

ORDINANCE NO. 2006-2

AN ORDINANCE DEFINING AND ESTABLISHING CONFINED ANIMAL FEEDING OPERATIONS (CAFOs): PROVIDING FOR TITLE, INTERPRETATION AND ENACTMENT; FOR DEFINITIONS, FOR REGISTERING EXISTING CONFINED ANIMAL FEEDING OPERATIONS, FOR ZONES IN WHICH CAFO'S ARE ALLOWED, FOR SETBACKS, FOR CAFO SITING PERMITS, FEES AND THE CONTENTS OF APPLICATIONS THEREFORE; PROVIDING FOR NOTICE AND HEARING ON CAFO PERMITS; SETTING FORTH THE CRITERIA FOR SUCH PERMITS; PROVIDING FOR UTILIZATION OF THE STATE OF IDAHO CAFO ADVISORY SITING TEAM; PROVIDING FOR THE GRANT OR DENIAL OF CAFO SITING PERMITS, FOR AMENDING THOSE PERMITS AND GRANTING VARIANCES TO SETBACKS, FOR CAFO OPERATION PERMITS; PROVIDING FOR GRANT OR DENIAL OF OPERATION PERMITS, FOR APPEALS, FOR ENFORCEMENT; AND FOR AN EFFECTIVE DATE.

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

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INTRODUCTION AND PURPOSE

Economic development, including placement and expansion of new and existing dairies and feedlots, is an essential part of the economic future of Elmore County. However, the Board of County Commissioners recognizes that such operations may have negative impacts on the quiet use, enjoyment and economic value of neighboring property and adverse environmental consequences. To minimize those impacts and consequences and allow for economic development, appropriate zoning controls consistent with the Local Land Use Planning Act and the Idaho Right to Farm Act are necessary.

The purpose of this ordinance is to establish an orderly procedure to regulate the placement and construction of Confined Animal Feeding Operations within Elmore County. Elmore County does not have the resources or authority to enforce state or federal environmental laws. However, it is the intent of the Board of County Commissioners to require all CAFOs operating in Elmore County to obtain and be in compliance with all applicable federal and state environmental standards, to be sited within agriculture zones and clearly meet their policies, rules, laws and certain development standards. The Board also feels that it is appropriate to take advantage of all resources and assistance available from other government agencies in making CAFO Permit decisions.

I. TITLE, INTERPRETATION, AND ENACTMENT

- A. This Ordinance shall be known as Chapter 3 of the Elmore County Zoning and Development Ordinance--CAFO Standards, and is adopted pursuant to authority granted by Title 67, Chapter 65 of the Idaho Code, and Article 12, Section 2 of the Idaho Constitution, as amended or subsequently codified.
- B. Should any section or provision of this Ordinance be declared by the Courts to be unconstitutional or invalid, such a decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.
- C. All ordinances or parts of ordinances in conflict with this Ordinance or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect. However, Chapter 1, Article XIII-1 of the Elmore County Zoning and Development Ordinance regulating livestock confinement operations shall remain in full force and effect for any livestock confinement operation that is not regulated by this Ordinance. This Ordinance shall become effective from and after the date of its approval and adoption.
- D. The Board of County Commissioners of Elmore County specifically finds that this ordinance conforms with and is in compliance with the Elmore County Comprehensive Plan that encourages agricultural development in appropriate areas.

II. DEFINITIONS:

ADMINISTRATOR: The official or that official's designee appointed by the Board to administer the Elmore County Zoning and Development Ordinance.

AFFECTED PERSON: A person or legal entity having an interest in real property that may be affected by the issuance or denial of a permit.

ANIMAL WASTE: Animal excrement, feed wastes, Process Wastewater, or any other waste associated with the confinement of animals.

ANIMAL WASTE MANAGEMENT SYSTEM: Any structure or system that provides for the collection, treatment, and storage of Animal Waste.

APPLICANT: Any person initiating an application for any action or provision authorized under this Ordinance.

APPLICATION: The document and accompanying information required of a person seeking a CAFO Siting Permit.

BEST MANAGEMENT PRACTICES: Practices as defined in Title 22, Chapter 49, Idaho Code or other practices, techniques, or measures that are determined to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources to a level compatible with state environmental goals.

BOARD: The Board of County Commissioners.

BUILDING INSPECTOR: An official of the County, appointed by the Board to inspect and certify compliance with building ordinances adopted by Elmore County.

CAFO: also referred to as "concentrated animal feeding operation" or "confined animal feeding operation," means a lot or facility where the following conditions are met:

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

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

(c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories; Large CAFO: 700 mature dairy cows, whether milked or dry; 1,000 veal calves; 1,000 beef cattle or heifers; 2,500 swine each weighing 55 pounds or more; 10,000 swine each weighing less than 55 pounds; 500 horses; 10,000 sheep or lambs, 55,000 turkeys, 30,000 ducks (other than liquid manure handling systems), 5,000 ducks (liquid manure handling systems), 30,000 chickens (liquid manure

handling systems), 125,000 chickens except laying hens (other than liquid manure handling systems), 82,000 laying hens (other than liquid manure handling systems); Medium CAFO: (At the time of the adoption of this Ordinance) 200 mature dairy cows, whether milked or dry, 300 veal calves, 300 beef cattle or heifers, 750 swine (each 55 lbs or more), 3,000 sheep or lambs, 3,000 swine (each under 55 lbs), 16,500 turkeys, 10,000 ducks (other than liquid manure handling systems), 1,500 ducks (liquid manure handling systems), 9,000 chickens (liquid manure handling systems), 37,500 chickens except laying hens (other than liquid manure handling systems), 25,000 laying hens (other than liquid manure handling systems). Two (2) or more concentrated feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

CAFO FACILITY AREA: A contiguous area or parcel of land or the use of a contiguous area or parcel of land, upon which are confined or fed livestock, fish or birds in enclosures or ponds and which does not sustain crops, vegetation, forage growth in the normal growing season or post-harvest residues.

Land application sites are not considered to be part of the CAFO Facility Area. Areas or parcels of land are deemed contiguous when separated by county roads. Areas or parcels of land also are deemed contiguous if they are not adjacent, but are owned or operated by a CAFO operator and a pipeline exists which is capable of conveying Process Wastewater to the non-adjacent land. CAFO Facility Area only pertains to the area containing CAFO Improvements.

CAFO IMPROVEMENTS: Improvements to the CAFO real property including but not limited to, buildings, barns, feed stalls, feeding yards, corrals, feed containment structures or areas, the waste management system, and truck or motor vehicle parking areas. CAFO improvements do not include land application sites, or the piping or method of conveyance used to convey process wastewater to the land application area.

CAFO OPERATION PERMIT: Permit required to occupy a new CAFO facility area or the added portion of an expanded CAFO.

CAFO SITING PERMIT: The Conditional Use Permit required for a person to operate a New or Expanding Facility.

CAFO SITE ADVISORY TEAM: Team authorized by I.C. §§ 67-6529C and 67-6529G consisting of representatives of Idaho state agencies that review a site and information regarding a proposed CAFO and issues an opinion regarding environmental risks and that site's suitability for a CAFO. This team shall include a designee of Elmore County.

CLOSURE PLAN: A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes:

- a. The estimated length of operation of the facility; and

- b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste.

COMMISSION: Planning and Zoning Commission of Elmore County appointed by the Board.

COMMENCE OR START OF CONSTRUCTION: Date building permit is issued or notice of Agriculture Construction is submitted to Elmore County. Where no building permit or notice is required, the date work is actually begun.

DEAD ANIMAL: Carcasses, parts of carcasses, or tissues from dead animals, including domesticated livestock, sheep, goats, poultry, pets and commercial fish.

DIRECT GLARE: The light seen in a lighting fixture as opposed to seeing the light from a fixture.

ENVIRONMENTAL RISK: Means that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report.

EXISTING OR GRAND FATHERED CAFO: A CAFO built and in operation and properly registered at the time of the effective date of this Ordinance.

EXPANDING CAFO: An existing CAFO that: (1) Cumulatively increases its One-Time Animal Capacity by ten (10) percent or 150 animals whichever is less, or (2) An existing CAFO that increases the capacity of its Animal Waste Management System.

FSA: Farm Service Agency of the United States Department of Agriculture.

ISDA: Idaho State Department of Agriculture.

IDAPA: Idaho Administrative Procedures Act.

IDEQ: Idaho Department of Environmental Quality.

IDWR: Idaho Department of Water Resources.

LAND APPLICATION: The spreading or chemigating on, or incorporation of, Animal Waste into the soil mantle primarily for beneficial purposes.

LIQUID WASTE MANAGEMENT SYSTEM: Means those wastewater storage and containment facilities, associated waste collection and conveyance systems and the final distribution system where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis.

MATERIAL CHANGE: An alteration in the CAFO that meets at least one of the

following criteria:

- a. Change in the size and/or location of the animal waste management system.
- b. Relocation of CAFO Improvements outside of the CAFO Facility Area for which they were approved.
- c. Relocation of any CAFO improvement so that it no longer meets a setback required by this ordinance.
- d. Change in type of animal housed.
- e. Change to Dead Animal Storage Area.
- f. Change or relocation of Feed Storage Area.
- g. Cumulative increase of the permitted one (1)-time animal capacity by ten (10) percent or 150 animals, whichever is less.

MINIMUM: The smallest quantity, number, or degree possible or permissible.

NEW CAFO: A CAFO commenced after the effective date of this ordinance, which contains upon it a CAFO Facility Area.

NON-CONFORMING CAFO: Any grandfathered operation or operation that met the definition of a Livestock Confinement Operation under Ordinance 94-2, but is not registered at the time of the adoption of this ordinance, shall become a legal non-conforming CAFO if it has not been expanded or materially changed, and may not be expanded or materially improved except as otherwise provided in the zoning ordinance.

NRCS: Natural Resource Conservation Service of the United States Department of Agriculture.

NUTRIENT MANAGEMENT PLAN: A plan approved by the Director of the Idaho State Department of Agriculture or his/her designee for managing the amount, source, placement, form and timing of the Land Application of nutrients and soil amendments for plant production and to minimize potential for environmental degradation, particularly impairment of water quality. Third party recipients must be compliant with County Ordinances in regards to setbacks, application, and removal of animal waste.

ODOR MANAGEMENT PLAN: A site specific plan approved by the responsible government agencies with regulatory authority to manage odor generated on a CAFO.

ONE -TIME ANIMAL CAPACITY: The maximum number of animals that a CAFO Facility Area is capable of housing at any given point in time.

PEST: Insects, rodents and other vermin.

PEST ABATEMENT PLAN: A site specific plan, if such plan is required by any regulatory agencies with authority over the proposed CAFO.

PROCESS WASTEWATER: Any water on the CAFO Facility Area that comes into

contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a CAFO Facility Area, such as spillage from animal watering systems; washing, cleaning or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with Animal Waste.

PUBLIC RIGHTS OF WAY: All public rights of way intended for road purposes under the jurisdiction of local, state, and/or federal agencies.

REGISTRANT: Owner or operator of an Existing CAFO, who files a Registration Notice with the Office of the Administrator and provides the information required under this Ordinance.

REGISTRATION NOTICE: The document and accompanying information that an Existing CAFO shall file with the Administrator in order to register the CAFO.

SETBACKS: Setbacks are measured from the nearest edge of the CAFO improvements, not the property boundary.

SUITABILITY DETERMINATION: Means that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

USGS: United States Geologic Survey.

VARIANCE: A modification of the requirements of this Ordinance approved through the process outlined in Section IX of this Ordinance.

III. REGISTRATION PROCESS FOR EXISTING CAFOs:

A. Within six (6) months from the effective date of this Ordinance, any person or entity ("Registrant") operating an Existing CAFO shall file a Registration Notice with the Administrator. An Existing CAFO that fails to file a Registration Notice within six (6) months of the effective date of this Ordinance shall pay a fee as set by the Board, which fee shall be submitted with the Registration Notice. CAFOs that have previously received a conditional use permit, or have registered as an Existing Facility need not register or re-register under this Section IIIA. The Registration Notice shall be submitted on a form provided by the Growth and Development Department and shall include but not be limited to the following applicable information, if available:

1. Name, address, and telephone number of registrant.
2. Legal description of the CAFO Facility.

3. Type of animals.
4. One-Time Animal Capacity.
5. Zoning district.
6. A Site Plan or a current FSA aerial photograph showing and labeling the following:
 - a. Size including CAFO Facility Area dimensions and location of existing improvements within the CAFO so that the CAFO Facility Area may be determined;
 - b. Property lines, set backs and acreage;
 - c. Feed storage areas;
 - d. Confinement areas;
 - e. Animal Waste Management System;
 - f. Wells; and
 - g. Dead animal storage.
 - h. A written description of any Animal Waste Management System.
7. A copy of the Nutrient Management Plan and a letter from the Idaho Department of Agriculture, or any other regulatory agency that states the facility has an approved Nutrient Management Plan.
8. A valid stock water right permit or license from the State of Idaho.
9. Other relevant information as required by the Commission.
10. Proof that the facility has been operating as a CAFO as defined in this Ordinance.

- B. The Registrant shall submit a copy of the above information to the Administrator at least thirty (30) days prior to a regularly scheduled Commission meeting. The Commission shall review each Registration Notice and shall make a determination regarding the completeness and accuracy of the Registration Notice within ninety (90) days of the meeting.
- C. The Commission shall provide the Applicant written notice within thirty (30) days of its decision as to whether the Application is complete and accurate. If the Registration notice is accepted, it shall be filed in the official records of the Elmore County Growth and Development Department. If the Commission determines the Registration Notice is incomplete or the information is inaccurate, it shall provide the Registrant written notification specifying the incomplete portions or inaccuracies.
- D. The Registrant shall provide the completed items or the correct information to the Administrator if the registration is to be accepted. The Commission shall review the new information, and if it shall deem the registration notice accepted the notice shall be filed in the official records of the Growth and Development office. The Commission shall provide the registrant with written notification of such action within thirty (30) days of the determination.
- E. Registration Notices which have been accepted and filed by the Commission shall allow the continued operation of an Existing CAFO as described in the

Registration notice and shall be transferable in the same manner as a CAFO Siting Permit for so long as the CAFO remains in operation without a material change.

IV. CAFO SITING PERMIT REQUIRED:

- A. The following require a CAFO Siting Permit prior to commencement:
 - 1. Expanding an Existing CAFO;
 - 2. Material changes to an Existing CAFO; or
 - 3. A New CAFO.

- B. The CAFO Siting Permit may be transferred with the approval of the Planning and Zoning Commission. The Administrator shall be given notice of the transfer of a CAFO Siting Permit setting forth the date of the transfer and the name, mailing address and telephone number of the party to whom the permit is being transferred. CAFO Siting Permits are appurtenant to the location for which they are granted, shall not be transferred to any other location, and are binding on transferees.

- C. An Existing CAFO that has registered with the Administrator or has obtained a CAFO Siting Permit may make changes without applying for another Siting Permit, if such changes do not meet this ordinance's definitions of material change or Expanding CAFO.

V. CONTENTS OF APPLICATION FOR CAFO SITING PERMIT:

- A. The Application shall contain all information reasonably required by the Commission including but not limited to:
 - 1. Information required by the CAFO Siting Advisory Team as set forth in Idaho Administrative Code § 02.04.18.300, a copy of which is available on request from the Growth & Development Department.
 - 2. A complete Site Plan that is legible and prepared by a licensed engineer, architect, NRCS agent, an ISDA employee, County Extension Service Educator or other qualified individual approved by the Administrator. Scale shall be as required for clarity. The map size shall be at least 18" x 24." The site plan shall include, but is not limited to, the following information:
 - a. Building locations.
 - b. Animal Waste Management System.
 - c. Dead animal storage.
 - d. Feed storage area.
 - e. Animal confinement areas.
 - f. Perimeter dimensions of the CAFO Facility Area and Distances to determine compliance with setback requirements.

- g. A map, or maps, including surface contours, soil depths and types, size and location of natural drainage points of the CAFO site obtained from the Office of the USDA Soil Conservation Service (SCS) or other source. Proposed changes to the existing contours shall be shown on a separate contour map prepared by an engineer or surveyor licensed in the State of Idaho.
- h. A map showing all private and community domestic wells, irrigation wells, injection wells and monitoring wells that are registered by IDWR; all irrigation conveyance and drainage structures; all streams, ponds and reservoirs; and all wetlands designated by an appropriate state or federal agency, which are located within one mile of the CAFO Facility Area.

The Site Plan shall clearly delineate a line enclosing all CAFO improvements. Proposed Expanding or New Facility information shall be included in the maps. The above information may be provided on more than one map, where distances and scale make using one map impractical.

- 3. Best management practices shall be implemented per I.C. § 25-3803, or its most current supplement, and a copy provided to the Commission and the Board.
- 4. An Animal Waste Management System design plan for Animal Waste that meets all State and Federal requirements and is approved by the responsible regulatory agencies. If a waste management system is not required, the Applicant shall provide satisfactory proof to the commission of such.
- 5. A Nutrient Management Plan, if such a plan is required by any regulatory agencies with authority over the proposed CAFO.
- 6. An Odor Management Plan, if such a plan is required by any regulatory agencies with authority over the proposed CAFO.
- 7. A Pest Abatement Plan if such plan is required by any regulatory agencies with authority over the proposed CAFO.
- 8. If the regulatory agencies requiring Nutrient Management and/or an Odor Management/Pest Abatement Plan accepts preliminary plans at the design stage, the Applicant shall submit a preliminary plan. However, a final plan approved by the responsible regulatory agencies is required prior to issuance of an Operation Permit.

Furthermore, the final plan may require a change to the Siting Permit, if it violates the terms and conditions of that permit or causes a material change to the project.

9. Written comment on and approval of, the filed Site Plan from the applicable highway district showing that the site is served by roads of capacity sufficient to carry the traffic generated by the CAFO, in order to avoid any undue burden on existing transportation and service facilities in the area.
 10. If the Applicant does not have adequate area for land application of animal wastes, the Applicant shall provide proof of legal contracts with other parties for disposition of the animal waste. All land upon which animal waste will be applied shall be part of the Nutrient Management Plan.
 11. Composting under the supervision of the Idaho State Department of Agriculture may be an acceptable alternative to land application or any other responsible State agencies.
 12. For all CAFO facilities managing liquid waste a closure plan shall be submitted to the County.
- B. The Applicant shall submit one additional copy of the above information for the CAFO Site Advisory Team, or any other similar entity approved and required by the Board. The Board and Commission shall take any steps necessary to process the information. The CAFO Advisory Team report will be part of the application if such a report is requested, and may be used in determining the suitability of the proposed site.
- C. A fee shall be submitted with the application in an amount set by the Board by Resolution.
- D. The applicant shall be billed for any postage and publication costs incurred by the County. Such payment shall be made before the public hearing date.

VI. PROCESS OF NOTICE AND APPLICATION HEARING FOR CAFO PERMIT APPROVAL:

The Commission shall review the CAFO Permit Application for completeness. Upon determining that the same is complete and accurate, the Commission shall conduct a minimum of one (1) public hearing. Hearings shall be advertised and conducted according to the requirements of conditional use permits contained in the Elmore County Zoning and Development Ordinance and I.C. § 67-6509; provided however, notice shall also be provided by certified mail to property owners within a minimum of two (2) miles of the CAFO Facility Area. The Administrator shall also physically post notices at the

external boundaries of the CAFO Facility Area at least thirty (30) days prior to the hearing.

VII. CRITERIA FOR APPROVAL AND DEVELOPMENT STANDARDS FOR NEW FACILITIES:

Prior to approval of a CAFO Siting Permit for a New CAFO, and after public hearing, the Commission shall find that the New CAFO as proposed meets the following requirements:

A. General requirements:

1. The New CAFO shall be within an area zoned Agriculture.
2. The New CAFO Facility Area shall be located a minimum of two (2) miles outside the defined Area of Impact adopted pursuant to I.C. § 67-6526 of any incorporated municipality within Elmore County and two (2) miles from the legally described perimeter of Mountain Home Air Force Base.
3. New Swine and Poultry Facility Areas shall be located a minimum of three (3) miles outside any Area of City Impact and the legally described perimeter of Mountain Home Air Force Base.
4. A New CAFO Facility Area shall not be located within any aquifer recharge Community Development Overlay as adopted and defined by the Elmore County Zoning and Development Ordinance.
5. The New CAFO shall comply with and not be in violation of any federal, state or local laws or ordinances.
6. An Applicant shall not begin construction of a New CAFO prior to approval of the CAFO Siting Permit.
7. A New CAFO shall provide a pest abatement plan if it is required by any governing agencies.
8. A New CAFO shall comply with IDAPA rules governing dead animal movement and disposal.
9. A New CAFO, Swine or Poultry Facility Area shall provide a hold harmless agreement pertaining to noise within two (2) miles of the legally described perimeter of the Orchard Training Range.
10. Reports of monitoring wells must be reported annually to the Board of County Commissioners.

B. Animal Waste:

1. The New CAFO shall comply with the terms of its Nutrient Management Plan for Land Application.
2. The New CAFO shall be in compliance with all environmental regulations, requirements and permits imposed by state or federal law or any regulatory agencies.
3. Liquid animal waste shall not be applied on snow, ice or frozen soil.

C. Site Setbacks:

1. The location of Animal Waste Management Systems, corrals, wells, and septic systems shall conform to all applicable rules, regulations and specifications as required by any regulatory agencies.
2. Silage, potatoes or any feed product resulting from the ensilage process shall be located a minimum of seven hundred feet (700') from any existing residence not belonging to the owner or operator of the CAFO.
3. All agricultural buildings, feed storage areas, feed bunks or feed racks shall be setback a minimum of one hundred feet (100') from property lines and public rights of way.
4. Lights shall be placed and shielded to direct the light source down and inside the property lines of the New CAFO. All direct glare from the CAFO lights shall be contained within the CAFO facility area.
5. No New CAFO Facility Area shall be approved and/or located within a minimum of one and one-half (1 ½) miles of a parcel of property in a residential zone or a platted, approved or developed subdivision or an unincorporated townsite that has been platted for five (5) years or more as of the effective date of this ordinance. If however, a subdivision or unincorporated townsite has been platted for five (5) years or more and no public improvements have been built, the minimum 1½-mile setback shall not be applied to that subdivision or unincorporated townsite. Public improvements are those required by Chapter II, Article V-2, Section B.5-2 (Required Public Improvements) of the Elmore County Zoning and Development Ordinance.
6. The Animal Waste Management System shall not be located or operated closer than a minimum of one thousand three hundred twenty feet (1,320') from an existing residence belonging to someone other than the Applicant, or be located and/or operated closer than a minimum of three hundred feet (300') from property lines. However, the Animal Waste Management System for New Swine or Poultry Facilities shall not be located closer than a minimum of two miles of an occupied residence not part of the New Facility or owned, occupied or leased by the owner of the New Facility. Such setbacks may be reduced if the owner and occupant of the residence consent in writing.
7. No Animal Waste Management System shall be located and/or operated closer than a minimum of five hundred feet (500') from a well.
8. No Animal Waste Management System shall be located closer than a minimum of three hundred feet (300') from a public right of way.
9. No New CAFO Facility Area shall be approved and/or located within a minimum of one and one half (1 1/2) miles of the Snake and/or Boise Rivers or within a floodplain as set out on the most recent Federal Emergency Management Agency Flood Insurance Rate Map for Elmore County.
10. Aquaculture CAFOS are exempt from the setbacks contained herein except for the storage of solid waste on the land.
11. The setbacks contained herein shall not apply to Land Application, except

that Animal Waste from a swine or poultry CAFO facility area shall not be land applied within a minimum of one (1) mile of a residence not part of the New CAFO or owned, occupied or leased by the owner of the New CAFO. Such setback may be reduced if the owner and occupant of the residence consent in writing.

- D. Exemption to Site Setbacks: Certain land parcels may not be conducive to setback requirements due to unique locations and demographics. Where appropriate, the Commission may grant Applicants a variance to setback requirements pursuant to Article IX below. If this setback includes Animal Waste Management Systems, the System shall meet all state and federal regulations and be approved by the regulatory agencies with authority.

VIII. CRITERIA FOR APPROVAL OF EXPANDING CAFOs:

Prior to approval of a CAFO Siting Permit for an Expanding CAFO, the Commission shall find that the Expanding CAFO meets the following requirements:

A. General requirements:

1. The Expanding CAFO shall be within an area zoned Agriculture.
2. The Expanding CAFO Facility Area shall be located a minimum of two (2) miles outside the defined Area of City Impact adopted pursuant to I.C. §67-6526 of any incorporated municipality within Elmore County and two (2) miles from the legally described perimeter of Mountain Home Air Force Base.
3. Swine and Poultry Expanding CAFO Facility Areas shall be located a minimum of three (3) miles outside any Area of City Impact and the legally described perimeter of Mountain Home Air Force Base.
4. The Expanding CAFO shall not be located within any aquifer recharge Community Development Overlay as adopted and defined by the Elmore County Zoning and Development Ordinance.
5. The Expanding CAFO shall comply with and not be in violation of any federal, state or local law, ordinance, or regulatory requirement.
6. An Applicant shall not begin construction of an Expanding CAFO prior to approval of the CAFO Siting Permit.
7. An Expanding CAFO shall provide a copy of its pest abatement plan if required by any governing agencies.
8. An Expanding CAFO shall comply with IDAPA rules governing dead animal movement and disposal.
9. An Expanding CAFO shall come into compliance with all the requirements of a New CAFO as a condition of the expansion, except when those requirements are specifically not required by this Ordinance.
10. An Expanding CAFO, Swine or Poultry Facility Area shall provide a hold harmless agreement pertaining to noise within two (2) miles of the legally described perimeter of the Orchard Training Range.
11. Reports of monitoring wells must be reported annually to the Board of

Commissioners.

B. Animal Waste:

1. The Expanding CAFO shall comply with the terms of its Nutrient Management Plan for Land Application.
2. The Expanding CAFO shall be in compliance with all environmental regulations, requirements, and permits imposed by state or federal law or any regulatory agencies.
3. Liquid animal waste shall not be applied on snow, ice or frozen soil.

C. Site Setbacks:

1. The location of Animal Waste Management Systems, corrals, wells, and septic systems shall conform to all applicable rules, regulations and specifications as required by any governing agencies.
2. Silage, potatoes or any feed product resulting from the ensilage process which is stored in the open air shall be located a minimum of at least seven hundred feet (700') from any existing residence not belonging to the owner or operator of the feed.
3. All agricultural buildings, feed storage areas, feed bunks or feed racks shall have a minimum of one hundred foot (100') setback from property lines and public rights of way.
4. Lights shall be placed and shielded to direct the light source down and inside the property lines of the Expanding CAFO.
5. No Expanding CAFO Facility Area shall be approved and/or located within a minimum of one and one-half (1½) miles of a parcel of property in a residential zone or a platted, approved or developed subdivision or an unincorporated townsite that has been platted for five (5) years or more as of the effective date of this ordinance. If however, a subdivision or unincorporated townsite has been platted for five (5) years or more and no public improvements have been built, the minimum of 1½-mile setback shall not be applied to that subdivision or unincorporated townsite. Public improvements are those required by Chapter II, Article V-2, Section B.5-2 (Required Public Improvements) of the Elmore County Zoning and Development Ordinance.
6. The Animal Waste Management System shall not be located or operated closer than a minimum of one thousand three hundred twenty feet (1,320') from an existing residence belonging to someone other than the Applicant, or be located and/or operated closer than a minimum of three hundred feet (300') from property lines. However, the Animal Waste Management System for swine Expanding Swine and Poultry CAFOs shall not be located closer than a minimum of two miles of an occupied residence not part of the Expanding Facility or owned, occupied or leased by the owner of the Expanding Facility; provided however, such setbacks may be reduced if the owner and occupant of the residence consents in writing to a lesser setback.
7. No Animal Waste Management System shall be located and/or operated closer than a minimum of five hundred feet (500') from a well.

8. No Animal Waste Management System shall be located closer than a minimum of three hundred feet (300') from a public right of way.
 9. No Expanding CAFO Facility Area shall be approved to expand to within a minimum of one and one-half (1 ½) miles of the Snake or Boise Rivers or to expand within a floodplain as set out on the most recent Federal Emergency Management Agency Flood Insurance Rate Map for Elmore County.
 10. The setbacks contained herein shall not apply to Land Application, except that Animal Waste from a swine or poultry CAFO Facility Area shall not be land applied within a minimum of one (1) mile of a residence not part of the Expanding CAFO or owned, occupied or leased by the owner of the Expanding CAFO. However, such setback may be reduced if the owner and occupant of the residence consent in writing.
- D. Exemption to Site Setbacks: Certain land parcels may not be conducive to setback requirements due to unique locations and circumstances. Where appropriate, the Commission may grant Applicants a variance in setback requirements pursuant to Article IX below. If this setback includes Animal Waste Management Systems, the System shall meet all state and federal regulations and be approved by the regulatory agency with authority.

IX. VARIANCE PROCESS:

- A. A variance may be sought relating to the setback requirements contained in this Ordinance by making a written request for a Variance at the time of filing the CAFO Siting Permit Application. The Applicant shall pay the required variance fee as set by the Board by resolution at the time of submitting his or her Application. The Commission may authorize a variance from the requirements contained in this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.
- B. Variance procedures shall be consistent with the provisions contained in the Elmore County Zoning and Development Ordinance for Variances.

X. GRANT OR DENIAL OF CAFO SITING PERMIT:

- A. If the Commission finds that the Applicant has shown that the proposed Expanding or New CAFO meets the criteria set forth herein, the Commission shall grant the CAFO Siting Permit requested. The CAFO Siting Permit shall be in the form of a Findings of Fact, Conclusions of Law and Order. If the Commission does not find that the Applicant has shown that the proposed Expanding or New CAFO meets the criteria set forth herein, the Commission shall deny the CAFO Siting Permit in writing setting forth reasons for the denial and the relevant law relied upon. In making such decision, the Commission may use information and consider recommendations received from the State of Idaho CAFO Advisory Team or any other similar group.

B. **SPECIAL CONDITIONS:** The Commission may require any special conditions allowed by I.C. § 67-6513 and make those conditions part of the Applicant's Siting Permit.

C. If construction is not commenced within one (1) year of issuance of the New or Expanding CAFO Siting Permit, the Applicant shall appear before the Commission to show proof of measurable progress toward a complete project and must be presented before the Commission. The Applicant shall reappear on a yearly basis thereafter to show cause why the New or Expanding CAFO has not been completed. If the CAFO is not a working CAFO within five years of the permit being issued, the Commission may revoke the permit. Once revoked, the Applicant may reapply. Re-application shall be governed by statutes, regulations, and ordinances in effect at the date of re-application.

D. **CAFO Siting Permit Fees:**

See the current fee schedule located at the Growth and Development Department.

XI. **CAFO OPERATION PERMIT REQUIRED:**

Prior to the use of a New CAFO, the new portion of an Expanding CAFO, or making material changes in any CAFO, a CAFO Operation Permit is required.

XII. **PROCESS FOR CAFO OPERATION PERMIT:**

A. After approval of the CAFO Siting Permit the permit holder shall notify the Administrator in writing when construction starts. Additionally, if construction of an Animal Waste Management System commences after the initial commencement of construction notice, the CAFO Siting Permit holder shall provide the Administrator with separate written notice of the date of the Animal Waste Management System construction commencement.

After approval of a CAFO Siting Permit, if the permit holder desires to make changes to the proposal authorized under the CAFO Siting Permit that may violate the terms or conditions of the permit as the application was presented to the Commission, the permit holder shall present a written change request to the Administrator. The change request shall be on a form provided by the Administrator and will contain information the Administrator deems appropriate. The request shall clearly specify the proposed change(s) and shall provide an explanation or justification for the proposed change(s). The Administrator shall place the request on the Commission's next available meeting agenda. If the Commission determines the proposed change is minimal and does not violate the terms and conditions of the CAFO Siting Permit, the Commission may approve the change request in writing and the permit holder may proceed with construction.

If the Administrator determines that the CAFO Siting Permit holder desires to make changes to the proposal that may violate the terms and conditions of the CAFO Siting Permit, or result in material change to the project, the Administrator shall place the written change request on the Commission's next available meeting agenda. In considering the change request, the Commission shall apply the same criteria to the proposed change as was applied in the decision to grant the original CAFO Siting Permit application and may conduct a hearing with the required notice. The Commission, after Notice and Hearing as required for an original application, and if necessary after submission of additional information, shall apply the same criteria as for granting an original application. If the change request is granted by the Commission, an amended CAFO Siting Permit shall be issued within ten (10) days of Commission approval.

- B. If the change request is denied by the Commission, the CAFO Siting Permit holder may appeal the denial to the Board. The appeals shall be governed and processed in accordance with the provisions of the Elmore County Zoning and Development Ordinance regarding Conditional Use Permits.
- C. Inspection of the construction progress of the CAFO facility authorized by the CAFO permit shall occur as governed by the Uniform Building Code. For those sections for which a building code inspection is not required, inspection shall be made at the Building Inspector's discretion. In addition, inspections may be done when requested by the CAFO Permit holder. The inspections shall be performed by the Building Inspector or the Idaho State Department of Agriculture and reported to the Commission. The County may by resolution adopted by the Board charge fees for inspections performed by the Building Inspector.
- D. The Commission or the Building Inspector shall have the authority to issue a "STOP WORK" order for that portion of the New or Expanding Facility in violation of the CAFO Siting Permit if an inspection reveals a material violation of the terms of the CAFO Siting Permit or construction that does not comply with the CAFO plans as presented. All work specified in the order shall STOP after posting the order. The CAFO Siting Permit holder owner may appeal such an order to the Commission.
- E. After completion of the construction of the New or Expanding CAFO authorized by the CAFO Siting Permit, completion of any approved change requests or non-compliance corrections, and receipt of proof by the Administrator that all required permits have been obtained and management plans approved where all responsible regulatory agencies requires approval of those plans, the Administrator shall issue a CAFO Operation Permit to the CAFO Siting Permit holder. The Applicant shall provide copies of all permits and management plans of the Facility to the Administrator. The CAFO Operation Permit shall certify that the New or Expanding CAFO has been inspected and conforms to the terms of the CAFO Siting Permit, with approved changes, and the CAFO Siting Permit holder is fully authorized to operate the New or Expanded CAFO.

- F. For all CAFO facilities managing liquid waste continued proof of liability insurance shall be submitted to the County annually.
- G. If the Administrator denies issuance of a CAFO Operation Permit, such denial shall be in writing setting forth the reasons for the denial and may be appealed to the Commission. Such an appeal shall be filed with the Office of the Administrator within twenty (20) days of the issuance of the denial.

XIII. APPEAL

- A. Any Applicant or affected person who has appeared before the Commission in person or in writing, and is aggrieved by a decision of the Commission shall have a right to appeal to the Board. Unless otherwise specified in this ordinance, appeals shall be governed and processed in accordance with the provisions of the Elmore County Zoning and Development Ordinance.

XIV. ENFORCEMENT:

- A. Violations of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor as defined by I.C. § 18-113, and is punishable by up to six (6) months in jail and up to a One Thousand dollar (\$1,000.00) fine, or both. Each day a violation continues shall be considered a separate offense.
- B. If the Administrator receives a signed written complaint of alleged non-compliance with the terms of a CAFO Siting or Operation Permit, or possible non-compliance by any government inspector, official or employee or any affected person, the Administrator shall immediately give notice of the complaint to the CAFO Siting Permit holder and shall determine the validity of the alleged non-compliance within ten (10) business days of giving such notice to the CAFO Siting Permit holder. The holder may submit rebuttal evidence to the Administrator concerning the alleged non-compliance within ten (10) business days of receiving a copy of the complaint.

Written notice of the Administrator's decision shall be given to the permit holder and the complaining party. The CAFO Siting Permit holder may correct any non-compliance or appeal the Administrator's decision to the Commission within fifteen (15) days of the date of the Administrator's determination. If no appeal is filed, the correction(s) shall be completed within thirty (30) days of the date of the Administrator's written determination unless a written extension has been granted by the Administrator. If a longer period of time is needed to make the correction(s), the Applicant can request a longer extension from the Commission.

If the Permit holder does not comply with the Administrator's decision, the Administrator shall forward the complaint to the Commission for further consideration. The Commission shall proceed with a public hearing as set forth below. If the Permit holder does not correct the violation as directed by the Administrator or the Commission, the Commission may revoke, suspend, or

modify the CAFO Siting and/or Operation Permit, and/or request the Board to direct the Elmore County Prosecutor to initiate a misdemeanor prosecution or an action in district court requesting injunctive relief.

If the complaint of non-compliance is based on an alleged violation of state or federal laws, rules or regulations, the Administrator or Commission shall forward the complaint to the applicable enforcement agency and defer to the determination of that agency. In such situations, time limits in this Ordinance shall be tolled until a response is received from the relevant agency.

The complaining party may also appeal the Administrator's decision to the Commission within fifteen (15) days of the date of the Administrator's determination.

If either the Permit holder or complaining party appeals the Administrator's decision to the Commission, the Commission shall hold a public hearing on the complaint. The public hearing shall be advertised and conducted according to the requirements of conditional use permits contained in the Elmore County Zoning and Development Ordinance and I.C. § 67-6509; provided however, notice shall also be provided by certified mail to property owners within a minimum of two (2) miles of the CAFO Facility Area. The Administrator shall also physically post notices at the external boundaries of the CAFO Facility Area at least thirty (30) days prior to the hearing. If the Commission does not decide to revoke the CAFO Siting Permit, no findings of fact and conclusions of law shall be made. If the Commission decides to revoke, suspend, or modify the CAFO Siting and/or Operation Permit, findings of fact and conclusions of law shall issue.

The Permit holder or complaining party may appeal the decision of the Commission to the Board provided the appeal is submitted within fifteen (15) days from the Commission's action. The Board shall follow the same procedures as outlined for the Commission. A findings of fact and conclusions of law shall be provided to the Commission, Permit holder and complaining party if the Board does not uphold the Commission's decision.

- C. The Commission may also at any time take immediate action to protect the public from immediate danger in accordance with the process set forth in Idaho's Administrative Procedure Act, specifically I.C. § 67-5247.

THIS ORDINANCE shall be in full force and effect from and after its passage, approval, and publication.

Passed by the Elmore County Board of Commissioners of the State of Idaho on the 5th day of June 2006.



ELMORE COUNTY COMMISSIONERS



MARY EGUSQUIZA, Chairperson



LARRY ROSE, Commissioner



CONNIE CRUSER, Commissioner

ATTEST:



GAIL L. BEST, Clerk

SUMMARY OF ORDINANCE 2006-2

On June 5, 2006, the Board of Commissioners of Elmore County enacted Ordinance No. 2006-2, an ordinance defining and establishing confined animal feeding operations (CAFOs); providing for title, interpretation and enactment; for definitions, for registering existing confined animal feeding operations, for zones in which CAFO's are allowed, for setbacks, for CAFO siting permits, fees and the contents of applications therefore; providing for notice and hearing on CAFO permits; setting forth the criteria for such permits; providing for utilization of the State of Idaho CAFO Siting Advisory Siting Team; providing for the grant or denial of CAFO Siting Permits, for amending those permits and granting variances to setbacks, for CAFO operation permits; providing for grant or denial of operation permits, for appeals, for enforcement; and for an effective date.

Ordinance 2006-2 shall become effective on the date of its publication. The following is a summary of that ordinance published in compliance with Idaho Code §31-715A. A copy of the full text of this ordinance is available in the Elmore County Recorder's Office, Elmore County Courthouse, 150 South 4th East, Mountain Home, Idaho. Office hours are 9:00 a.m. to 5:00 p.m. Monday through Friday.

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GAIL L. BEST
CLERK, BOARD OF COMMISSIONERS
ELMORE COUNTY, IDAHO

1 PUBLICATION - JUNE 14, 2006

GAIL L. BEST, Clerk
Elmore County Board of Commissioners

| | | | |
|---------------------------|---------------------|---------------------|---------------------|
| OTHER LOCAL REVENUE | 68,119 | 102,042 | 15,000 |
| STATE REVENUE | 16,754,705 | 16,522,825 | 15,472,000 |
| FEDERAL REVENUE | 3,178,893 | 3,904,917 | 3,018,500 |
| EARNINGS | 20,251 | 96,112 | 35,000 |
| TRANSFERS IN | 59,965 | 245,612 | 63,500 |
| TOTAL REVENUE | \$22,607,554 | \$24,818,840 | \$22,315,500 |
| EXPENDITURES | | | |
| SALARIES | 13,477,488 | 14,137,031 | 14,096,000 |
| BENEFITS | 3,980,741 | 4,525,306 | 4,584,500 |
| PURCHASED SERVICES | 2,515,076 | 2,594,212 | 2,758,500 |
| MATERIALS & SUPPLIES | 583,380 | 613,631 | 579,000 |
| CAPITAL OUTLAY | 21,633 | 35,029 | 43,000 |
| DEBT RETIREMENT | 9,871 | 24,355 | |
| INSURANCE & JUDGEMENTS | 134,162 | 175,784 | 162,500 |
| TRANSFERS | 73,543 | 56,300 | 70,000 |
| CONTINGENCY FUND | | | |
| UNAPPROPRIATED BALANCES | \$ 1,811,660 | \$ 2,657,192 | \$ 22,000 |
| TOTAL EXPENDITURES | \$22,607,554 | \$24,818,840 | \$22,315,500 |

A hearing of the proposed 2006-2007 budget for Mountain Home School District #193, will be held on June 14, 2006. A COPY OF THE SCHOOL DISTRICT BUDGET IS AVAILABLE FOR PUBLIC INSPECTION. One Publication: June 14, 2006.

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- GAIL L. BEST
CLERK,
BOARD OF COMMISSIONERS
ELMORE COUNTY, IDAHO
One Publication. June 14, 2006.

triangular sides of the shown on the Oregon Town Survey of Department of State of Idaho across the Government Township Boise Meridian Beginning U.S. Government Township Boise Meridian feet Southeast corner of West along U.S. Government Section 2 more or South 37 feet distance and parallel to a point East line more or

Case No. CV-2006-733

SUMMONS FOR PUBLICATION

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

PRESTON LORD, Plaintiff,

vs.

THE UNKNOWN HEIRS OR DEVISEES OF CYNTHIA MAY ALLER, GEORGE H. ALLER, DWIGHT FRANCIS ALLER AND CHARLES LYNN ALLER, AND THE UNKNOWN OWNERS OF AND CLAIMANTS TO ALL OR ANY PART OF THE FOLLOWING DESCRIBED REAL PROPERTY LOCATED IN THE COUNTY OF ELMORE, STATE OF IDAHO, TO-WIT: the Southwest Quarter of the Northeast Quarter of Section 25 and U.S. Government Lot 2 in Section 25, Township 1 South, Range 4 East, Boise Meridian, Elmore County, Idaho, SAVING AND EXCEPTING: A

NOTICE BY THE AB AGAINST THE COURT NOTICE WITHIN 20 DAYS TO THE DEVISEES OF GEORGE H. ALLER AND THE AND CLAIM PART OF DESCRIBED IN THE COUNTY OF IDAHO