

# LINCOLN COUNTY ZONING ORDINANCE No. 1212-10-1

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**LINCOLN COUNTY ZONING ORDINANCE**

TITLE:

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS WITHIN LINCOLN COUNTY: PROVIDING FOR DEFINITIONS: PROVIDING FOR ADMINISTRATION: PROVIDING FOR ESTABLISHMENT AND PURPOSE OF DISTRICTS: PROVIDING FOR AN OFFICIAL ZONING MAP: PROVIDING FOR DISTRICT REGULATIONS: PROVIDING FOR OVERLAY ZONES AND REGULATIONS: PROVIDING FOR PERFORMANCE STANDARDS: PROVIDING FOR OFFICIAL HEIGHT AND AREA REGULATIONS: PROVIDING FOR CONDITIONAL USE PERMITS: PROVIDING FOR NON-CONFORMING USES: PROVIDING FOR APPEAL, VARIANCE AND ACTIONS BY AFFECTED PERSONS: PROVIDING FOR ENFORCEMENT: PROVIDING FOR AMENDMENT: AND PROVIDING FOR EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, IDAHO:

Pursuant to authority under Article 12, Section 2, of the Idaho Constitution, and the authority granted by Title 67, Chapter 65 of the Idaho Code, as amended or subsequently codified, it is hereby ordained:

***CHAPTER 1.0***

This Ordinance shall be known as the Lincoln County Zoning Ordinance.

- 1.1 **Purpose** - This ordinance, the zone boundaries and regulations which apply within each of the zones have been made in accordance with the Comprehensive Plan for Lincoln County; which Plan and Ordinance are designed to protect and promote the health, safety, and general welfare of the residents. It is therefore to provide:
  - 1.1.1 Protection of property values by conserving existing uses and regulating future development;
  - 1.1.2 Equal protection of each citizen’s private property from undue encroachment in that each citizen shall have the maximum use of his property without placing an undue burden upon his neighbors;
  - 1.1.3 Protection from the menace to the public safety that would result from placing of buildings or other structures in such locations or in such a manner as to interfere with present or future traffic movement, and to promote beauty along the highways and elsewhere;
  - 1.1.4 To ensure that adequate public facilities and services are provided to the people at reasonable cost;
  - 1.1.5 To ensure that the economy, health and safety of the county and localities is protected and enhanced;
  - 1.1.6 To encourage the protection of agricultural lands for production of food, and to foster agriculture and industry together with uses related thereto;

- 1.1.7 To ensure that the important environmental features of the County and localities are protected and enhanced;
- 1.1.8 To avoid undue concentration of population and overcrowding of the land;
- 1.1.9 To ensure that the development of land is commensurate with the physical characteristics of the land;
- 1.1.10 To protect life and property in areas subject to natural hazards and disasters;
- 1.1.11 To protect fish, wildlife and recreation resources;
- 1.1.12 To avoid undue water and air pollution.

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

**1.3 Scope and Content** - This Ordinance consists of this text and the Official Zoning Map which shall be designated as the LINCOLN COUNTY ZONING MAP, as identified by the appropriate signatures of the Board of Lincoln County Commissioners.

**1.4 Amendment** – The official LINCOLN COUNTY ZONING MAP may be amended at anytime deemed necessary.

**1.5 Conflict with Other Lincoln County Laws** - All Lincoln County Ordinances in conflict with this Zoning Ordinance or inconsistent with the provisions of this Ordinance is hereby repealed to the extent necessary to give this ordinance full force and effect.

**1.6 Conflict with Other Laws** - In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety and the general welfare. Whenever the requirements of this Ordinance conflict with the requirements of any other governmental jurisdictions' lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive or that imposing the higher standards shall govern. Additionally, all buildings constructed and uses maintained under this Ordinance shall comply with:

- 1.6.1 South Central District Health Department regulations;
- 1.6.2 International Fire Code;
- 1.6.3 International Building Code as adopted by Lincoln County;

- 1.6.4 Federal Mobile Home Construction and Safety Standards Code;
- 1.6.5 Irrigation requirements as per Idaho Code 31-3805 and 67-6537 for all subdivisions;
- 1.6.6 Highway departments and districts, Local and State standards.
- 1.6.7 Any other Local, State & Federal laws and regulations as they apply to building and zoning ordinances.

**1.7 Right to Farm** - Lincoln County recognizes a farmer’s “right to farm”, using customary farming practices without interference and undue harassment. Policies adopted shall respect private property.

**CHAPTER 2.0 -DEFINITIONS**

**2.1 Interpretation of Terms or Words** - For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

2.1.1 The word “person” includes a firm, association, organization, partnership, trust, corporation, as well as an individual; the present tense includes the future tense, the singular number includes the plural and the plural number includes the singular; the word “shall” is a mandatory requirement and the word “may” is a permissive requirement and the word “should” is a preferred requirement; the words “used” or “occupied” include the words “intended, designed or arranged to be used or occupied”; and the word “lot” includes the words “plot”, “parcel” and “tract”.

**2.2 Meaning of Terms or Words**

Accessory Use or Structure - A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Administrative Review - Review of all applicable divisions of land by P & Z Administrator to verify compliance with this ordinance.

Agriculture & Agricultural Purposes - An economic endeavor engaged in the growing of food or fiber. Agricultural activities include farming, pasture, agriculture, horticulture, forestry, floriculture, viticulture, animal and poultry husbandry and the necessary accessory uses for packing, treating or storing the produce or waste, provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Agricultural Business - An economic endeavor which prepares agricultural products for market. The preparation of the agricultural products is the primary business on the property and is not secondary to normal farming activities. Agricultural businesses may include, regulated livestock feed lots, regulated poultry establishments, and regulated dairies.

Airport - Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings.

Alteration- The word "alteration" as applied to a building or structure shall mean a change or rearrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height, or in the moving from one location of position to another.

Animal Units - Means a unit of measurement for any livestock operation. Animal Units are further defined in the Lincoln County CAFO Ordinance

Animal – One Animal Unit

Area of Impact - Defined area around incorporated towns.

Automotive Repair - The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including collision service, painting and steam cleaning of vehicles.

Automotive, Mobile Home, Travel Trailer and Farm Implement Sales - The sale or rental of new and used motor vehicles, mobile homes, travel trailers or farm implements, but not including repair work except incidental warranty repair of same, to be displayed and sold on the premises.

Automotive Wrecking - The dismantling or wrecking of two (2) or more used motor vehicles, mobile homes, trailers and/or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

Basement - A dwelling unit all or partly underground but having at least one-half (1/2) of its height below the average level of the adjoining ground.

Board - The Board of County Commissioners of Lincoln County, Idaho.

Buffer Zone and/or Screening - Trees, fencing, berms, etc. which shields property from neighbors or roadway.

Building - Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind.

Building, Accessory - A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental and accessory to that of the main building or use.

Building, Height - The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and the top of building walls for gable, hip and gambrel roofs.

Building, Principal - A building in which is conducted the main or principal use of the lot on which said building is situated.

Cemetery - Land use or intended to be used for the burial of the human or animal dead and dedicated for cemetery purposes, including crematories, mausoleums and mortuaries if operated in connection with and within the boundaries of such cemetery for which perpetual care and maintenance is provided.

(CAFO) - Concentrated Animal Feeding Operation An area of confinement or parcel of land described in the site plan upon which there are confined or fed livestock, fish or birds in

enclosures or ponds for 180 consecutive days in any 12 Month period, in any combination of 100 Animals or more, possess a milk shipping permit, or a state approved waste containment system. A CAFO is a conditional use permit.

CAFO Buffer Zone - a zone created to protect CAFO's from non-agricultural development. Non-agricultural development is not permitted within CAFO Buffer Zones. The origin of the zone is considered perimeter of the site plan as defined in the Lincoln County CAFO ordinance 1212-08-2 2.2.7.

Clinic - A building used for the care, diagnosis and treatment of sick, ailing, infirm or injured persons and those who are in need of medical and surgical attention; but which building does not provide board, room or regular hospital care and services.

Club or Lodge - A building or portion thereof or premises owned or operated by non-profit organized association of persons for a social, literary, political, educational or recreational purpose primarily for the exclusive use of members and their guests.

Cluster Zone - Cluster zoning generally refers to development pattern for residential, commercial, industrial, institutional, or combinations of such uses in which buildings are grouped or "clustered", rather than evenly spread throughout a parcel as in a conventional lot-by-lot development. A zoning ordinance may authorize such development by permitting smaller lot sizes and higher density if a specified portion of the land is kept in permanent open space through public dedication or designation on a site plan or plat. Cluster zoning is encouraged by many communities and developers since it allows them to keep in open space land they may have found un-buildable anyway, such as steep slopes, ravines, or wetlands, to create innovative designs and to save money by building shorter streets and utility lines.

Commercial Operation or Business - Any sales, service, operation or entertainment operated for livelihood or profit (excluding agricultural businesses).

Commission - The Lincoln County Planning and Zoning Commission.

Comprehensive Plan - A plan, or any portion thereof, adopted by the Board including such things as the general location and extent of present and proposed physical facilities including housing, industrial and commercial uses, major transportation, parks, schools and other community facilities.

Conditional Use - A special use permitted within a district, other than a principally permitted use, requiring a permit and approval of the Commission. Conditional uses permitted in each district are listed in the District Regulations.

Dairy - Same as Dairy Farm - A farm where milk is produced (see regulated dairy).

Density - A unit of measurement; the number of buildings or animal units per area of land.

Gross Density - The number of building units per acre of total land to be developed, including public right-of-way.

Net Density - The number of dwelling units per acre of land when the acreage involved includes the land devoted to residential uses, excluding public right-of-way.

Development Agreement - An agreement between Lincoln County and the developer outlining the rights, duties and obligations of each party.

District/Zone - A portion of the unincorporated territory of Lincoln County within which certain uniform regulations or requirements or various combinations thereof apply under the provisions of this Ordinance.

Dwelling Unit - Space within a dwelling comprising living, dining, sleeping areas or rooms, storage areas, as well as space and equipment for cooking, bathing and toilet facilities, and its household employees but not including a tent, or room in a hotel or motel.

Dwelling, Single-Family - A dwelling consisting of a single dwelling unit only, separated from other dwelling units by open space.

Dwelling, Two-Family or Duplex - A dwelling consisting of two (2) dwelling units which may be either attached side-by-side or one above the other.

Dwelling, Multi-Family - A dwelling consisting of three (3) or more dwelling units including townhouses, row houses and condominiums with varying arrangements of entrances and party walls. Multi-family housing may include public housing and industrialized units.

Dwelling, Rooming House (Boarding House, Lodging House, Dormitory) - A dwelling or part thereof, other than a hotel, motel, or restaurant, where meals and/or lodging are provided for compensation for unrelated persons and where no cooking or dining facilities are provided in the individual rooms.

Easement - Authorization by a property owner for the use by another, and for a specified purpose, on any designated part of his property.

Exempt - An activity, use, or structure that is not regulated by this ordinance.

Family - One (1) or more persons occupying a dwelling unit.

Farm Homestead Split - A land split no smaller than one acre and no larger than five acres, is to allow for the sale of a farm without the relocation of its original owners or in which the owners intend on living.

Farm Implement Sales - The sale, rental or repair of new and used farm implements to be displayed, sold and/or repaired on the premises.

Financial split - A land split strictly for the purpose of financing a home mortgage.

Flood Plain - The relatively flat area or low land adjoining the channel of a river, stream, lake or other body of water which has been or may be covered by water for a flood of one hundred (100) year frequency. The flood plain includes the channel, floodway and floodway fringe, as established per the engineering practices as specified and mapped by the Army Corps of Engineers.

Food Processing Plant - An establishment for the canning, freezing or other similar processing of vegetable and fruit food products for the retail trade.



Garage - A building or portion thereof used or designed for the storage of motor vehicles.

Grandfather Certificate - A certificate given by the commission to an established operator upon application under 7.1. See non-conforming issues.

Grandfather Use - Any practice or use in existence at the time of the adoption of this Ordinance.

Government Lot - A Fractional lot, and assigned a unique number, whether the irregularity is caused by survey error, rivers and lakes, Indian reservation boundaries, state lines, or any other reason.

Health Authority - The South Central District Health Department and / or the Idaho Department of Environmental Quality (IDEQ)

Home Occupation/Cottage Industry - Any gainful operation, profession or craft, which is carried out in a dwelling place, and wherein the use is clearly secondary and incidental to the use of the dwelling for dwelling purposes, and does not involve any on-site retail activities.

Hospital - An institution devoted primarily to the medical or surgical care of patients for twenty-four (24) or more hours. The term "hospital" does not include convalescent, nursing or boarding homes, or any institution operating solely for the treatment of mentally ill persons, drug addicts, liquor addicts or other types of cases necessitating forcible confinement of patients.

Hotel, or Motel, Apartment Hotel, and Bed & Breakfast- A building in which lodging or boarding and lodging are provided and offered to the public for compensation. As such, it is open to the public in contradistinction to a boarding house, rooming house, lodging house or dormitory which is herein separately defined.

Industrial - See Manufacturing.

Institution - Building and/or land designated to aid individuals in need of mental, therapeutic, rehabilitative counseling or other correctional services.

Junk Yards - Any land, property, structure, building or combination of the same, on which junk is stored or processed.

Landfill - a low area that has been filled in; area containing buried waste; garbage dump, junkyard, scrap yard, landfill, rubbish dump.

Kennel - Any lot or premises on which four (4) or more domesticated canine or feline animals more than four (4) months of age are housed, groomed, bred, boarded, trained or sold, and which offers provisions for minor medical treatment.

Loading Space, Off-Street - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space

Lot - For the purposes of this Ordinance, a lot is a parcel, plot, tract or other area of land of suitable size to meet minimum zoning requirements for use and area, and to provide such yards and other open spaces as are herein required.

Lot Frontage - The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjustment to streets shall be considered frontage and yards shall be provided as indicated under “Yards” in this section.

Lot, Area of - The area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.

Lot of Record - A lot which is part of a **SUBDIVISION** recorded in the Office of the County Recorder; or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lot Types - Terminology used in this Ordinance with reference to corner lots, interior lots and through lots is as follows:

- a) Corner Lot - A lot located at the intersection of two (2) or more streets;
- b) Interior lot - A lot with only one (1) frontage on a street;
- c) Through Lot - A lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots;
- d) Reversed Frontage Lot - A lot on which frontage is at right angles to the general pattern in the area. A reversed frontage lot may also be a corner lot.

Manufacturing, Heavy - Manufacturing, processing, assembling, storing, testing and similar industrial uses which are generally major operations and extensive in character requiring large sites, open storage and service areas, extensive services and facilities, ready access to regional transportation and normally generate some nuisances such as smoke, noise, vibration, dust, glare, air pollution and water pollution.

Manufacturing/Industrial Light - Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet and free of objectionable or hazardous elements such as smoke, noise, odor or dust; operating and storing within enclosed structures and generating little industrial traffic.

Manufacturing, Extractive - Any mining, quarrying, excavating, processing, storing, separating, cleaning or marketing of any mineral.

Meat or Poultry Packing Facilities, - The canning, curing, smoking, salting, packing and freezing or other similar establishments in which meat or poultry products are processed for sale to the retail trade, and where the inspection of poultry or meat, poultry or meat by-products and food products are maintained.

Mobile/Modular/Manufactured Home - A detached single family dwelling unit, constructed according to HUD/FHA mobile home construction safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation. designed to be transported after fabrication on its own wheels, or on flatbed or other trailers or detached wheels;

Mobile Home Subdivision - Any site or tract of land under sole proprietorship, partnership or corporate ownership, upon which two (2) or more mobile/manufactured/modular homes for

occupancy are parked, with either water, sewer and electricity including propane or natural gas, either free of charge or revenue purposes; including any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of such park.

Motor home - Motor vehicle with living facilities: a motor vehicle that has facilities for cooking, living, and sleeping

Non-Conforming Use - A building, structure or use of land existing at the time of enactment of this Ordinance, and which does not conform to the regulations of the zone in which it is situated.

Non-Exempt - An activity, use, or structure that is regulated by this Ordinance.

Nursing or Convalescent Home - A home or facility for the care and treatment of more than five (5) unrelated pensioners or elderly people requiring skilled or semi-skilled nursing care..

Nursery/Daycare for Children - A place, home or facility providing care for children under the age of 18 as defined by Idaho Statutes Title 39 Chapter 11.

Nursery/Garden Centers - Land, building structure or combination thereof for the storage, cultivation, transplanting of live trees, shrubs or plants offered for retail and/or wholesale including products used for gardening or landscaping.

Open Space - An area open to the sky that may include, natural environmental features, but is otherwise undeveloped.

Original Parcel – **A parcel of land as of the date of adoption of Lincoln County Ordinance 1212-08-1.**

Parcel - A unit of contiguous land in the ownership of one person or entity and constituting a separate tract of land as identified by the Lincoln County Assessor.

Parking Space, Dedicated Off-Street - For the purpose of this Ordinance, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room; but, shall be located totally outside of any street or alley right-of-way.

Performance Bond or Surety Bond - A type of contract bond, guaranteeing that a contractor will adhere to the terms and conditions of a contract.

Personal Services - Any enterprise conducted for gain which primarily offers services to the general public such as shoe repair, watch repair, barber shops, beauty shops, beauty parlors and similar activities.

Planned Unit Development - An area of land in which a variety of residential, commercial and/ or industrial uses developed under single ownership or control are accommodated in a pre-planned environment with more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under these regulations. In a Planned Unit Development services both public and private are typically provided by the developer.

Poultry Establishments - A business which raises poultry for egg production or for slaughter.

Professional Activities - The use of offices and related spaces for such professional services as are provided by medical practitioners, lawyers, architects, engineers, real estate sales and similar professions.

Public Service Facility Utilities - The erection, construction, alteration, operation or maintenance of buildings, power plants or substations, water treatment or pumping stations, sewage disposal or pumping plants and other similar public service structures by a public utility, by a railroad whether publicly or privately owned, or by a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport, communication, public water and sewage services.

Public Uses - Public parks, schools, administrative and cultural buildings and structures, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and public service facilities.

Quasi-Public Use - Churches, Sunday schools, parochial schools, colleges, hospitals and other facilities of an educational, religious, charitable, philanthropic or non-profit nature.

Recreational Vehicles or Travel Trailer Park - A limited stay facility for use by travelers. Provides water and may have sewer hook-ups or may supply a dump station.

Regulated Dairy/Regulated Feed Lots – See Lincoln County CAFO Ordinance.

Research Activities - Research, development and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation and engineering and more.

Residential Zone - Residential area with a minimum lot size of 0.5 acres.

Roadside Stand - A temporary structure designed or used for display or sale of agricultural and related products.

Right-of-Way - A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts and bridges.

Rural Residential Agriculture - Primary use is residential. Secondary use is agricultural or part time farming. Minimum lot size is 2 acres.

School, Elementary, Secondary or High - An institution of learning, branches of learning and study as required by the State of Idaho.

Setback Line - A line established by the Zoning Ordinance, generally parallel with and measured from the lot line, defining the limits of the property in which no building or structure may be located above ground except as may be provided in said code.

Service Station /Garage - Building and premises where motor fuel, oil, grease, batteries, tires and motor vehicle accessories may be supplied and dispensed at retail and where other related services including motor vehicle repairs are done. Uses permissible at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition or other work involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in service stations.

Sign - Any device designed to inform or attract the attention of persons not on the premises on which the sign is located.

- a) Sign, On-Premises - Any sign related to a business or profession conducted, or a commodity or service sold or offered upon the premises where such sign is located.
- b) Sign, Off-Premises - Any sign unrelated to a business or profession conducted, or to a commodity or service sold or offered upon the premises where such sign is located.
- c) Sign, Illuminated - Any sign illuminated by electricity, gas or other artificial light including reflecting or phosphorescent light.
- d) Sign, Lighting Device - Any light, string of lights or group of lights located or arranged so as to cast illumination.
- e) Sign, Projecting - Any sign which projects from the exterior of a building.

Site Plan - As defined in the CAFO ordinance 1212-08-2 2.2.7.

Story - That part of a building between the surface of a floor and the ceiling immediately above it.

Street - A right-of-way which provides vehicular and pedestrian access to adjacent properties, the dedication of which the Board has accepted by official action. It shall include the terms street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, place and other such terms.

Structure - Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences of over ten (10) feet in height and billboards.

Subdivision – The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development.

Supply Yards - A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain and similar goods.

Travel trailer- a wheeled vehicle that can be pulled by a car or truck and is equipped for occupancy

Use - The specific purpose for which land or a building is designated, arranged, intended or for which it is or may be occupied or maintained.

Variance - A modification of the requirements of this Ordinance as to lot size to accommodate a physical impediment, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings or other Ordinance provisions affecting the size or shape of a structure or the size of lots; provided that such modifications will not be contrary to the public interest, and where they are owing to conditions peculiar to the property and are not the result of action of the applicant.

Veterinary, Animal Hospital or Clinic - A place used for the care, grooming, diagnosis and treatment of sick, ailing, infirm or injured animals, and those who are in need of medical or

surgical attention and may include overnight accommodations on the premises for the treatment, observation and/or recuperation. It may also include boarding that is incidental to the primary activity.

Vicinity Map - A small scale map which sets forth by dimensions or other means the relationship of the proposed development to other nearby developments or landmarks and community facilities and services within the general area in order to better locate and orient the area in question.

Yard - A required open space, other than a court, unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the ground level of the graded lot upward; provided, accessories, ornaments and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

**CHAPTER 3 – ESTABLISHMENT OF ZONES AND BOUNDARIES**

3.1 **Establishment of Zones** - In order to more fully accomplish the objectives and purpose of this Ordinance, Lincoln County, Idaho, is hereby divided into districts and zones which shall be known by symbols and/or names as follows:

Zone Name	Map Designator	Section
A-Agriculture	A-40	4.1
A5-Agriculture	A5	4.2
RR-Rural Residential	RR2	4.3
R-Residential	R0.5	4.4
C-Commercial	C	4.5
I-Industrial	I	4.6
Future Land Use Residential	FR	5.1.1.1
Future Land Use Commercial	FRC	5.1.2
Future Land Use Industrial	FRI	5.1.3

The specific purpose of each zoning district shall be as stated.

3.2 **Zoning Map** - The location boundaries of each of the zones are shown on the Lincoln County Zoning Map, all boundaries, notations and other data shown thereon are an adopted part of this Ordinance. The Zoning Map shall be identified, and certified by the signature of the Chairman of the Board of County Commissioners, attested by the Clerk.

**Zoning Boundaries** - Where uncertainty exists with respect to the boundaries of zones, the following rules shall apply:

3.3.1 Where district boundaries are indicated as approximately following the center line of street lines, railroad lines, highway right-of-way lines, streams, lakes, or other bodies of water, canals, or other natural features, the center line shall be construed to be such boundary;

3.3.2 Where district boundaries are approximate street or land survey lines, said street or land survey lines shall be construed to be the zone boundaries;

3.3.3 If there is no street, land survey, canal, natural stream, water course, or other natural feature or measurement as forming the boundaries of any zone, the scale or measurement shown on the map shall be used to determine the boundary lines;

3.3.4 In cases where small parcels of land have not been specifically included within a district through errors in legal description, or through the relocation of the County/City boundaries, such parcels or land areas shall automatically retain their existing use classification, until they are otherwise classified. Classification must be completed within six (6) months following the discovery of the error, omission or boundary alteration.

3.4 **Compliance with Regulations** - The regulations for each district set forth by this Ordinance shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided

3.4.1 No building or other structure shall be erected or altered;

- a) To provide for greater height or bulk;
- b) To accommodate or house a greater number of families;
- c) To occupy a greater percentage of land area; or
- d) To have narrower or smaller rear yards, front yards, side yards or other open spaces; than herein required, or in any other manner be contrary to the provisions of this Ordinance., and

3.5 **Area of Impact**

3.5.1 **Purpose** - Area surrounding established towns that is governed by Ordinances to protect the interests of both city and county and future development of the area is the Area of Impact.

3.5.2 There is established an Area of Impact in Lincoln County around the cities of Shoshone, Richfield and Dietrich, as shown on the Lincoln County Zoning Map.

Areas of impact will be governed by Local ordinances and Idaho State Code.

## **CHAPTER 4 – ZONES**

### **4. - ZONES**

It is the policy of the Lincoln County Commissioners, sitting in their capacity of planning and zoning, to interpret the language in Chapter 4.0 of the Lincoln County Planning and Zoning Ordinance 1212-08-1 to mean that, within any zoning designation, Lincoln County subdivision ordinance is applicable at the time of the second split of the original parcel. (**See Definitions for Original Parcel**). The purpose of this provision is to prevent fractured or “spot” zoning in areas such as pivot corners, and to encourage development where already existing.

All applications for re-zoning of land shall be subject to the following land use zone designations and restrictions, and shall also be subject to specific conditions, where applicable, which protect existing uses or which would affect future uses of adjacent lands, including but not limited to:

- a) Flood Plain restrictions – structures built within a 100-yr flood plain zone, as identified by the Federal Emergency Management Agency (FEMA) shall bear an Idaho Professional Engineer’s stamp certifying the elevation of the placement of the structure within a flood plain.
- b) C.A.F.O. buffers – no rezone for the purposes of residential development shall be permitted within the C.A.F.O. Buffer Zone. The origin of the zone is considered the perimeter of the C.A.F.O. site defined in the ordinance, establishing the C.A.F.O.
- c) Commercial and Industrial setbacks as determined by Planning & Zoning Commission.
- d) Building setbacks – International Residential Code (IRC)
- e) Waterways – the flow of water in ditches, laterals and canals may not be impeded, pursuant to Idaho Code 42-902 or other pertinent statutes.
- f) Appurtenant water rights – pursuant to Idaho Code 67-6537, all appurtenant water rights, originating from either a surface or a ground water source, shall remain associated with the lands which are proposed for zoning change. If water rights are removed or transferred from the applicant lands, lands will not be considered for a zoning change.

**4.1. Agriculture (A-40) Zone**

4.1.1 Purpose. The purpose of the A-40 Zone is to preserve and protect the supply and disposition of agricultural land. This zone is established, also, to control the infiltration of urban development which would adversely affect agricultural operators, in agricultural areas. Minimum lot size of forty (40) acres. Platted government lots of more or less than 40 acres in size will be treated as a 40-acre tract.

4.1.2 No Conditional Use Permit Required (exempt activities)

- a) Agriculture and related purposes
- b) Agricultural buildings and structures
- c) Single family dwellings including mobile/modular homes with maximum of one dwelling per forty (40) acres. In accordance with the subdivision Ordinance
- d) Home occupations/Cottage Industry
- e) Bus pickup areas or shelters
- f) Historical sites or monuments
- g) Open space

4.1.3 Conditional Use Permit Required

- a) Public utility facilities such as power, gas, telephone, public or private sewer and water lines
- b) Additional dwellings
- c) Veterinarian
- d) Animal Hospital
- e) Horticultural services
- f) Botanical gardens and arboretums
- g) Schools and Churches
- h) Land fill of any type



- i) All other non exempt uses

#### 4.1.4 Zone Change Required

- a. Lot sizes less than forty (40) acres with the exception of homestead splits, financial splits and Conditional Use Permits
- b. Subdivisions

#### 4.1.5 Farm Homestead Split

A conditional use permit may be granted, without invoking the subdivision ordinance, for a land split to separate an existing farm residence and associated improvements, including but not limited to garages, sheds, fences, ditches, driveways, or irrigation systems, from the agricultural land. This exclusion is limited to homes in existence as of the date of passage of the Lincoln County Zoning ordinance 1212-08-1. The split parcel must be no less than one (1) acre and no greater than five (5) acres in size, unless there are physical or geographic barriers which necessitate a larger size. Split parcels must be contiguous to the farmed land, and there may be no more than one (1) Homestead split per forty (40) acre tract. Pursuant to this section, the remainder land in the tract is not eligible for a residential building permit. Subsequent subdivision of either parcel created from Homestead splits is subject to all planning and zoning regulations.

The purpose of this exclusion is to provide for the preservation of historic rural homes, and/or to allow for the sale of a farm without the relocation of its original owners.

#### 4.1.6 Financial Splits

A conditional use permit may be granted for a single land split within a forty (40) acre tract, strictly for the purposes of financing a home mortgage. The split parcel must be no less than one (1) acre and no greater than five (5) acres in size. A deed restriction shall be recorded, rendering the remainder of the property ineligible for separate legal sale, subdivision, or residential building permit. Such restriction shall not be removed until the mortgage has been satisfied, at which time the tract shall be recombined and shall be subject to all planning and zoning regulations.

## **4.2 Agriculture (A-5) Zone**

4.2.1 Purpose. The purpose of the A-5 Zone is to allow further residential development in agricultural areas that are deemed to be desirable areas for future growth and development. Minimum lot size is five (5) acres.

#### 4.2.2 No Conditional Use Permit Required

- a) Agriculture and related purposes
- b) Agricultural buildings and structures
- c) Single family dwellings including mobile/modular homes with maximum of one dwelling per five (5) acres. In accordance with the subdivision Ordinance
- d) Home occupations/Cottage Industries

- e) Bus pickup areas or shelters
- f) Historical sites or monuments
- g) One (1) animal unit per acre, FFA and 4-H Projects allowed up to 3 additional Animal units.
- h) Open space.

#### 4.2.3 Conditional Use Permit Required

- a) Additional dwellings
- b) Additional animal units (AU) per acre
- c) Subdivisions (at the time of the second land split)
- d) Landfills of any type.
- e) All other non-exempt uses

#### 4.2.4 Zone Change Required

Lot sizes less than five (5) acres, with the exception of homestead splits, financial splits and Conditional Use Permits

### **4.3 Rural Residential (RR-2) Zone**

4.3.1 Purpose. The purpose of the Rural Residential (RR-2) Zone is to allow further residential development in Agricultural areas that are deemed to be desirable areas for residential development. Minimum lot size of two (2) acres.

#### 4.3.2 No Conditional Use Permit Required (exempt activities)

- a) Agriculture and related purposes
- b) Agricultural buildings and structures
- c) Single family dwellings including mobile/modular homes with maximum of one dwelling per two (2) acres. In accordance with the subdivision Ordinance
- d) Home occupations/Cottage Industries
- e) Bus pickup areas or shelters
- f) Historical sites or monuments
- g) One (1) animal unit per acre, FFA and 4-H projects Allowed up to three additional animal units.
- h) Open space

#### 4.3.3 Conditional Use Permit Required

- a) Subdivisions
- b) All other non-exempt uses

#### 4.3.4 Zone Change Required

- a) Lot sizes less than two (2) acres, with the exceptions of homestead splits, financial splits and conditional use permits.

#### **4.4 Residential (RR 0.5) Zone**

4.4.1 Purpose of the R0.5 Zone is to allow for medium density residential areas. These areas are primarily located adjacent to (and may be annexed into) the communities. The R0.5 Zone is to allow for new residential neighborhoods which are located close to shopping, recreational, office, non-agricultural employment and cultural facilities. This zone allows for the extension of urban and suburban residential areas into the County. Minimum lot size is 0.5 acres.

4.4.2 No Conditional Use Permit Required

- a) Single-family dwelling
- b) Home Occupation/Cottage industry

4.4.3 Conditional Use Permit Required

- a) Subdivisions
- b) All other non-exempt uses

#### **4.5 Commercial (C) Zone**

4.5.1 Purpose - The purpose of this zone is to allow limited commercial activities which are designed to provide services to the public. The purpose is to also allow expansion of existing commercial enterprises in the County and to assure that free market competition will be allowed. It is intended, however, that most commercial activities will continue to locate within the cities.

4.5.2 No Permit Required

- a) Open space

4.5.3 Conditional Use Permit Required

- a) All other uses - Lincoln County Commissioners and/or the Planning and Zoning Commission may place reasonable conditions upon any conditional use permit issued based upon the type of project proposed; the effect the proposed project may have on established surrounding entities and consideration of future development of the area.

#### **4.6 Industrial (I) Zone**

4.6.1 Purpose - The purpose of this district is to allow limited industrial activities which are to provide services to the agricultural and urban community. This district is to provide appropriately located lands for manufacturing and their industrial uses including those which normally have characteristics which are objectionable to residential and commercial users. In all cases the industrial pollutants should be controlled in such a way as they do not unduly harm the agricultural productivity of surrounding areas.

4.6.2 No Permit Required

- a) Open Space

4.6.3 Conditional Use Permit Required

- a) All other uses - Lincoln County Commissioners and/or the Planning and Zoning Commission may place reasonable conditions upon any conditional use permit issued based upon the type of proposed project, the effect the proposed project, may have on established surrounding entities and consideration of future development of the area.

***CHAPTER 5 –FUTURE LAND USE AREAS***

**5. Future Land Use Areas**

Lincoln County has identified areas in the county where it is appropriate to change land uses from the existing classification to a new land use. Areas have been identified as follows:

**5.1 Future Land Use Area Residential**

- 5.1.1 Future Residential Area: A land use type established to provide a transition from land use Agriculture to Residential. This land use is the principle land use type established where non- agricultural use will be permitted when approved by P&Z and or the Board.

**5.2 Future Land Use Area Commercial**

- 5.2.1 Areas within the bounds of this area are desirable for commercial development and will be permitted when approved by P&Z and or the Board.

**5.3 Future Land Use Area Industrial**

- 5.3.1 Areas within the bounds of this area are desirable for industrial development and will be permitted when approved by P&Z and or the Board.

***CHAPTER 6–BUILDING REGULATIONS***

**6. Building Regulations**

- 6.1 Pursuant to Idaho Code 39-4116(2), the following codes published by the International Code Council are hereby adopted by reference:

- 6.1.1 2006 International building code as published by the International Code Council, as currently adopted by the Lincoln county Board of Commissioners  
6.1.2 Including all rules promulgated by the Idaho building code board to provide equivalency with the provisions of the Americans with disabilities act

accessibility guidelines and the federal fair housing act accessibility guidelines;  
and

- 6.1.3 2006 International residential code as published by the International Code Council, as currently adopted by the Lincoln county Board of Commissioners
- 6.1.4 2006 International energy conservation code as published by the International Code Council , as currently adopted by the Lincoln county Board of Commissioners
- 6.1.5 All applications for building permits will require submittal of a completed REScheck. REScheck is designed to demonstrate compliance with the requirements of the International Energy Conservation Code [www.energycodes.com](http://www.energycodes.com) is the Department of Energy's official Energy Code web site and REScheck is available there free.
- 6.1.6 The latest edition of the National Electrical Code as approved by the American Standards Institute, as amended from time to time, and approved by the Idaho Electrical Board is hereby adopted as the official electrical code of the County.
- 6.1.7 The latest edition of the Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials, as amended from time to time and approved and adopted by the Idaho Plumbing Board is hereby adopted as the official plumbing code of the County
- 6.1.8 The latest edition of the Uniform Mechanical Code published by the Intermountain Conference of Building Officials, as amended from time to time, is hereby adopted as the official mechanical code of the County.

## **6.2 MANUFACTURED HOUSING QUALIFICATIONS AND TEMPORARY HOUSING RULES**

- a. Manufactured homes require a Lincoln County Building Permit, including mobile homes, single wides and double wides.
- b. No manufactured home may be moved into Lincoln County without a HUD certificate from the state of Idaho.
- c. Building permits will not be issued for any manufactured home built prior to June 1976 that does not have a HUD certificate of compliance from the administrator of the division of Building safety of the state of Idaho IC44-2502.

6.2.1 Travel trailers, recreational vehicles and other temporary housing may not be occupied outside a trailer park as a residence, unless such occupation is providing temporary shelter while a permanent residence is under active construction on the same parcel of land. Provisions must be made for adequate sanitation during the period of occupancy. An active building permit must be issued for the parcel prior to the occupation of the temporary dwelling. Temporary residences as authorized by this section may be occupied for no more than one (1) year from the date of issuance of the building permit. Up to a one-year extension may be granted provided the building permit has been extended and remains active during the same period.

## **6.3 BUILDING PERMITS / ENFORCEMENT**

6.3.1 It shall be unlawful hereafter to erect, move, add to, or structurally alter building or other structure, or to establish or change the use of any building, structure, until the appropriate permits have been issued by the Lincoln County

Planning and Zoning Administrator and Building Official, or the Board of Lincoln County Commissioners; however, this does not apply to the use or construction of land, buildings or structures which meet the Ordinance requirements for no permit needed. No permit shall be required for minor repairs to buildings which do not involve structural alterations or an increase in floor area.

6.3.2 Failure to obtain a Building Permit, when it is required by this Ordinance, shall be a violation of this Ordinance.

6.3.3 Construction and use are to be as provided in applications, plans, permits and certificates. Building Permits are issued on the basis of plans and applications approved by the Building Official and authorize only the use and arrangement, set forth in such approved plans and applications or amendments thereto, and no other use, arrangement or construction. Use, arrangement or construction contrary to that authorized shall be deemed a violation of this Ordinance and the Building Permit shall be invalid.

#### 6.4 Expiration of Building Permits

6.4.1 Every permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced.

6.4.2 One or more extensions of 180 days may be issued but the applicant must apply in writing prior to the permit expiring and justifiable cause demonstrated.

#### 6.5 Certificate of Occupancy

6.5.1 A Certificate of Occupancy is a certificate confirming that the work completed conforms to this Ordinance.

6.5.2 Every Building Permit will also require a Certificate of Occupancy prior to any occupancy.

6.5.3 Recordkeeping - One (1) copy of each applicant's plans shall be retained by the Building Official after the Building Official has marked such copy of either approved or disapproved. One (1) copy of the plans, similarly marked shall be retained by the County.

6.5.4 Issuance of Place card - The Administrator and Building Official shall issue a place card for each approved permit, to be posted in a conspicuous place, on the property in question, attesting to the fact that the use or alteration is in conformance with the provisions of this Ordinance.

## CHAPTER 7.0 NONCONFORMING USES

### 7. Non conforming uses

7.1 Purpose – The purpose of this section is to establish policies and procedures for buildings, structures, and uses of land which do not conform to the current zone designation in which they are located. For example, a nonconforming use may be an industrial building or a feedlot in an area which has been zoned A-5.

7.1.1 Any parcel affected by future zone changes may be given a grandfathered status as evidenced by a grandfather certificate to be issued, free of charge, by the Lincoln County Planning and Zoning Commission (Commission). The requesting party must be the owner of the property or a party with a documented interest in the property or in the nonconforming use, such as a renter or manager. Certificates may be issued upon the filing of an application which includes a full description of the operation and facilities, location, and a site plan. If grandfather status is requested for a livestock operation of any size, the application shall also include maximum capacity and numbers and type of livestock on the parcel at the highest level at any one time in the five (5) years immediately prior to the date of this ordinance. All applications for grandfather status for existing facilities must be received within two (2) years of the date of this ordinance. Failure to make timely application may result in a determination by the Commission of unlawful nonconforming activities on that site.

7.1.2 A conditional use permit will be required in order that any grandfathered nonconforming use, may be enlarged or extended in such a way as to occupy any land beyond the original boundaries of the building or operation, or within the lot upon which it existed at the time of issuance of the grandfather certificate. No nonconforming use may displace any conforming use or exempt activity or facility in the same building or on the same parcel, without a conditional use permit being obtained.

7.1.3 Nothing in this ordinance shall be construed to prevent the restoration and the resumption of former lawful use of any building or operation that is damaged or partially or totally destroyed by fire or other calamity, provided that such restoration is started within one (1) calendar year from the date of loss of use, and diligently pursued to completion. If the restoration of former use is started in a timely manner but not completed within two (2) years from the date of loss of use, an application for extension of time to resume use, may be requested from the Commission and may be granted for a period of time not to exceed an additional one (1) year from the date of application.

7.1.4 Whenever a nonconforming use of land, lawful or otherwise, has been discontinued for a period of one (1) year, such non-use may constitute abandonment of the nonconforming use. If an application for extension of time to resume use is filed within one year of date of last use, such extension may be granted for no more than two (2) years from the date of the application.

7.1.5 Once a nonconforming use has been abandoned, subsequent use(s) of the premises shall comply with the regulations of the use zone, and these rules.

## CHAPTER 8.0 BY-LAWS/ADMINISTRATIONS

### **8. By Laws/ administration**

8.1 **General** - For the purpose of carrying out the provisions of this Ordinance, the Lincoln County Planning and Zoning Commission may be created.

8.2 **Commission**

8.2.1 **Membership** - The Commission shall consist of seven (7) voting members, all appointed by the Chairman of the County Board of Commissioners and confirmed by majority vote of the Board. An appointed member of a Commission must have resided in the County for two (2) years prior to his appointment, and must remain a resident of the County during his service on the Commission. No 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 in the County. The term of office for members shall be three (3) years, with a maximum of two (2) consecutive terms. 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 a cause by a majority vote of the Board. Membership of members who miss three (3) consecutive meetings without being excused may be terminated by the Board. To be excused, a member must notify the Chairman or Secretary at least one hour prior to meeting. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the Board. Upon annual election of a chairman of the Lincoln County Planning and Zoning Commission at the first January meeting, he/she shall serve a minimum of one (1) year term and a maximum of two (2) consecutive years, at the pleasure of a majority vote of the Planning and Zoning Commission.

8.2.2 **Organization** - The Commission shall elect a Chairman and create and fill any other office that it may deem necessary. The Commission may establish subcommittees, advisory committees, hearing examiners or neighborhood groups to advise and assist in carrying out the responsibilities. The Commission may recommend appointment or hiring of nonvoting ex-officio advisors, secretaries or an administrator as may be deemed necessary.

8.2.3 **Rules, Records and Meetings** - Written organization papers or bylaws consistent with this Ordinance 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. The Commission shall prepare written reasoned decision based on findings of fact and conclusion of law within thirty (30) days, signed by the presiding member, for each Commission decision and given to the applicant. 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 voting members of the Commission shall constitute a quorum.

8.2.4 **Expenditures and Staff** - With approval of the Board the Commission may receive and expend funds, goods and services from the Federal government or agencies and instrumentality's of the State or local governments or from civic and private sources and may contract with these entities and provide information as necessary to secure aid. Expenditures by the Commission shall be within the amounts appropriated by the Board. Within such limits, the



Commission is authorized to hire employees and technical advisors, including but not limited to planners, engineers, architects and legal assistants.

- 8.2.5 Schedule of Fees, Charges and Expenses - The Board shall establish a schedule of fees, charges and expenses and a collection procedure for zoning permits, amendments, appeals, variances, Conditional Use Permits, plan approvals and other matters pertaining to the Administration and enforcement of this Ordinance requiring investigations, inspections, legal advertising, postage and other expenses. The schedule of fees shall be posted in the Lincoln County Planning and Zoning Offices located in the Lincoln County Courthouse, 111 W 'B' Street, Shoshone, and may be altered or amended only by the Board. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken by the P&Z Administrator or the Board on any application or appeal. These fees are non-refundable.
- 8.2.6 Upon granting or denying - an application for a zoning permit, Conditional Use Permit, rezone, variance or appeal, the Commission/Board shall provide the applicant with a written statement which includes:
- a) The Ordinance and standards used in evaluating the application;
  - b) The reasons for approval or denial;
  - c) The actions, if any, that the applicant could take to obtain a permit; and
  - d) A statement of the applicant's right of appeal and judicial review.

### **8.3 Duties of the Commission**

- 8.3.1 For the purpose of this Ordinance the Planning and Zoning Commission shall have the following duties:
- a) Initiate proposed amendments to this Ordinance and may conduct an annual review of the complete Zoning Ordinance;
  - b) Review all proposed amendments to this Ordinance and make recommendations to the County Commissioners
  - c) Grant Conditional Use Permits as specified in the District Regulations and under the conditions as herein specified, and with such additional safeguards as will uphold the intent of this ordinance;
  - d) Authorize such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice will be done; and
  - e) Report all violations of this Ordinance and notify, the planning and Zoning Administrator, of the person responsible for such violation.

#### **8.4 Conflict of Interest**

8.4.1 The County Commissioners creating the Commission shall provide that the area and interests within its jurisdiction are broadly represented on the Commission. A member or employee of the Board or Commission shall not participate in any official action or vote when the member or employee or his employer, business partner, business associate or any person related to him by affinity or consanguinity blood, marriage, or adoption 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. A knowing violation of this Section shall be a misdemeanor.

#### **8.5 Role of P & Z Administrator** - The Board may appoint an Administrator to assist the P & Z Commission. The Administrator's duties include, but are not limited to, the following:

- a) Advise interested citizens of the zoning ordinance provisions.
- b) Inform the news media regarding land use and zoning matters of public interest, particularly the time and place of public hearings (be knowledgeable of the notice requirements of the Local Planning Act & Idaho Code).
- c) Prepare the Agenda for the monthly meetings of the Commission and all other meetings as directed by the P & Z Chairman. P & Z members should receive agendas and upcoming meeting information with copies of applications to be discussed at least five (5) days before meeting. In the case of Public Hearings, all permit applications information should be sent out fifteen (15) days in advance of the hearing.
- d) Aid applicants in the preparation of required forms and permit applications. Where practical, related permits may be combined for the convenience of the applicant.
- e) Receive, file and transmit to the Commission or Board all applications, petitions, transcripts and other communications on which they must act. Advise the Commission and the Board of pertinent provisions of the ordinance regarding development proposals.
- f) Maintain permanent and current records of applications, reclassifications, variance, conditional use permits, minutes of P & Z meetings, and of the hearings and actions thereon.
- g) Inspect and make recommendations upon all filed plats and Planned Unit Developments pursuant to the Lincoln County Subdivision Ordinance.
- h) Investigate all violations of this ordinance, and notify in writing the person responsible for such violation(s), defining the action necessary to correct such violation.
- i) Interpret boundaries of zone districts. (Provide maps to applicants showing the existing land use designations.)

- j) Provide a liaison between the Commission and the Board, and perform such duties as requested by the Commissioners to assist them in carrying out the provisions of this Ordinance.
- k) Provide building permits together with the Building Official to the public and transmit same as necessary to their governmental departments.
- l) Working with the Public: The Administrator should communicate openly with the citizens of the community and provide general direction and guidance to all applicants, within the confines of the local Comprehensive Planning and Zoning Ordinances.
- m) The Administrator must keep abreast of current changes in Planning and Zoning regulations and research alternative solutions for conflicting development issues.

## 9. Complaints Regarding Violations

9.1 Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written citizen complaint. Such complaint shall state fully the causes and basis thereof and shall be filed with the Planning and Zoning Administrator. The Planning and Zoning Administrator shall properly record such complaint, immediately investigate and take action thereon as provided by this Ordinance

9.1.1 Penalties - The Prosecuting Attorney may take criminal action and may civilly enjoin any violation of this Ordinance. Penalties for failure to comply with, or violations of, the provisions of this Ordinance shall be as follows:

9.1.2 “Violation of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor as defined by Idaho code, or, each day such violation continues shall be considered a separate offense. The landowner, tenant, sub divider, builder, public official or any other person, who commits, participates in, assists in or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Board or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this Ordinance or of the Idaho Code.”

## 9.2 CONDITIONAL USE PERMIT

9.2.1 Contents of Application - The application for a Conditional Use Permit shall be signed by the owner and applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the permit shall expire and be considered revoked if work has not begun within three hundred sixty-five (365) days from the date the permit was issued. As a minimum, the application shall contain the following information:

- a) Name, address and phone number of the applicant and the owner of the property;
- b) Legal description of the property;
- c) Existing use;
- d) Proposed use;
- e) Zoning district;
- f) A plan of the proposed site for conditional use showing the location of all buildings, parking and loading area, utilities, yards and other such information as the Commission may require to determine if the conditional use meets the intent and requirements of this Ordinance;
- g) Building height;
- h) Number of dwelling units (if applicable):
- i) A narrative statement evaluating the affects of such elements as noise, glare, odor, fumes, vibrations and effluents of the proposed use upon adjoining property;
- j) A discussion of the general compatibility with adjacent and other properties in the district; and
- k) A narrative statement of the proposed use to the Lincoln County Comprehensive Plan.

9.2.2 Consideration of a Conditional Use Permit - Within seventy five (75) days after the receipt of an application, the Commission shall hold a public hearing for the review of a Conditional Use Permit. The public hearing shall be held in accordance with Section 11.1.

9.2.3 After the public hearing the Commission shall approve, disapprove or approve with special conditions, a reasoned Decision shall be provided within thirty (30)days to the applicant.

- a) Upon granting or denying an application to amend the Zoning Ordinance, the Board shall specify:
  - 1. The Ordinance and standards used in evaluating the application;
  - 2. The reasons for approval or denial; and
  - 3. The actions, if any, that the applicant could take to obtain a permit.
  - 4. ID Code 67-8003. Regulatory takings, protection protection of private property.

9.2.4 Considerations to be made in Reviewing Conditional Use Permits - The Commission shall review the particular facts and circumstances of each proposed Conditional Use Permit in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- a) Will in fact, constitute a conditional use as established within the applicable district/zone;
- b) Will be harmonious and in accordance with the general objectives or a specific objective of the Lincoln County Comprehensive Plan or this Ordinance;
- c) Will be designed, constructed, operated and maintained to be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;

- d) Will not be hazardous or unduly disturbing to existing or neighboring uses;
- e) Will be or can be served adequately by essential public facilities and services such as highways, streets, sheriff and fire protection, drainage structures, refuse disposal, water and sewer, and schools at a reasonable cost which will not be detrimental to the economic welfare of the community;
- f) Will not be unduly detrimental to any persons, property or the general welfare by reason of excessive traffic, noise, smoke, fumes, glare, odors or water pollution;
- g) Will have vehicular approaches to the property which are designed so as not to create an interference with traffic or surrounding public thoroughfares; and
- h) Will not result in destruction, loss or damage of a natural scenic or historic feature of major importance.

9.2.5 Special conditions which may be attached to a Conditional Use Permit may include but are not limited to those which:

- a) Minimize adverse impact on other development;
- b) Control the sequence and timing of development;
- c) Control the duration of development;
- d) Assure that development is properly maintained;
- e) Designate the exact location and nature of development;
- f) Require on-site or off-site public facilities or services;
- g) Require more restrictive standards than those generally required in this Ordinance.

9.2.6 Termination of Permit - Any permit given under this section shall terminate without notice and by operation of this ordinance in the event either, (1) the activity or operation for which the permit was sought has ceased to exist for a period of twelve (12) consecutive months, or (2) the activity or operation for which the permit was sought has not been completed within two (2) years from the date of the issuance of the permit by the Commission. Extenuating circumstances may be considered.

### 9.3 VARIANCE

9.3.1 Situations in Which a Variance May be Granted - The Commission may authorize in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, or due to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. No non-conforming use of neighboring lands, structures or buildings in the same district and no permitted or non-conforming use of lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance would result in unnecessary hardship.

9.3.2 Application Standards for Variances - The application for a variance permit shall be in writing, be signed by the applicant and shall include:

- a) Name, address and phone number of applicant(s) and owners(s);
- b) Legal description of property;
- c) Description of the nature of the variance requested; and
- d) A narrative statement demonstrating that the requested variance conforms to the following standards:
  - 1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
  - 2. That a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
  - 3. That the special conditions and circumstances do not result from the actions of the applicant; and
  - 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance or other lands, structures or buildings in the same district.
  - 5. A variance shall not be granted unless the Commission makes specific findings of fact based directly on the particular evidence presented to it which support conclusions that the above mentioned standards and conditions have been met by the applicant.

9.3.3 Supplementary Conditions and Safeguards - The Commission or Board shall not grant an appeal or variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. In granting any appeal or variance, the Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Ordinance.

#### 9.4 CONSIDERATION OF A VARIANCE

9.4.1 Consideration of a Variance - Within seventy five (75) days after the receipt of an application, the Commission shall hold a public hearing for the review of the variance application. The public hearing shall be held in accordance with Section 11.1. After the public hearing, the Commission shall approve, disapprove or table the variance. Notice of Action on the variance shall be given within thirty (30) days after the public hearing to the

#### 9.5 RIGHT OF APPEAL

The applicant or any affected person who appeared in person or in writing before the Commission may appeal the decision of the Commission to the board provided that the appeal is submitted in writing to the Board within thirty (30) days from the Commission's decision. Cost of transcribing will be paid by the person who is requesting the tapes be transcribed, and an appeal fee.

## 9.6 APPEALS

- 9.6.1 **General** - The Lincoln County Board of County Commissioners shall hear administrative appeals where it is alleged that an error has been made by the Planning and Zoning Commission.
- 9.6.2 Appeals to the Board concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the legislative authority affected by any decision of the Planning and Zoning Commission. Such appeal shall be presented in written form within thirty (30) days after the decision of the Commission by filing with the Commission and the Board a Notice of Appeal specifying the grounds upon which the appeal is being taken. The Administrator shall transmit to the Board all papers constituting the record upon which the appeal is based.
- 9.6.3 Stay of Proceedings - An appeal stays all proceedings in furtherance of the action taken unless the Commission certifies to the Board after the Notice of Appeal is filed with them that by reason of facts stated in the application, a stay would, in their opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court based upon an application, with notice to the Commission showing due cause.
- 9.6.4 Consideration of Appeal - Within seventy five days (75) after the receipt of an appeal notice, the Board shall hold a public hearing for the review of the appeal application. The Board shall consider all testimony, exhibits, the Commission's public hearing minutes and arguments to reach a decision to uphold, conditionally uphold, or overrule the Commission's decision. The public hearing shall be in accordance with Section 11.1.
- 9.6.5 Supplemental Conditions and Safeguards - See Section 9.3.3
- 9.6.6 Judicial Review - Any person aggrieved by a decision of the Board, may within thirty (30) days after all administrative appeals have been exhausted and shall be after the date of the filing of the reasoned decision under this Ordinance, seek judicial review through the procedures provided by I.C. 67-5270

## CHAPTER 10

### 10.0 ZONING ORDINANCE AMENDMENT/REZONE

- 10.1 General - Whenever the public convenience or necessity, public health, safety or general welfare, or good zoning practices require, the Board may in compliance with this section, amend the provisions of this Ordinance. Amendment shall include any measures to change the Zoning Map, or to add to, repeal, or amend any provisions of this Zoning Ordinance. Amendment shall include the rezoning or reclassification of property.
- 10.2 Initiation of Zoning Ordinance Amendments - Amendments may be initiated by: a motion by the Board; a motion by the Commission; or by the filing of an application by a property

owner or by a person who has existing interest in property within the area proposed to be changed or affected by said amendment. The Commission on its own initiative or at the request of the Board shall periodically review and make recommendations to the Board concerning the Lincoln County Comprehensive Plan, the Zoning Map, the Zoning Ordinance, and applicable administrative procedures.

10.3 Applications - Applications for a zoning amendment/rezone shall be submitted, along with the fee, to the County. The applications will contain, at least, the following information:

- a) Name, address, and phone number of applicant(s);
- b) A map showing the land parcels to be reclassified and the land parcels lying within three hundred (300) feet of the exterior boundaries of the property to be reclassified;
- c) The names and addresses of the owners and residents of each parcel within three hundred (300) feet of the exterior boundaries of the property to be reclassified;
- d) The present land use, and zoning district;
- e) The proposed use, proposed district, and the proposed amending ordinance;
- f) A statement on how conditions have changed which would justify the proposed change in the text or the map;
- g) A statement to justify the proposed change on the basis of the Comprehensive Plan, the availability of public facilities, and the compatibility with the surrounding area; and
- h) A statement on how the amendment would affect the value and character of the adjacent properties.

10.4 Extent of Amendment- The Zoning Ordinance shall be amended in the following manner:

- 10.4.1 Requests for an amendment to the Zoning Ordinance shall be submitted to the Commission who shall evaluate the request to determine the extent and nature of the amendment requested;
- 10.4.2 If the request is in accordance with the adopted Comprehensive Plan, the Commission may recommend and the Board may adopt or reject the Ordinance amendment under the notice and hearing procedures as provided in Section 11.1; and
- 10.4.3 If the request is not in accordance with the adopted Comprehensive Plan, the request shall be submitted to the Planning and Zoning Commission or, in its absence, the Board, which shall recommend and the Board may adopt or reject an amendment to the Comprehensive Plan under the public hearing procedures provided in Section 11.1. After the Comprehensive Plan has been amended, the Zoning Ordinance may then be amended as herein after provided.

10.5 Commission Public Hearing - The Commission shall hold a public hearing in accordance with Section 11.1 and make recommendations on proposed zoning amendments. Zoning amendments may consist of text or map revisions.

- 10.5.1 Zoning Text Amendment - The Commission, prior to recommending a Zoning Ordinance Text Amendment to the Board shall conduct at least one (1) public hearing in accordance with Section 11.1 in which interested persons



shall have an opportunity to be heard. Following the Commission's hearing, if the Commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the Commission forwards the amendment with its recommendation to the Board.

10.5.2 Zoning Map Amendment - The Commission, prior to recommending a Zoning Ordinance Map Amendment that is in accordance with the Comprehensive Plan to the Board, shall conduct at least one (1) public hearing in accordance with Section 11.1 in which interested persons shall have an opportunity to be heard. Following the Commission's hearing, if the Commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the Commission forwards the amendment with its recommendation to the Board.

10.5.3 Recommendation by Commission – Within seventy five (75) days from the receipt of the proposed amendment, the Commission shall transmit its recommendation to the Board. The Commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be denied. The Commission shall insure that any favorable recommendations for amendments are in accordance with the Comprehensive Plan and established goals and objectives.

10.5.4 Action by Board - The Board, prior to adopting, revising or rejecting the amendment to the Zoning Ordinance as recommended by the Commission shall conduct at least one (1) public hearing using the same notice and hearing procedures as the Commission including a transcribe able verbatim record of the proceedings. If the Board makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the Board adopts the amendment.

- a) The Board shall accept the recommendation of the Commission's report unless rejected by a vote of a simple majority of the full Board.
- b) Upon granting or denying an application to amend the Zoning Ordinance, the Board shall specify:
  - 1.The Ordinance and standards used in evaluating the application;
  - 2.The reasons for approval or denial; and
  - 3.The actions, if any, that the applicant could take to obtain a permit.
- c) In the event the Board shall approve a zoning amendment, such shall thereafter be made a part of this Ordinance upon the preparation and passage of an Ordinance.

10.5.5 Resubmission of Application - No application for a reclassification of any property which has been denied by the Board, shall be resubmitted in either substantially the same form or with reference to substantially the same premises for the same purpose within a period of one (1) year from the date of such final action; unless there is an amendment in the Comprehensive Plan which resulted from a change in conditions as applying to the specific property under consideration.

CHAPTER 11  
11.0 GENERAL

- 11.1 Procedures for Public Hearing - Public hearings as required for Conditional Use Permits, Variances, Appeals, Zoning Ordinance amendments and Zoning Map amendments, including text amendments, shall be held in the following manner:
- 11.2 Public Notice - At least fifteen (15) days prior to the public hearing, notice of the time, place and a summary of the proposal shall be published in the paper of general circulation in Lincoln County.
- 11.3 Public Notice Signage At least fifteen (15) days prior to the public hearing, notice of the time, place and a summary of the proposal shall be posted on the subject property.
- 11.4 Notice to Neighbors - Notice shall also be provided to all property owners and residents within the land being considered, and who have any part of any land lying within three hundred (300) feet of the external boundaries of the land being considered, and any other area that may be substantially impacted by the proposed project as determined by the Commission. When notice is required to two hundred (200) or more property owners or residents, alternate forms of procedures which provide adequate notice, such as additional newspaper notices, may be used in lieu of mailed notice.
- 11.5 Procedure for Public Hearing for Zoning Map Amendment - The Commission, prior to recommending a Zoning Ordinance Map Amendment that is in accordance with the Comprehensive Plan to the 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 time and place and the amendment shall be published in the official newspaper or paper of general circulation within the jurisdiction. Additional notice shall be provided by mail to property owners and residents within one-half (1/2) mile of 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 posted on the premises as described in section 11.2.1. When notice is required to two hundred (200) or more property owners or residents, in lieu of the mail notifications, two (2) notices in the official newspaper or paper of general circulation is sufficient, provided that the second notice appears at least ten days prior to the public hearing. Political subdivisions including school.
- 11.6 All public hearings shall be conducted in accordance with Appendix A attached hereto.
- 11.7 Request for Hearing by Affected Persons - An affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.
- 11.7.1 Any affected person may at any time prior to final action on a Zoning, a Rezone, a Conditional Use, or Variance Permit, if no hearing has been held on the application, petition the Commission or (Board) in writing to hold a hearing as required in Chapters 9 and 10; however, that if ten (10) affected persons petition for a hearing, the hearing shall be held.

11.8 After a hearing, the Commission or (Board/Council) may:

- a) Grant or deny a permit; or

- b) Delay such a decision for a definite period of time for further study or hearing.

11.8.1 Judicial Review - Any person aggrieved by a decision of the Board, may within thirty (30) days after all administrative appeals have been exhausted and shall be after the date of the filing of the reasoned decision under this Ordinance, seek judicial review through the procedures provided by I.C.67-5270.

11.9 Severability - If any provisions of this Ordinance or application thereof to any persons or circumstances are held invalid, the remainder of the Ordinance or the application or provisions to other persons or circumstances shall not be declared invalid or unconstitutional.

Dated this 13th day of December, 2010 Lincoln County Commissioners

\_\_\_\_\_  
Jerry Nance, Chairman Commissioner

\_\_\_\_\_  
Charles Ritter Commissioner

\_\_\_\_\_  
Marsha Hiatt Commissioner

\_\_\_\_\_  
Attested: Liz Kime  
Lincoln County Clerk

EFFECTIVE DATE

THE EFFECTIVE DATE of this ordinance shall be \_\_\_\_\_, 2010 as published by the Times news.

## APPENDIX A

### Public Hearing

Hearings are required prior to nearly any planning decision. The purpose of a public hearing is to give everyone an opportunity to offer their views and provide evidence in support of their views. This body of opinion and evidence creates the record upon which the decision-makers rely for their findings and conclusions. Opinions expressed and evidence offered “off the record” cannot be accepted because they may impair the fairness of the decision-making process.

### Procedures for Conducting a Public Hearing

#### Rules

1. To offer written and/or oral testimony, come to the podium, give your name, mailing address and, if applicable, the organization you are representing. Present your testimony. The Commission reserves the right to set a time limit on testimony and to prohibit repetitive testimony.
2. To ask a question, signal the Commission Chairperson by raising your hand and wait to be recognized.
3. Commissioners may ask questions after each witness.

#### Procedures

The following is the recommended sequent of events to be followed in conducting a public hearing:

1. Explanation of hearing procedures by chair or staff.
2. Presentation by staff.
3. Presentation by applicant. Remember, applicant bears the responsibility for making his/her case. This is the time for governing board members to ask their questions of the applicant.
4. Written correspondence- written testimony received needs to be received seven days (7) before the hearing.
5. Testimony by those supporting the application.
6. Testimony by those uncommitted on the application.
7. Testimony by opponents to the application.
8. Rebuttal by the applicant.
9. Final call for questions and testimony. Members of the audience may ask questions at this time.
10. Close the hearing. Chairperson will announce the next step in the decision-making process.
11. Initiate deliberations and develop reasoned decision based on Findings of Fact and Conclusion of Law.