided in this subsection.

(a) (i) If a county has not complied with the provisions of subsection (2) or (3) of this section, the city seeking the establishment, modification, or confirmation of an area of impact may petition the district court to establish, modify, or confirm an area of impact that meets the criteria and requirements of subsection (4) of this section in accordance with the procedures provided in this subsection. If the modification of an area of impact boundary involves areas of impact boundaries that abut each other or that are proposed to abut each other, then any city whose area of impact abuts or is proposed to abut another area of impact boundary may file a petition challenging the county's determination regarding only those boundaries that abut or that are proposed to abut each other. Any petition regarding a proposed area of impact or portion thereof that is subject to challenge must be filed in the county in which the proposed area of impact or portion thereof is located.

(ii) Before a city may file a petition for review of an area of impact decision made by the county, as provided in paragraph (a) (i) of this subsection, it must first file a request for reconsideration with the board of county commissioners. Such request must be filed within fourteen (14) days of the issuance of the writ-

ten decision by the board of county commissioners and must specify deficiencies in the decision of the board of county commissioners. Filing a timely request for reconsideration is a prerequisite to the city having standing to file a petition with the district court. The county shall act on and issue a written decision on the request for reconsideration within thirty (30) days of receipt of the request or the request shall be deemed denied. A petition challenging the decision of the county must be filed by the city within twenty-eight (28) days after the issuance of a decision by the county on the request for reconsideration or expiration of the thirty (30) day period for the county to act on the request.

(b) When filing a petition challenging the decision of the board of county commissioners with the clerk of the court, the petitioner shall pay a fee of one hundred dollars (\$100), which fee shall be in full for all clerk's fees except the regular fees provided by law for appeals. The court shall fix a time for the hearing on the petition to be held no less than thirty (30) days and no more than ninety (90) days from the filing of the petition. The petitioner shall serve or cause to be served a copy of the petition and notice of the hearing on the board of county commissioners or county clerk and the mayor or city clerk of such other city whose area of impact boundary is in question pursuant to paragraph (a) of this subsection at least twenty (20) days before the date of the hearing.

(c) No petition, objection, or reply authorized under this subsection need be verified.

(d) The hearing on a petition filed pursuant to this subsection shall be held within the county in which the area of impact or portion thereof is situated. The regular district court reporter shall reduce to writing the testimony and evidence introduced in the same manner as in a trial of civil actions. The judge of the court, either before or after the hearing, may view the lands pertaining to the proposed area of impact, lands on the outside of the city or cities in the same vicinity in which the lands sought to be included in the area of impact are situated, and other lands within the corporate limits of the city that might in any way be affected by the granting of the petition. The judge may consider such modifications as the judge finds in connection with the evidence introduced at the hearing, in making and arriving at a final decision and determination of the matter.

(e) (i) If the court finds that the board of county commissioners did not follow the notice and hearing requirements provided in this subsection, the court shall remand the matter back to the board of county commissioners to comply with the requirements and issue a new decision. If the court finds that the decision of the board of county commissioners was not arbitrary, capricious, or an abuse of discretion, the court shall affirm the decision of the board of commissioners. If the court finds that the decision of the board of county commissioners was arbitrary, capricious, or an abuse of discretion, the court may remand the matter to the board of county commissioners to correct its decision or the court may determine the appropriate boundaries of the area of impact in question before it. It shall not be necessary for the judge of the court to make written findings of fact or conclusions of law unless

the court establishes the area of impact boundary. The court may award attorney's fees and costs to the prevailing party in such an action only if it finds that the other party or parties acted without a reasonable basis in fact or law.

(ii) If the court establishes the area of impact boundary, such boundary shall become the area of impact boundary as of the date of the decree establishing the boundary. Within twenty (20) days after the filing of the decree, the petitioner shall file or cause to be filed with the county recorder and with the city clerk a certified copy of the decree. The board of county commissioners shall adopt an ordinance consistent with the court decree within thirty (30) days of the entry of the decree or be subject to contempt and other sanctions or actions deemed appropriate by the court.

(f) Any city or county aggrieved by the decision of the court may appeal from the decision and judgment to the supreme court. The procedure of the appeal shall be the same as the procedure for appeals from final judgment in civil actions.

(6) Cities and counties shall review their existing areas of impact and shall reestablish the areas in conformance with the provisions of this section by December 31, 2025. Failure to timely conduct such review and reestablishment shall nullify the current area of impact boundaries and require the city and county to go through the process set forth in subsection (2) of this section.

[67-6526, added 1975, ch. 188, sec. 2, p. 515; am. 1977, ch. 155, sec. 1, p. 396; am. 1979, ch. 87, sec. 1, p. 212; am. 1993, ch. 55, sec. 1, p. 150; am. 1995, ch. 118, sec. 97, p. 506; am. 1996, ch. 116, sec. 2, p. 428; am. 1999, ch. 251, sec. 1, p. 651; am. 2002, ch. 333, sec. 6, p. 947.; am. 2024, ch. 227, sec. 2, p. 796.]

67-6527. VIOLATIONS -- CRIMINAL PENALTIES -- ENFORCEMENT. A governing board may provide by ordinance for the enforcement of this chapter or any ordinance or regulation made pursuant to this chapter. A violation of any such ordinance or regulation may be declared a misdemeanor and the governing board may provide by ordinance for punishment thereof by fine or imprisonment or by both. Local ordinances adopted pursuant to authority granted by this chapter may be enforced by the imposition of infraction penalties. Except that where property has been made nonconforming by the exercise of eminent domain it shall not be a violation and no penalty, either civil or criminal, shall result. In addition, whenever it appears to a governing board that any person has engaged or is about to engage in any act or practice violating any provision of this chapter or an ordinance or regulation enacted pursuant to this chapter, the governing board may institute a civil action in the district court to enforce compliance with this chapter or any ordinance or regulation enacted hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or ordinance or regulation enacted hereunder, a permanent or temporary injunction, restraining order, or such other relief as the court deems appropriate shall be granted. The governing board shall not be required to furnish bond.

[67-6527, added I.C., sec. 67-6527, as added by 1975, ch. 188, sec. 2, p. 515; am. 1999, ch. 396, sec. 15, p. 1110.]

67-6528. APPLICABILITY OF ORDINANCES. The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law. In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts. The provisions of plans and ordinances enacted pursuant to this chapter shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation board. The Idaho transportation board shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions. If a public utility has been ordered or permitted by specific order, pursuant to [title 61](#), Idaho Code, to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall be insofar as it is in conflict, null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict.

[67-6528, added I.C., sec. 67-6528, as added by 1975, ch. 188, sec. 2, p. 515.]

67-6529. APPLICABILITY TO AGRICULTURAL LAND -- COUNTIES MAY REGULATE SITING OF CERTAIN ANIMAL OPERATIONS AND FACILITIES. (1) No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. Agricultural land shall be defined by local ordinance or resolution.

(2) Notwithstanding any provision of law to the contrary, a board of county commissioners shall enact ordinances and resolutions to regulate the siting of large confined animal feeding operations and facilities, as they shall be defined by the board, provided however, that the definition of a confined animal feeding operation shall not be less restrictive than the definition contained in section [67-6529C](#), Idaho Code, including the approval or rejection of sites for the operations and facilities. At a minimum, a county's ordinance or resolution shall provide that the board of county commissioners shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed site before the siting of such facility. Several sites may be considered at any one (1) public hearing. Only members of the public with their primary residence within a one (1) mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. A record of each hearing and comments received shall be made by the board. The comments shall be duly considered by the board when deciding whether to approve or reject a proposed site. A board of county commissioners may reject a site regardless of the approval or rejection of the site by a state agency.

[67-6529, added I.C., sec. 67-6529, as added by 1975, ch. 188, sec. 2, p. 515; am. 2000, ch. 217, sec. 1, p. 605; am. 2003, ch. 297, sec. 1, p. 805.]

67-6529A. SHORT TITLE. This act shall be referred to as the "Site Advisory Team Suitability Determination Act."

[67-6529A, added 2001, ch. 381, sec. 1, p. 1336.]

67-6529B. LEGISLATIVE FINDINGS AND PURPOSES. The legislature finds that:

(1) Confined animal feeding operations increase social and environmental impacts in areas where these facilities are located;

(2) The siting of confined animal feeding operations is a complex and technically difficult undertaking requiring assistance to counties and other units of local government as they exercise their land use planning authority;

(3) It is in the interest of the state of Idaho that state departments and agencies use their particular expertise to assist counties and other local governments in the environmental evaluation of appropriate sites for confined animal feeding operations.

[67-6529B, added 2001, ch. 381, sec. 2, p. 1337.]

67-6529C. DEFINITIONS. As used in this act, the following definitions shall apply:

(1) "CAFO," also referred to as "concentrated animal feeding operation" or "confined animal feeding operation," means, for those counties that have requested a site suitability determination, a CAFO as defined in the applicable ordinance of the county wherein the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means a lot or facility where the following conditions are met:

(a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;

(b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; or eighty-two thousand (82,000) chickens.

Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;

(2) "CAFO site advisory team" shall mean representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine environmental risks and submit a suitability determination to a county. The department of agriculture shall serve as the lead agency for the team;

(3) "Environmental risk" shall mean that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report;

(4) "Suitability determination" shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

[67-6529C, added 2001, ch. 381, sec. 3, p. 1337; am. 2006, ch. 218, sec. 1, p. 653; am. 2011, ch. 180, sec. 1, p. 511.]

67-6529D. ODOR MANAGEMENT PLANS -- COUNTY REQUEST FOR SUITABILITY DETERMINATION -- LOCAL REGULATION. (1) Counties may require an applicant for siting of a CAFO to submit an odor management plan as part of their application.

(2) A board of county commissioners considering the siting of a CAFO may request the director of the department of agriculture to form a CAFO site advisory team to provide a suitability determination for the site.

(3) This act does not preempt local regulation of a CAFO.

[67-6529D, added 2001, ch. 381, sec. 4, p. 1338.]

67-6529E. PROCESS FOR COUNTY REQUEST -- CONTENTS OF THE REQUEST. (1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination. The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

[67-6529E, added 2001, ch. 381, sec. 5, p. 1338; am. 2006, ch. 218, sec. 2, p. 654; am. 2011, ch. 180, sec. 2, p. 512.]

67-6529F. DEPARTMENT RESPONSIBILITIES -- AUTHORITY TO ADOPT RULES AND CONTRACT WITH OTHER AGENCIES. (1) Upon the request of a board of county commissioners, the director of the department of agriculture shall form and chair a site advisory team specific to the request of the county. The director of the department of environmental quality and the director of the department of water resources shall provide full cooperation in the formation of the site advisory team.

(2) The CAFO site advisory team shall review the information provided by the county and shall visit the site as may be necessary in the judgment of the team.

(3) Within thirty (30) days of receiving the request for a suitability determination by a board of county commissioners, the CAFO site advisory team shall issue a written suitability determination and provide a copy in writing to the board of county commissioners that requested the review.

(4) Any director responsible for carrying out the purposes of this act may adopt administrative rules necessary or helpful to carry out those purposes.

(5) Any director responsible for carrying out the purposes of this act may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this act.

[67-6529F, added 2001, ch. 381, sec. 6, p. 1338.]

67-6529G. REPORT OF CAFO SITE ADVISORY TEAM -- COUNTY ACTION. The board of county commissioners requesting the suitability determination, upon receipt of the written suitability determination report by the CAFO site advisory team, may use the report as the county deems appropriate.

[67-6529G, added 2001, ch. 381, sec. 7, p. 1339.]

67-6529H. SITE SUITABILITY DETERMINATION -- APPLICATION FEES. (1) The board of county commissioners shall collect a CAFO site suitability fee from each applicant that will require a suitability determination by the site advisory team. The fee shall be one thousand two hundred dollars (\$1,200) plus mileage and per diem calculated based on distance traveled from the department of agriculture's Boise office to the proposed CAFO site. Mileage and per diem shall not exceed the established state rate existing at the time of the suitability determination.

(a) The board of county commissioners requesting the suitability determination shall forward the CAFO site suitability fee to the department of agriculture at the time of the request;

(b) Whenever the cost of the suitability determination is less than one thousand two hundred dollars (\$1,200) plus per diem and mileage, the difference shall be refunded to the applicant by the department of agriculture;

(c) The department of agriculture shall distribute the fee to the site advisory team on a pro rata basis according to time spent by team members on the suitability determination.

(2) Any applicant subject to the butterfat assessment pursuant to section [37-407](#), Idaho Code, following the issuance of a permit is hereby exempt from paying the CAFO site suitability fee.

(3) Any applicant subject to a brand inspection fee pursuant to section [25-1160](#), Idaho Code, is exempt from paying the CAFO site suitability fee.

[67-6529H, added 2011, ch. 180, sec. 3, p. 512.]

67-6530. DECLARATION OF PURPOSE. The legislature declares that it is the policy of this state that persons with disabilities or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer persons with disabilities or elderly persons is a residential use of such property for the purposes of local zoning.

[67-6530, added 1979, ch. 319, sec. 1, p. 858; am. 1993, ch. 18, sec. 1, p. 70; am. 2010, ch. 235, sec. 61, p. 600.]

67-6531. SINGLE FAMILY DWELLING. (1) For the purpose of any zoning law, ordinance or code, the classification "single family dwelling" shall include any group residence in which eight (8) or fewer unrelated persons with disabilities or elderly persons reside and who are supervised at the group residence in connection with their disability or age related infirmity.

(2) Resident staff, if employed, need not be related to each other or to any of the persons with disabilities or elderly persons residing in the group residence.

(3) No more than two (2) of such staff shall reside in the dwelling at any one time.

[67-6531, added 1979, ch. 319, sec. 1, p. 858; am. 1993, ch. 18, sec. 2, p. 70; am. 2008, ch. 123, sec. 1, p. 342; am. 2010, ch. 235, sec. 62, p. 600.]

67-6532. LICENSURE, STANDARDS AND RESTRICTIONS. (1) The department of health and welfare may require group residences, as defined in section [67-6531](#), Idaho Code, to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential or assisted living facility rules, or under the intermediate care facilities for people with intellectual disabilities or related conditions rules, or under rules specifically written for such group residences.

(2) No conditional use permit, zoning variance, or other zoning clearance shall be required of a group residence, as defined in section [67-6531](#), Idaho Code, which is not required of a single family dwelling in the same zone.

(3) No local ordinances or local restrictions shall be applied to or required for a group residence, as defined in section [67-6531](#), Idaho Code, which is not applied to or required for a single family dwelling in the same zone.

(4) The limitations provided for in subsections (2) and (3) of this section shall not apply to tenancy or planned tenancy in a group residence, as defined in section [67-6531](#), Idaho Code, by persons who are under the supervision of the state board of correction pursuant to section [20-219](#), Idaho Code, or who are required to register pursuant to chapter 83 or 84, [title 18](#), Idaho Code, or whose tenancy would otherwise constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

[67-6532, added 1979, ch. 319, sec. 1, p. 859; am. 1989, ch. 193, sec. 17, p. 489; am. 1993, ch. 18, sec. 3, p. 71; am. 2000, ch. 274, sec. 154, p. 892; am. 2008, ch. 123, sec. 2, p. 342; am. 2010, ch. 235, sec. 63, p. 600.]

67-6533. LOCATION OF STORES SELLING SEXUAL MATERIAL RESTRICTED IN CERTAIN AREAS. (a) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined as obscene materials in section [18-4101](#), Idaho Code, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.



(b) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined in subsection 1 of section 18-1515, Idaho Code, where such materials constitute ten percent (10%) or more of the printed materials held for sale or rent of such store, shop or business, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.

(c) From and after the effective date of this act, a violation of subsection (a) or subsection (b) of this section shall be a misdemeanor.

(d) A judge of a court of competent jurisdiction shall immediately issue a temporary restraining order for a violation of subsection (a) or subsection (b) of this section upon application therefore [therefor] by any public or private entity or person and upon compliance with the Idaho rules of civil procedure, except that no bond or security for the issuance of such restraining order shall be required. Further, a violation of subsection (a) or subsection (b) of this section shall subject the person and entities therefore [therefor] to a preliminary and permanent order of any court of this state enjoining them from such violation and no bond or security shall be required from the plaintiff or applicant therefore [therefor].

(e) No entity, public or private, nor any person shall be liable for any damages, costs or attorney fees for any acts attempting to civilly or criminally enforce this section.

(f) Nothing contained in this section shall preempt or prohibit cities or counties from regulating or restricting the location of the business activity described in this section and cities and counties are hereby specifically authorized to so regulate or restrict the location of said business activity.

[67-6533, added 1980, ch. 82, sec. 1, p. 181.]

67-6534. ADOPTION OF HEARING PROCEDURES. The governing board shall, by ordinance or resolution, adopt procedures for the conduct of public hearings. At a minimum such hearing procedures shall provide an opportunity for all affected persons to present and rebut evidence.

[67-6534, added 1982, ch. 129, sec. 1, p. 371; am. 1999, ch. 396, sec. 16, p. 1111.]

67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON EXPRESS STANDARDS AND TO BE IN WRITING. (1) The approval or denial of any application required or authorized pursuant to this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale

for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

(3) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section [67-8003](#), Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section [67-6521](#)(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by [chapter 52, title 67](#), Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.

[67-6535, added 1982, ch. 129, sec. 2, p. 371; am. 1999, ch. 396, sec. 17, p. 1111; am. 2003, ch. 142, sec. 8, p. 416; am. 2010, ch. 175, sec. 4, p. 362; am. 2013, ch. 216, sec. 3, p. 509.]

67-6536. TRANSCRIBABLE RECORD. In every case in this chapter where an appeal is provided for, a transcribable verbatim record of the proceeding shall be made and kept for a period of not less than six (6) months after a final decision on the matter. The proceeding envisioned by this statute for which a transcribable verbatim record must be maintained shall include all public hearings at which testimony or evidence is received or at which an applicant or affected person addresses the commission or governing board regarding a pending application or during which the commission or governing

board deliberates toward a decision after compilation of the record. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense.

The governing board and commission shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

[67-6536, added 1982, ch. 129, sec. 3, p. 372; am. 1999, ch. 396, sec. 18, p. 1111.]

67-6537. USE OF SURFACE AND GROUND WATER. (1) The intent of this section is to encourage the use of surface water for irrigation. All applicants proposing to make land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation. Surface water shall be deemed reasonably available if:

(a) A surface water right is, or reasonably can be made, appurtenant to the land;

(b) The land is entitled to distribution of surface water from an irrigation district, canal company, ditch users association, or other irrigation delivery entity, and the entity's distribution system is capable of delivering the water to the land; or

(c) An irrigation district, canal company, or other irrigation delivery entity has sufficient available surface water rights to apportion or allocate to the land and has a distribution system capable of delivering the water to the land.

(2) Consistent with sections [42-108](#) and [42-222](#), Idaho Code, any change in the nature of use of surface water provided by an irrigation delivery entity must be authorized by the entity holding the water right(s) for the available surface water. Nothing in this section shall alter the authority and discretion of irrigation delivery entities to apportion, allocate and distribute surface water, or for municipalities, counties, or water and sewer districts to pass ordinances or regulations to promote the use of surface water for irrigation.

(3) Nothing in this section shall be construed to override or amend any provision of [title 42](#) or 43, Idaho Code, or impair any rights acquired thereunder.

(4) When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area.

[67-6537, added 1989, ch. 421, sec. 3, p. 1033; am. 2005, ch. 338, sec. 1, p. 1056.]

67-6538. USE FOR DESIGNED PURPOSE PROTECTED -- WHEN VACANCY OCCURS. (1) No rights or authority granted pursuant to this chapter shall be construed to empower a city or county to enact any ordinance or resolution which deprives an owner of the right to use improvements on private property for their designed purpose based solely on the nonuse of the improvements for their designed purpose for a period of ten (10) years or less. Where an owner or his authorized agent permits or allows an approved or unlawful intervening use of the owner's property, the provisions of this section are not applicable.

(2) If the nonuse continues for a period of one (1) year or longer, the city or county may, by written request, require that the owner declare his

intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, he shall notify the city or county in writing of his intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the county where the property is located. If the property owner complies with the requirements of this subsection, his right to use such improvements in the future for their designed purpose shall continue, notwithstanding any change in the zoning of the property.

(3) The property owner may voluntarily elect to withdraw the use by filing with the clerk of the city or the county, as the case may be, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

(4) For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable planning and zoning ordinances.

(5) The provisions of this section shall not be construed to prohibit a city or a county from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

[67-6538, added 1999, ch. 292, sec. 1, p. 731.]

67-6539. LIMITATIONS ON REGULATION OF SHORT-TERM RENTALS AND VACATION RENTALS. (1) Neither a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals in the county or city. A county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate. A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto.

(2) Neither a county nor a city can regulate the operation of a short-term rental marketplace.

[67-6539, added 2017, ch. 239, sec. 2, p. 592; am. 2018, ch. 79, sec. 1, p. 179.]