

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 509

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO AERONAUTICS; AMENDING SECTION 21-501, IDAHO CODE, TO REVISE  
2 DEFINITIONS; AMENDING SECTION 21-502, IDAHO CODE, TO REVISE PROVISIONS  
3 RELATING TO CERTAIN AVIATION HAZARDS; REPEALING SECTION 21-503, IDAHO  
4 CODE, RELATING TO AIRPORT ZONING REGULATION; AMENDING CHAPTER 5, TITLE  
5 21, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 21-503, ESTABLISH-  
6 ING PROVISIONS RELATING TO AVIATION HAZARD MITIGATION, TO ESTABLISH  
7 PROVISIONS RELATING TO THE MARKING OF AVIATION HAZARDS, TO ESTAB-  
8 LISH PROVISIONS RELATING TO THE DETERMINATION OF AVIATION HAZARDS,  
9 TO ESTABLISH PROVISIONS RELATING TO CERTAIN PROCEDURES, TO ESTABLISH  
10 PROVISIONS RELATING TO VARIANCES, TO ESTABLISH PROVISIONS RELATING TO  
11 JUDICIAL REVIEW, TO ESTABLISH PROVISIONS RELATING TO RULES AND REGULA-  
12 TIONS AND TO ESTABLISH PROVISIONS RELATING TO ENFORCEMENT AND REMEDIES;  
13 REPEALING SECTION 21-504, IDAHO CODE, RELATING TO PROCEDURES FOR ZONING  
14 AN AVIATION HAZARD AREA; REPEALING SECTION 21-505, IDAHO CODE, RELATING  
15 TO AIRPORT ZONING REQUIREMENTS; REPEALING SECTION 21-505A, IDAHO CODE,  
16 RELATING TO PERMITS AND VARIANCES, MARKING AND LIGHTING; REPEALING  
17 SECTION 21-505B, IDAHO CODE, RELATING TO COMPREHENSIVE ZONING REGU-  
18 LATIONS; REPEALING SECTION 21-506, IDAHO CODE, RELATING TO JUDICIAL  
19 REVIEW; REPEALING SECTION 21-507, IDAHO CODE, RELATING TO ENFORCEMENT  
20 AND REMEDIES; REPEALING SECTION 21-508, IDAHO CODE, RELATING TO ACQUI-  
21 SITION OF AIR RIGHTS; REPEALING SECTION 21-510, IDAHO CODE, RELATING TO  
22 A SHORT TITLE; REPEALING SECTION 21-513, IDAHO CODE, RELATING TO A DEC-  
23 LARATION OF POLICY; REPEALING SECTION 21-515, IDAHO CODE, RELATING TO  
24 MARKING OF HAZARDS TO AIR FLIGHT; REPEALING SECTION 21-516, IDAHO CODE,  
25 RELATING TO DETERMINATION OF HAZARDS; REPEALING SECTION 21-517, IDAHO  
26 CODE, RELATING TO PROCEDURE FOR DETERMINATION OF HAZARDS; REPEALING  
27 SECTION 21-518, IDAHO CODE, RELATING TO JUDICIAL REVIEW; REPEALING SEC-  
28 TION 21-519, IDAHO CODE, RELATING TO RULES AND REGULATIONS; REPEALING  
29 SECTION 21-520, IDAHO CODE, RELATING TO VIOLATIONS OF ACT, PENALTIES  
30 AND INJUNCTIONS; AMENDING SECTION 67-6502, IDAHO CODE, TO REVISE PROVI-  
31 SIONS RELATING TO THE PURPOSE OF THE ACT AND TO MAKE A TECHNICAL CORREC-  
32 TION; AMENDING SECTION 67-6508, IDAHO CODE, TO ELIMINATE A REFERENCE TO  
33 AVIATION AND TO ESTABLISH PROVISIONS RELATING TO PUBLIC AIRPORT FACIL-  
34 ITIES IN REGARD TO CERTAIN PLANNING DUTIES; AMENDING SECTION 67-6509,  
35 IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE; AMENDING SECTION  
36 67-6511, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN ZONES OR  
37 ZONING DISTRICTS AND TO REVISE PROVISIONS RELATING TO CERTAIN ORDI-  
38 NANCES ESTABLISHING ZONING DISTRICTS; AMENDING SECTION 67-6512, IDAHO  
39 CODE, TO REVISE PROVISIONS RELATING TO GRANTING A SPECIAL USE PERMIT;  
40 AMENDING SECTION 67-6513, IDAHO CODE, TO REVISE PROVISIONS RELATING  
41 TO SUBDIVISION ORDINANCES; AMENDING SECTION 67-6515A, IDAHO CODE, TO  
42 PROVIDE FOR NOTICE AND HEARING AND TO REVISE PROVISIONS RELATING TO THE  
43 TRANSFER OF CERTAIN DEVELOPMENT RIGHTS; AND AMENDING SECTION 67-6516,  
44

1 IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTICE AND AN OPPORTUNITY  
2 TO BE HEARD IN REGARD TO GRANTING A VARIANCE.

3 Be It Enacted by the Legislature of the State of Idaho:

4 SECTION 1. That Section 21-501, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 21-501. DEFINITIONS. Definitions as used in this chapter, unless the  
7 context otherwise requires:

8 (1) "Airport" means any area of land or water which is used, or intended  
9 for use, for the landing and takeoff of aircraft, and any appurtenant areas  
10 which are used, or intended for use, for airport buildings or other airport  
11 facilities or rights-of-way, together with all airport buildings and facil-  
12 ities located thereon. The term "airport" shall include such other common  
13 terms as aviation field, airfield, intermediate landing field, landing  
14 field, landing area, airstrip, and landing strip. For the purposes of this  
15 chapter, the term "airport" refers to a publicly owned and managed facility  
16 that is open for public use without operational restrictions on its use.

17 (2) "Airport influence area" means a locally defined area, as deter-  
18 mined by the political subdivision with assistance from the department's di-  
19 vision of aeronautics as requested and the manager or person(s) in charge of  
20 the local public airport, that establishes airport operational boundaries  
21 for land use planning purposes.

22 (3) "Aviation hazard" means any new or existing structure, object of  
23 natural growth, use of land, or modification thereto, which endangers the  
24 lives and property of users of an airport, or of occupants of land in its  
25 vicinity, and within an airport influence area or that reduces the size of  
26 the area available for landing, taking off and maneuvering of aircraft, or  
27 extends up into the airspace between airports so as to cause disastrous and  
28 needless loss of life and property.

29 ~~(3) "Aviation hazard area" means any area of land or water upon which~~  
30 ~~an aviation hazard might be established if not prevented as provided in this~~  
31 ~~chapter.~~

32 (4) "Board" means the Idaho transportation board.

33 (5) "Department" means the Idaho transportation department.

34 (6) "Director" means the director of the Idaho transportation depart-  
35 ment or his agent.

36 (47) "Political subdivision" means any municipality, city or county.

37 (58) "Person" means any individual, firm, copartnership, corpora-  
38 tion, company, association, joint stock association, or body politic, and  
39 includes any trustee, receiver, assignee, or other similar representative  
40 thereof.

41 (69) "Structure" means any object constructed or installed by man, in-  
42 cluding, but without limitation, buildings, towers, smokestacks, and over-  
43 head transmission lines and any object of natural growth that includes, but  
44 is not limited to, trees.

45 ~~(7) "Tree" means any object of natural growth.~~

46 (810) "State" or "this state" means the state of Idaho.

47 ~~(9) "Department" means the Idaho transportation department.~~

1       ~~(10) "Director" means the director of the Idaho transportation depart-~~  
2 ~~ment or his agent.~~

3       ~~(11) "Board" means the Idaho transportation board.~~

4       SECTION 2. That Section 21-502, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6       21-502. AVIATION HAZARDS CONTRARY TO PUBLIC INTEREST. It is hereby  
7 found that an aviation hazard endangers the lives and property of users of  
8 the airport and of occupants of land ~~in its vicinity~~ within an airport in-  
9 fluence area, and also, if of the obstruction type, in effect reduces the  
10 size of the area available for the landing, taking off and maneuvering of  
11 aircraft thus tending to ~~destroy~~ limit or impair the utility of the airport  
12 and the public investment therein. It is further found that aviation hazards  
13 endanger the lives of air flight participants and persons in the vicinity of  
14 the airport, adversely affecting their health or otherwise limiting the ac-  
15 complishment of normal air flight and airport activities. The public policy  
16 of this state is declared to be that any aviation hazard may cause disastrous  
17 and needless loss of life and property, that safety in air flight operations  
18 and the safety of persons in the vicinity and the continued operation of a  
19 public airport is of paramount importance for the protection and well-being  
20 of the people, that the use of the airspace is constantly increasing and  
21 is vital to the continued growth, development and enjoyment of the great  
22 natural resources and economy of this state and that the general welfare of  
23 the citizens of this state requires, under the police powers of the state,  
24 that maximum safety precautions to air commerce be enacted and maintained.  
25 Accordingly, it is hereby declared:

26       (a) That the creation or establishment of an aviation hazard is a public  
27 nuisance and an injury to the community served by the airport in question;

28       (b) That it is therefore necessary in the interest of the public health,  
29 public safety, and general welfare that the creation or establishment of  
30 aviation hazards be prevented;

31       (c) That this should be accomplished, to the extent legally possible,  
32 by exercise of the police power, without compensation.

33       It is further declared that both the prevention of the creation or es-  
34 tablishment of aviation hazards and the elimination, removal, alteration,  
35 mitigation, or marking and lighting of existing aviation hazards are public  
36 purposes for which political subdivisions may raise and expend public funds  
37 and acquire land and property interests therein.

38       SECTION 3. That Section [21-503](#), Idaho Code, be, and the same is hereby  
39 repealed.

40       SECTION 4. That Chapter 5, Title 21, Idaho Code, be, and the same is  
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
42 ignated as Section 21-503, Idaho Code, and to read as follows:

43       21-503. AVIATION HAZARD MITIGATION AND ENFORCEMENT. (1) Marking of  
44 Aviation Hazards to Air Flight Operations. Any structure when determined by  
45 the director of the department to be an aviation hazard or potential aviation  
46 hazard shall be plainly marked, illuminated, painted, lighted or designated

1 in a manner to be approved by the director, so that the same will be clearly  
2 visible to airmen.

3 (2) Determination of Aviation Hazards. In determining the structures  
4 which are or may be an aviation hazard, the director shall consider the ter-  
5 rain and uses to which the structure and surrounding property may be adapt-  
6 able and the scope and type of air flight operations expected to be conducted  
7 in the area.

8 (3) Procedure for Determination of Aviation Hazards. When the director  
9 determines that a structure is an aviation hazard or potential aviation haz-  
10 ard within the meaning of this chapter, he shall notify the owner of the land,  
11 or operator or owner of the structure who shall have twenty (20) days after  
12 the receipt of such notice to show cause why such structure should not be de-  
13 termined to be an aviation hazard or potential aviation hazard.

14 (4) Variances. The director may modify the determination and marking  
15 of aviation hazards when a literal application or enforcement of the regula-  
16 tions would result in practical difficulty and unnecessary hardship and the  
17 relief granted would not be contrary to the public interest or create undue  
18 hazards to air flight operations.

19 (5) Judicial Review. Any person aggrieved by the decision of the direc-  
20 tor in making a determination within the meaning of this act may appeal such  
21 determination to the district court of the judicial district in which such  
22 structure is situated in the same manner in which appeals are taken from the  
23 board of county commissioners to the district court.

24 (6) Rules and Regulations. The director of the Idaho transportation  
25 department shall adopt and may, as conditions require, amend such rules and  
26 regulations as he deems necessary to provide reasonable standards of mark-  
27 ing, painting, lighting, illuminating, designating and maintaining any such  
28 aviation hazards to the end that the same will be made clearly visible to air-  
29 men in order that maximum safety may be provided for air flight operations.

30 (7) Enforcement and Remedies. Each violation of any rule, regulation,  
31 order or ruling promulgated or made pursuant to this section shall consti-  
32 tute a misdemeanor and shall be punishable by a fine of not less than one  
33 hundred dollars (\$100), or imprisonment for not more than six (6) months or  
34 by both such fine and imprisonment. Every subsequent period of thirty (30)  
35 days during which such person neglects to comply with the provisions of this  
36 section, shall constitute a separate offense and be punishable as provided  
37 herein. In addition, the department on behalf of the state may institute in  
38 any court of competent jurisdiction, an action to prevent, restrain, correct  
39 or abate any violation of this chapter, or of any order or ruling made in con-  
40 nection with its administration or enforcement, and the court shall adjudge  
41 to the plaintiff such relief, by way of injunction, which may be mandatory  
42 or otherwise, as may be proper under all the facts and circumstances of the  
43 case, in order fully to effectuate the purposes of this act and of the regula-  
44 tions adopted and orders and rulings made pursuant thereto.

45 SECTION 5. That Section [21-504](#), Idaho Code, be, and the same is hereby  
46 repealed.

47 SECTION 6. That Section [21-505](#), Idaho Code, be, and the same is hereby  
48 repealed.

1 SECTION 7. That Section [21-505A](#), Idaho Code, be, and the same is hereby  
2 repealed.

3 SECTION 8. That Section [21-505B](#), Idaho Code, be, and the same is hereby  
4 repealed.

5 SECTION 9. That Section [21-506](#), Idaho Code, be, and the same is hereby  
6 repealed.

7 SECTION 10. That Section [21-507](#), Idaho Code, be, and the same is hereby  
8 repealed.

9 SECTION 11. That Section [21-508](#), Idaho Code, be, and the same is hereby  
10 repealed.

11 SECTION 12. That Section [21-510](#), Idaho Code, be, and the same is hereby  
12 repealed.

13 SECTION 13. That Section [21-513](#), Idaho Code, be, and the same is hereby  
14 repealed.

15 SECTION 14. That Section [21-515](#), Idaho Code, be, and the same is hereby  
16 repealed.

17 SECTION 15. That Section [21-516](#), Idaho Code, be, and the same is hereby  
18 repealed.

19 SECTION 16. That Section [21-517](#), Idaho Code, be, and the same is hereby  
20 repealed.

21 SECTION 17. That Section [21-518](#), Idaho Code, be, and the same is hereby  
22 repealed.

23 SECTION 18. That Section [21-519](#), Idaho Code, be, and the same is hereby  
24 repealed.

25 SECTION 19. That Section [21-520](#), Idaho Code, be, and the same is hereby  
26 repealed.

27 SECTION 20. That Section 67-6502, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 67-6502. PURPOSE. The purpose of this act shall be to promote the  
30 health, safety and general welfare of the people of the state of Idaho as  
31 follows:

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

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

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

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

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

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

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

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

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

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

13 (k) To avoid undue water and air pollution.

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

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

20 SECTION 21. That Section 67-6508, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 67-6508. PLANNING DUTIES. It shall be the duty of the planning or plan-  
 23 ning and zoning commission to conduct a comprehensive planning process de-  
 24 signed to prepare, implement, and review and update a comprehensive plan,  
 25 hereafter referred to as the plan. The plan shall include all land within the  
 26 jurisdiction of the governing board. The plan shall consider previous and  
 27 existing conditions, trends, compatibility of land uses, desirable goals  
 28 and objectives, or desirable future situations for each planning component.  
 29 The plan with maps, charts, and reports shall be based on the following com-  
 30 ponents as they may apply to land use regulations and actions unless the plan  
 31 specifies reasons why a particular component is unneeded.

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

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

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

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

46 (e) Land Use -- An analysis of natural land types, existing land covers  
 47 and uses, and the intrinsic suitability of lands for uses such as agricul-  
 48 ture, forestry, mineral exploration and extraction, preservation, recre-

1 ation, housing, commerce, industry, and public facilities. A map shall be  
2 prepared indicating suitable projected land uses for the jurisdiction.

3 (f) Natural Resources -- An analysis of the uses of rivers and other wa-  
4 ters, forests, range, soils, harbors, fisheries, wildlife, minerals, ther-  
5 mal waters, beaches, watersheds, and shorelines.

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

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

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

27 (j) Recreation -- An analysis showing a system of recreation areas, in-  
28 cluding parks, parkways, trailways, river bank greenbelts, beaches, play-  
29 grounds, and other recreation areas and programs.

30 (k) Special Areas or Sites -- An analysis of areas, sites, or struc-  
31 tures of historical, archeological, architectural, ecological, wildlife,  
32 or scenic significance.

33 (l) Housing -- An analysis of housing conditions and needs; plans for  
34 improvement of housing standards; and plans for the provision of safe, san-  
35 itary, and adequate housing, including the provision for low-cost conven-  
36 tional housing, the siting of manufactured housing and mobile homes in sub-  
37 divisions and parks and on individual lots which are sufficient to maintain  
38 a competitive market for each of those housing types and to address the needs  
39 of the community.

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

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

46 (o) Implementation -- An analysis to determine actions, programs, bud-  
47 gets, ordinances, or other methods including scheduling of public expendi-  
48 tures to provide for the timely execution of the various components of the  
49 plan.

1 (p) National Interest Electric Transmission Corridors -- After noti-  
2 fication by the public utilities commission concerning the likelihood of  
3 a federally designated national interest electric transmission corridor,  
4 prepare an analysis showing the existing location and possible routing  
5 of high voltage transmission lines, including national interest electric  
6 transmission corridors based upon the United States department of energy's  
7 most recent national electric transmission congestion study pursuant to  
8 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-  
9 mission lines" means lines with a capacity of one hundred fifteen thousand  
10 (115,000) volts or more supported by structures of forty (40) feet or more in  
11 height.

12 (q) Public Airport Facilities -- An analysis, prepared with assistance  
13 from the Idaho transportation department division of aeronautics as re-  
14 quested and the manager or person(s) in charge of the local public airport  
15 identifying, but not limited to, facility locations, the scope and type of  
16 airport operations, existing and future planned airport development and  
17 infrastructure needs, the airport influence area and the economic impact to  
18 the community.

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

21 SECTION 22. That Section 67-6509, Idaho Code, be, and the same is hereby  
22 amended to read as follows:

23 67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE  
24 PLAN. (a) The planning or planning and zoning commission, prior to recom-  
25 mending the plan, amendment, or repeal of the plan to the governing board,  
26 shall conduct at least one (1) public hearing in which interested persons  
27 shall have an opportunity to be heard. At least fifteen (15) days prior to  
28 the hearing, notice of the time and place and a summary of the plan to be  
29 discussed shall be published in the official newspaper or paper of general  
30 circulation within the jurisdiction. The commission shall also make avail-  
31 able a notice to other papers, radio and television stations serving the  
32 jurisdiction for use as a public service announcement. Notice of intent  
33 to adopt, repeal or amend the plan shall be sent to all political subdivi-  
34 sions providing services within the planning jurisdiction, including school  
35 districts, the manager or person(s) in charge of the local public airport  
36 and the Idaho transportation department division of aeronautics, at least  
37 fifteen (15) days prior to the public hearing scheduled by the commission.  
38 Following the commission hearing, if the commission recommends a material  
39 change to the proposed amendment to the plan which was considered at the  
40 hearing, it shall give notice of its proposed recommendation and conduct  
41 another public hearing concerning the matter if the governing board will  
42 not conduct a subsequent public hearing concerning the proposed amendment.  
43 If the governing board will conduct a subsequent public hearing, notice of  
44 the planning and zoning commission recommendation shall be included in the  
45 notice of public hearing provided by the governing board. A record of the  
46 hearings, findings made, and actions taken by the commission shall be main-  
47 tained by the city or county.

48 (b) The governing board, as provided by local ordinance, prior to adop-  
49 tion, amendment, or repeal of the plan, may conduct at least one (1) public

1 hearing, in addition to the public hearing(s) conducted by the commission,  
2 using the same notice and hearing procedures as the commission. The govern-  
3 ing board shall not hold a public hearing, give notice of a proposed hearing,  
4 nor take action upon the plan, amendments, or repeal until recommendations  
5 have been received from the commission. Following consideration by the gov-  
6 erning board, if the governing board makes a material change in the recommen-  
7 dation or alternative options contained in the recommendation by the commis-  
8 sion concerning adoption, amendment or repeal of a plan, further notice and  
9 hearing shall be provided before the governing board adopts, amends or re-  
10 peals the plan.

11 (c) No plan shall be effective unless adopted by resolution by the gov-  
12 erning board. A resolution enacting or amending a plan or part of a plan  
13 may be adopted, amended, or repealed by definitive reference to the specific  
14 plan document. A copy of the adopted or amended plan shall accompany each  
15 adopting resolution and shall be kept on file with the city clerk or county  
16 clerk.

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

24 SECTION 23. That Section 67-6511, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance  
27 adopted, amended, or repealed in accordance with the notice and hearing pro-  
28 cedures provided under section 67-6509, Idaho Code, establish within its ju-  
29 risdiction one (1) or more zones or zoning districts where appropriate. If  
30 a public airport or airport influence area, as defined in section 21-501(2),  
31 Idaho Code, is located within the boundaries of the jurisdiction, the zon-  
32 ing ordinance shall include an airport influence area overlay or zone. The  
33 zoning districts shall be in accordance with the policies set forth in the  
34 adopted comprehensive plan.

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

43 Ordinances establishing zoning districts shall be amended as follows:

44 (a) Requests for an amendment to the zoning ordinance shall be submit-  
45 ted to the zoning or planning and zoning commission which shall evaluate  
46 the request to determine the extent and nature of the amendment requested.  
47 Particular consideration shall be given to the effects of any proposed zone  
48 change upon the delivery of services by any political subdivision providing  
49 public services, including school districts and public airports, within the

1 planning jurisdiction. An amendment of a zoning ordinance applicable to an  
2 owner's lands or approval of conditional rezoning or denial of a request for  
3 rezoning may be subject to the regulatory taking analysis provided for by  
4 section 67-8003, Idaho Code, consistent with the requirements established  
5 thereby.

6 (b) After considering the comprehensive plan and other evidence gath-  
7 ered through the public hearing process, the zoning or planning and zoning  
8 commission may recommend and the governing board may adopt or reject an or-  
9 dinance amendment pursuant to the notice and hearing procedures provided in  
10 section 67-6509, Idaho Code, provided that in the case of a zoning district  
11 boundary change, and notwithstanding jurisdictional boundaries, additional  
12 notice shall be provided by mail to property owners or purchasers of record  
13 within the land being considered, and within three hundred (300) feet of the  
14 external boundaries of the land being considered, and any additional area  
15 that may be impacted by the proposed change as determined by the commission.  
16 Notice shall also be posted on the premises not less than one (1) week prior  
17 to the hearing. When notice is required to two hundred (200) or more property  
18 owners or purchasers of record, alternate forms of procedures which would  
19 provide adequate notice may be provided by local ordinance in lieu of posted  
20 or mailed notice. In the absence of a locally adopted alternative notice  
21 procedure, sufficient notice shall be deemed to have been provided if the  
22 city or county provides notice through a display advertisement at least four  
23 (4) inches by two (2) columns in size in the official newspaper of the city  
24 or county at least fifteen (15) days prior to the hearing date, in addition  
25 to site posting on all external boundaries of the site. Any property owner  
26 entitled to specific notice pursuant to the provisions of this subsection  
27 shall have a right to participate in public hearings before a planning com-  
28 mission, planning and zoning commission or governing board subject to appli-  
29 cable procedures.

30 (c) The governing board shall analyze proposed changes to zoning or-  
31 dinances to ensure that they are not in conflict with the policies of the  
32 adopted comprehensive plan. If the request is found by the governing board  
33 to be in conflict with the adopted plan, or would result in demonstrable  
34 adverse impacts upon the delivery of services by any political subdivision  
35 providing public services, including school districts and public airports,  
36 within the planning jurisdiction, the governing board may require the re-  
37 quest to be submitted to the planning or planning and zoning commission or,  
38 in absence of a commission, the governing board may consider an amendment to  
39 the comprehensive plan pursuant to the notice and hearing procedures pro-  
40 vided in section 67-6509, Idaho Code. After the plan has been amended, the  
41 zoning ordinance may then be considered for amendment pursuant to section  
42 67-6511(b), Idaho Code.

43 (d) If a governing board adopts a zoning classification pursuant to a  
44 request by a property owner based upon a valid, existing comprehensive plan  
45 and zoning ordinance, the governing board shall not subsequently reverse its  
46 action or otherwise change the zoning classification of said property with-  
47 out the consent in writing of the current property owner for a period of four  
48 (4) years from the date the governing board adopted said individual prop-  
49 erty owner's request for a zoning classification change. If the governing  
50 body does reverse its action or otherwise change the zoning classification

1 of said property during the above four (4) year period without the current  
2 property owner's consent in writing, the current property owner shall have  
3 standing in a court of competent jurisdiction to enforce the provisions of  
4 this section.

5 SECTION 24. That Section 67-6512, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part  
8 of a zoning ordinance each governing board may provide by ordinance adopted,  
9 amended, or repealed in accordance with the notice and hearing procedures  
10 provided under section 67-6509, Idaho Code, for the processing of appli-  
11 cations for special or conditional use permits. A special use permit may  
12 be granted to an applicant if the proposed use is conditionally permitted  
13 by the terms of the ordinance, subject to conditions pursuant to specific  
14 provisions of the ordinance, subject to the ability of political subdivi-  
15 sions, including school districts, to provide services for the proposed  
16 use, and when it is not in conflict with the plan. Denial of a special use  
17 permit or approval of a special use permit with conditions unacceptable to  
18 the landowner may be subject to the regulatory taking analysis provided for  
19 by section 67-8003, Idaho Code, consistent with requirements established  
20 thereby.

21 (b) Prior to granting a special use permit, at least one (1) public  
22 hearing in which interested persons shall have an opportunity to be heard  
23 shall be held. At least fifteen (15) days prior to the hearing, notice of  
24 the time and place, and a summary of the proposal shall be published in the  
25 official newspaper or paper of general circulation within the jurisdiction.  
26 Each local government is encouraged to post such notice on its official  
27 websites, if one is maintained. Notice may also be made available to other  
28 newspapers, radio and television stations serving the jurisdiction for use  
29 as a public service announcement. Notice shall be posted on the premises not  
30 less than one (1) week prior to the hearing. Notwithstanding jurisdictional  
31 boundaries, notice shall also be provided to property owners or purchasers  
32 of record within the land being considered, three hundred (300) feet of the  
33 external boundaries of the land being considered, and any additional area  
34 that may be substantially impacted by the proposed special use as determined  
35 by the commission. Any property owner entitled to specific notice pursuant  
36 to the provisions of this subsection shall have a right to participate in  
37 public hearings before a planning commission, planning and zoning commis-  
38 sion or governing board.

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

48 (d) Upon the granting of a special use permit, conditions may be at-  
49 tached to a special use permit including, but not limited to, those:

- 1 (1) Minimizing adverse impact on other development;
- 2 (2) Controlling the sequence and timing of development;
- 3 (3) Controlling the duration of development;
- 4 (4) Assuring that development is maintained properly;
- 5 (5) Designating the exact location and nature of development;
- 6 (6) Requiring the provision for on-site or off-site public facilities
- 7 or services;
- 8 (7) Requiring more restrictive standards than those generally required
- 9 in an ordinance;
- 10 (8) Requiring mitigation of effects of the proposed development upon
- 11 service delivery by any political subdivision, including school dis-
- 12 tricts, providing services within the planning jurisdiction.
- 13 (e) Prior to granting a special use permit, studies may be required
- 14 of the social, economic, fiscal, aviation hazard, as defined in section
- 15 21-501(3), Idaho Code, and determined by the Idaho transportation depart-
- 16 ment division of aeronautics, and environmental effects of the proposed
- 17 special use. A special use permit shall not be considered as establishing a
- 18 binding precedent to grant other special use permits. A special use permit
- 19 is not transferable from one (1) parcel of land to another.

20 SECTION 25. That Section 67-6513, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 67-6513. SUBDIVISION ORDINANCE. Each governing board shall provide,  
23 by ordinance adopted, amended, or repealed in accordance with the notice  
24 and hearing procedures provided under section 67-6509, Idaho Code, for  
25 standards and for the processing of applications for subdivision permits  
26 under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance  
27 may provide for mitigation of the effects of subdivision development on the  
28 ability of political subdivisions of the state, including school districts  
29 and local public airports, to deliver services without compromising quality  
30 of service delivery to current residents or imposing substantial additional  
31 costs upon current residents to accommodate the proposed subdivision. Fees  
32 established for purposes of mitigating the financial impacts of development  
33 must comply with the provisions of chapter 82, title 67, Idaho Code. Denial  
34 of a subdivision permit or approval of a subdivision permit with condi-  
35 tions unacceptable to the landowner may be subject to the regulatory taking  
36 analysis provided for by section 67-8003, Idaho Code, consistent with the  
37 requirements established thereby.

38 SECTION 26. That Section 67-6515A, Idaho Code, be, and the same is  
39 hereby amended to read as follows:

40 67-6515A. TRANSFER OF DEVELOPMENT RIGHTS. (1) Any city or county  
41 governing body may, by ordinance, following notice and hearing procedures  
42 provided pursuant to section 67-6509, Idaho Code, create development rights  
43 and establish procedures authorizing landowners to voluntarily transfer  
44 said development rights subject to:

- 45 (a) Such conditions as the governing body shall determine to fulfill
- 46 the goals of the city or county to preserve open space, protect wildlife
- 47 habitat and critical areas, and enhance and maintain the rural charac-

1 ter of lands with contiguity to agricultural lands suitable for long-  
2 range farming and ranching operations, and avoid creation of aviation  
3 hazards, as defined in section 21-501(3), Idaho Code, and determined by  
4 the Idaho department of transportation division of aeronautics; and

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

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

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

18 (4) A city or county may not condition an application for a permit to  
19 which an applicant is otherwise entitled under existing zoning and subdivi-  
20 sion ordinances on the acquisition of development rights. A city or county  
21 may not condition an application for a zoning district boundary change which  
22 is consistent with the comprehensive plan on the acquisition of development  
23 rights. A city or county may not reduce the density of an existing zone and  
24 thereafter require an applicant to acquire development rights as a condition  
25 of approving a request for a zoning district boundary change which would per-  
26 mit greater density.

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

35 (6) No transfer of a development right, as contemplated herein, shall  
36 affect the validity or continued right to use any water right that is ap-  
37 purtenant to the real property from which such development right is trans-  
38 ferred. The transfer of a water right shall remain subject to the provisions  
39 of title 42, Idaho Code.

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

49 (b) A development right which is transferred shall be deemed to be an  
50 interest in real property and the rights evidenced thereby shall inure

1 to the benefit of the transferee, his heirs, successors and assigns.  
2 An unexercised development right shall not be taxed as real or personal  
3 property.

4 (8) For the purposes of this section:

5 (a) "Development rights" shall mean the rights permitted to a lot, par-  
6 cel or area of land under a zoning or other ordinance respecting permis-  
7 sible use, area, density, bulk or height of improvements. Development  
8 rights may be calculated and allocated in accordance with such factors  
9 as area, floor area, floor area ratios, density, height limitations, or  
10 any other criteria that will effectively quantify a value for the devel-  
11 opment right in a reasonable and uniform manner that will carry out the  
12 objectives of this section.

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

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

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

24 SECTION 27. That Section 67-6516, Idaho Code, be, and the same is hereby  
25 amended to read as follows:

26 67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEAR-  
27 ING. Each governing board shall provide, as part of the zoning ordinance,  
28 for the processing of applications for variance permits. A variance is a  
29 modification of the bulk and placement requirements of the ordinance as  
30 to lot size, lot coverage, width, depth, front yard, side yard, rear yard,  
31 setbacks, parking space, height of buildings, or other ordinance provision  
32 affecting the size or shape of a structure or the placement of the structure  
33 upon lots, or the size of lots. A variance shall not be considered a right or  
34 special privilege, but may be granted to an applicant only upon a showing of  
35 undue hardship because of characteristics of the site and that the variance  
36 is not in conflict with the public interest. Prior to granting a variance,  
37 notice and an opportunity to be heard shall be provided to property owners  
38 adjoining the parcel under consideration and to the manager or person(s) in  
39 charge of the local public airport and the Idaho transportation department  
40 division of aeronautics. Denial of a variance permit or approval of a vari-  
41 ance permit with conditions unacceptable to the landowner may be subject to  
42 the regulatory taking analysis provided for by section 67-8003, Idaho Code,  
43 consistent with the requirements established thereby.