

## **CHAPTER 13**

### **LIVESTOCK CONFINEMENT OPERATIONS**

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- 13-1. INTENT
  - A. Pursuant to Idaho Code Section 67-6529 and the subsequent case law interpreting it, nothing stated herein shall be construed to deprive any owner of property located in the A-1 Agricultural Zone of the full and complete use of such agricultural land for the production of agricultural product.
  - B. Jerome County hereby recognizes Livestock Confinement Operations (LCOs) as a conditional agricultural use that produces an agricultural product. Therefore, it is the intent of the County to allow properly permitted LCOs in A-1

## Agricultural Zones.

### 13-2. APPLICABILITY

- A. The provisions of this Chapter are minimum standards, and any more restrictive standards required by other applicable Local, State, and/or Federal laws, rules, codes and/or regulations and ordinances must be complied with. Any action by Jerome County pursuant to this Chapter does not insure that the Applicant is in compliance with any other provisions of applicable Local, State, and/or Federal laws, rules, and/or regulations.
- B. The regulations of this Chapter shall apply to all existing and proposed LCOs; but not to WLCOs which are regulated by Chapter 13A of the JCZO.
- C. The regulations of this Chapter shall not apply to any LCO functioning exclusively as a Livestock Transfer Point and Sales Yard

### 13-3. ADMINISTRATION

The Jerome County Planning and Zoning Administrator shall have the primary responsibility of administering all areas of this Chapter and related matters thereto that are not specifically designated to the Board, the Commission or others. The Administrator may designate/delegate these duties to other staff members of his office.

### 13-4. DEFINITIONS

#### ANIMAL CONFINEMENT AREAS

Individual areas used for the specific purpose of animal confinement, such as, but not by way of limitation, corrals, pens, stalls, stables, barns, parlors, etc.

#### ANIMAL CONFINEMENT SITE

A defined area whose parameter encompasses the total of all individual Animal Confinement Areas.

#### ANIMAL OPERATION

A commercial operation that involves the raising, housing and/or slaughtering of animals for the purpose of obtaining or processing certain animal product, such as but not by way of limitation, dairy, eggs, meat, fur, or other like products, and includes among other things, all coops, barns, pens, parlors, manure and liquid waste storage areas, and dead animal disposal areas used in conjunction with the operation and that are on the same site. Adjacent sites under common ownership are considered the same site or same facility for purposes of this definition.

#### ANIMAL UNIT

A unit of measure wherein one animal unit is equal to:

1. One thousand (1000) pounds of Cervidae (elk, deer), Bovidae (cattle, bison, goats, sheep), Equidae (horses), Camelidae (llama, alpacas, camels), or any

other kind of large animal livestock that is not specifically mentioned within this paragraph; or

2. Four hundred (400) pounds of Suidae (pigs, boars); or
3. Two hundred (200) pounds of poultry or other birds, mink, chinchilla, rabbit or any other small animal livestock not specifically mentioned within this paragraph.

Calculating an animal unit for a particular kind of livestock, the weight of such livestock is determined by tables of weights typical for that particular kind of animal. For purposes of this definition, large animal livestock is defined as any species of animal whose average weight at full growth is more than fifty (50) pounds; and small animal livestock as any species of animal whose average weight at full growth is fifty (50) pounds or less.

#### COMPOST

A stable, humus-like finished product resulting from the biological decomposition of organic materials that doesn't show any spike in temperature when remixed, smells earthy with no foul odors, and none of the initial materials can be identified.

#### COMPOSTING

The production of compost.

#### CONTAMINATED WATER RETENTION AREA

Any arrangement of walls, berms, depressions, or the like, designed to contain water that has been contaminated by Waste Matter and prevent it from leaving the LCO Site. These areas are not intended for the perpetual containment of liquids produced by the LCO's day to day operations, but rather only for the temporary collection of those contaminated waters produced by weather or other uncontrollable events that may occur from time to time.

#### DEAD ANIMAL

Any animal, or portions thereof, that has died from any cause.

#### HAZARDOUS MATERIALS

Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the state government to be hazardous as that term is defined by or pursuant to federal or state law.

#### LIVESTOCK CONFINEMENT OPERATION (LCO)

An animal operation functioning within a defined, contiguous area of land that is typically larger than the Animal Confinement Site, but in no event smaller, and where the animal unit to total land ratio is greater than two (2) units per one (1)

acre, or seventy-five (75) units per parcel, and where livestock are fed, maintained and confined forty-five (45) days or more within a twelve (12) month period.

#### LCO SITE

A legally described area of land, whether made from a single parcel or from multiple contiguous parcels, where an LCO is located or proposed to be located, and where the boundaries of such area encompasses the entirety of the LCO and will be used for establishing mandated setbacks.

#### WASTE LAGOON

An open pit or impoundment, and any open delivery component thereof (e.g. drains, ditches, culverts, etc.), that are designed for the containment of Liquid Waste Matter, treated or untreated, that is produced by the day to day operations of an LCO or other kind of animal facility.

#### WASTE MATTER

Any matter included in the definitions of "waste products," "dead animal," or "hazardous materials," as well as all other waste accumulation (animal, vegetable and/or other), or any combination thereof, that is putrescible or easily decomposable, such as, but not by way of limitation, manure, urine or other kinds of discarded matter.

#### WASTE PRODUCTS

Feed or bedding materials, such as straw, grass, hay, alfalfa, or other like products that have been abandoned or discarded, whether in piles, spread about the ground, in stacks, dilapidating or otherwise, that has no substantial market value because of it being in a used, spoiled, rotten, or molded condition; insect or rodent infested; exposed to the elements; or for other like reasons.

### 13-5. PERMITS

#### 13-5.01 LCO PERMIT

- A. An LCO Permit shall be required for the construction of every new LCO, or for any permitted LCO that:
1. Increases the amount of animal units beyond that which it is currently permitted.
  2. Makes a complete or partial change of the animal family from that which it is currently permitted, except that an LCO permitted for animals of the Bovidae, Camelidae, Cervidae, or Equidae families may interchange the animals of these four families under its current permit.
  3. Makes any modification to a regulated component of the LCO, which is not defined below as a minor modification.
- B. An LCO Permit shall be issued by the Board in accordance with the provisions of this Chapter and the JCZO as a whole.

- C. An LCO permit shall not be required for, and this Chapter shall not apply to:
  - 1. Any parcel that is more than one (1) acre, but less than two (2) acres, and whereupon there are two or less confined animals of any species.
  - 2. Any parcel where livestock are; broadly confined, allowed to freely roam and feed without constant maintenance on crops, vegetation or other kinds of forage growth that is sustained on the parcel during the normal growing season.

13-5.02 LCO MINOR MODIFICATION PERMIT

An LCO Minor Modification Permit shall be issued by the Administrator in accordance with the provisions of this Chapter, and shall be required for minor modifications to a permitted LCO. Minor modifications are changes to a permitted LCO that include expansion, reduction, relocation, or construction of wells, corrals, lagoons, or buildings associated with the LCO; or those changes to the property lines or boundaries of an LCO Site that do not affect the required setback distances thereof.

13-5.03 LCO OCCUPANCY PERMIT

An LCO Occupancy Permit issued by the Administrator, shall be required to initiate and maintain the daily operations of any newly constructed or newly expanded LCO.

13-5.04 PRE-ESTABLISHED LCO PERMIT

A Pre-Established LCO Permit issued by the Administrator in accordance with the provisions of this Chapter shall be required for the continued operation of any LCO that is not otherwise permitted and has been in continual operation since August 12, 1996. Any person seeking a Pre-Established LCO Permit shall have the burden of showing that the specified LCO falls within the parameters of this provision.

13-6. PERMITTING STANDARDS

LCOs shall be subject to and shall adhere to the standards of this Chapter at all times.

13-6.01 STANDARDS ON ZONING

- A. New and expanding LCOs shall be located in an A-1 Agricultural Zone.
- B. No Animal Confinement Site, Liquid Waste Containment Area, or Solid Waste Storage Area shall be located in any area depicted in a Zone "A" flood plain as depicted on a FEMA Flood Insurance Rated Map.

13-6.02 DENSITY STANDARD

For each LCO Site, the maximum allowed ratio of animal units to acre shall be 10:1 (ten (10) animal units for every one (1) acre). The acres calculated in this ratio shall be assigned to the particular LCO and cannot be used to satisfy the land to

density requirements of any other LCO.

### 13-6.03 STANDARDS ON SETBACKS

#### A. COMPLIANCE

All setback requirements stated herein shall at all times be complied with unless otherwise permitted. Setbacks currently in place on LCOs permitted prior to the effective date of the distances stated below, that do not adhere to the distances required by this Ordinance, shall be allowed to remain as a nonconforming use. Modification or expansion to that which the nonconforming setback applies, (the Animal Confinement Site or liquid or solid waste containment/storage areas), shall be allowed so long as there is no erosion of the existing, nonconforming setback(s).

#### B. ANIMAL CONFINEMENT SITE

The outer parameter of any Animal Confinement Site shall be setback from the following as indicated:

1. Fifty (50) feet from the water's edge of any canal, lateral or ditch that may return to the Snake River.
2. Three hundred (300) feet from the outer parameter of any water well.
3. Fifty (50) feet from public road right of ways.
4. Fifty (50) feet from all external boundary lines of the LCO Site.
5. One thousand (1000) feet from the boundary lines of A-2 Agriculture, Commercial General, City Impact Area, and Preservation Zones.

#### C. WASTE LAGOONS

The outer parameter of every waste lagoon shall be setback from the following as indicated:

1. Fifty (50) feet from the water's edge of any canal, lateral or ditch that may return to the Snake River.
2. Three hundred (300) feet from the outer parameter of any water well.
3. Three hundred (300) feet from all external boundary lines of the LCO Site.
4. Three hundred (300) feet from public road right of ways.

#### D. SOLID WASTE STORAGE AREAS

The outer parameters of any area designated as a location to store or treat solid waste matter or compost, shall be setback from the following as indicated:

1. Fifty (50) feet from the water's edge of any canal, lateral or ditch that may return to the Snake River.
2. Three hundred (300) feet from the outer parameter of any water well.
3. Three hundred (300) feet from any external boundary line of the LCO Site.
4. Fifty (50) feet from public road right of ways.

#### E. WELL SETBACK EXCEPTION

The three hundred (300) foot setback requirement for Animal Confinement Sites, Waste Lagoons, and Solid Waste Storage Areas to the outer parameter of any water well may be reduced to one hundred (100) feet if all of the

following conditions are met:

- a. The animal confinement area has been or will be constructed in accordance with the provisions of the JCZO and the standards mandated by the agency having regulatory authority over such confinement areas (if any);
- b. A solid berm, or comparable structure, two feet in height is installed around the wellhead to prevent runoff from contaminating the well;
- c. A backflow valve is installed on the well to prevent any contaminants from reaching the water source;
- d. An annular seal between the well casing and borehole is installed and approved pursuant to applicable Idaho Department of Water Resources requirements;
- e. Any other condition(s) required by the County if site or other factors warrant.

F. VARIANCE TO LCO SETBACKS

1. This section shall prevail over the applicable provisions of Chapter 6 of the JCZO when a variance to a setback prescribed under this Chapter is being requested.
2. A variance from a setback of this Chapter may be granted to an applicant upon a finding by the Board that:
  - a. All adjacent property owners to the LCO have received written notice of the requested variance; as well as notice of the date and time of the Board's hearing where the requested variance is to be considered; and
  - b. The requested variance would not be in conflict with the public interest; and
  - c. Either:
    - i. Compliance with the setback at issue causes the applicant an undue hardship because of characteristics of the site; and the purpose and intent behind the setback can be maintained in some other manner if the setback is in fact varied; or
    - ii. Compliance with the setback at issue would cause a detrimental effect to neighboring property or the public interest as a whole because such compliance actually thwarts the goals and objectives of this Chapter.
3. A requested variance of a setback that is being sought simultaneously with an LCO permit may be brought as part of the LCO application by including on such application a detailed explanation of the hardship or produced detrimental effect that justifies the variance being granted. No additional fee shall be collected for a variance request made part of an LCO application. The requested variance shall be decided simultaneously with an LCO application, following the same notice and hearing procedures designated in this Chapter for an LCO permit. However, the notice given

for the LCO application shall include notice of the proposed variance as well.

4. A request for a variance of a setback currently part of a previously permitted LCO shall be made by way of a general variance application that shall include a detailed explanation of the hardship or produced detrimental effect that justifies the variance being granted. When a variance of a setback is not being made in conjunction with an LCO permit, a fee equal to the amount required of variance applications made pursuant to Chapter 6 shall be imposed. The requested variance shall be decided following the same notice and hearing procedures designated in this Chapter for an LCO permit.

#### 13-6.04 STANDARDS ON WINDBREAKS AND BERMS

##### A. TERMS USED IN THIS SECTION.

In regard to this section the following terms shall have the following meanings:

**Identified Use:** Refers to an LCO (new or expanding), a residential subdivision, residential structure, school, or church.

**Seeking Use:** An Identified Use that is seeking approval of a permit.

**Existing Use:** An Identified Use that has an approved permit or is in existence and/or operation at the time a seeking use is applied for. The permit approval date of an existing use would necessarily precede that of a seeking use.

##### B. PURPOSE

1. It is recognized in Jerome County that the identified uses are typically in opposition when in close proximity to one another.
2. In order to reduce or eliminate the adverse impacts typically associated with LCOs (smell, sight, sound, airborne material, etc.), and that typically are the source of opposition between identified uses, all identified uses that are required to construct a windbreak or berm pursuant to this section, shall construct such in a manner that is consistent with the requirements set forth herein.
3. The windbreak or berm shall be constructed for the purpose of, as much as possible, diverting wind and odor; shielding from sight such things as, but not by way of limitation, LCO structures, animals, vehicles, bales of hay/straw, feed, waste products, and other like materials; and/or to shield the sounds of the daily activities of the LCO operation.

##### C. BURDEN

It shall be the applicant of the seeking use that shall have the burden and responsibility of constructing and maintaining the windbreak(s) or berm(s) prescribed herein.

D. EFFECT ON APPLICATION

1. When a windbreak or berm is required by the parameters of this section, the LCO application shall include a detailed plan that:
  - a. Shows consultation with the Natural Resources Conservation Services or other professional;
  - b. Illustrates or depicts the proposed location of the windbreak and/or berm;
  - c. Describes the materials to be used in constructing the windbreak and/or berm;
  - d. Shows the length, width, and height (both starting and maturity height when a living windbreak is being proposed);
  - e. Describes how the proposed windbreak and/or berm achieves the stated purpose of 13-6.04(B).
  - f. Illustrates or depicts the watering system defined in 13-6.04(G)(2). This requirement shall not apply if a non-living windbreak or berm is being contemplated.
2. The location of the windbreak and/or berm shall be depicted on the Applicant's Vicinity Map.
3. See subsection (H) of this section for possible exceptions to these requirements.

E. LOCATIONS AND DISTANCES.

1. A windbreak or berm shall be constructed in between an LCO and a subdivision, on the property of that which is the seeking use, when approval of the seeking use would put its boundary lines within a quarter mile (1320 feet) of the boundary lines of the existing use.
2. Windbreaks or berms shall be constructed in between the LCO and a residential use, on the property of that which is the seeking use, when approval of the seeking use would put the structure of the residential use within a quarter mile (1320 feet) of the LCO Site's boundary line.
3. The windbreak or berm described in this section shall run parallel to the property line that lies in between the two identified uses, and shall run the entire length of the subdivision or residential structure, church, or school, and shall continue to run, on both ends, fifty (50) feet past the last residential lot of a subdivision, or fifty (50) feet past the last residential structure, church, or school, or until reaching the opposing or perpendicular border of the seeking use, whichever is the shortest amount of distance.

F. MATERIALS AND MAINTENANCE

1. The windbreak or berm shall be constructed from landscaped earthen mounds, rock, trees, shrubs, bushes or other plants, or any other materials, manmade or otherwise, whose original purpose was for the

construction of structures such as that contemplated here, or a combination of some or all of the above.

2. All windbreaks and berms shall receive regular applicable maintenance, to include but not be limited to: pruning, raking and removal of leaves, felled trees, limbs or other branches; removal and replacement of dead trees, shrubs and bushes; removal of litter, graffiti, and other foreign items; painting, repairing or replacing broken, cracked, weathered or failed planks in fencing; and or replacing worn, defective or broken sprinkler hoses or heads.

#### G. LIVING WINDBREAKS

1. A windbreak constructed of living materials (trees, shrubs, bushes, etc.) should consist of several, parallel rows. The first row planted shall be known as the initial row, which shall be thick enough on its own, with or without year-round leaves, to accomplish the intended goals of this section.
2. Any windbreak constructed of living materials shall be constructed and maintained utilizing best management practices with an appropriate watering system so as to establish maximum growth efficiency and potential in reaching an effective level. Such watering system shall be contemplated, designed, and included in the site plan or plat.
3. Unless otherwise ordered by the Board, a windbreak constructed of living materials need not fulfill its intended purpose directly after planting, but shall accomplish such intended task upon reaching adolescence or maturity level, which shall occur between three (3) and seven (7) years from the date of approval of the seeking use that necessitated the windbreak.

#### H. WAIVER

1. An Applicant claiming impracticality or unfeasibility and seeking an exemption from compliance with this section shall submit a written statement with the application for the seeking use that shows by clear and convincing evidence why or how the windbreak(s) or berm(s) are impractical or infeasible, and what other steps will be taken to effectuate the purpose and goals of this section. A written statement as described herein that is presented with the application shall not nullify the requirements of 13-6.04 (D) of this section.
2. If the Applicant of the seeking use demonstrates at the hearing before the Board that a windbreak or berm is impractical or infeasible, the Board may order such requirement be exempted if circumstances exist, or other conditions are imposed, that will effectuate the same goals associated with the windbreaks and berms.

### 13-6.05 STANDARDS ON PLAN COMPLIANCE

- A. LCOs shall at all times abide by the terms and conditions set forth in both the

Nutrient Management Plan, if required, and the Waste System Plan (for solid and liquid waste), as have been respectively approved by an appropriate state agency, certified engineer, or Nutrient Management Planner, and of which have been specifically developed for that particular LCO at the time of permitting.

- B. LCOs shall at all times comply with the site plan as approved and adopted at the time of permitting.

#### 13-6.06 STANDARDS ON ODOR MANAGEMENT AND PEST CONTROL

LCOs shall abide by the terms and conditions set forth in a written odor management and pest control plan approved by an appropriate state agency and/or certified LCO planner, and both of which were specifically developed for that particular LCO at the time of permitting.

#### 13-6.07 LIGHTING STANDARD

Structures used in the illumination of new or expanding LCOs shall be shielded or use directional lighting so that the light from such structure projects downward and stays within the boundaries of the LCO Site.

#### 13-6.08 STANDARDS ON WASTE MANAGEMENT

- A. Liquid and Solid Waste Matter shall not be discharged from or otherwise allowed to leave the LCO Site unless such waste is being transferred in a controlled manner from the LCO Site to property not part of its operations, or to a third party who is taking possession of such waste.
- B. Run-off water that is contaminated with either Liquid or Solid Waste Matter shall be retained on the LCO Site in a Contaminated Water Retention Area.
- C. Any pivotal irrigation system that is identified in an approved LCO application as being used in the distribution or sprinkling of Liquid Waste Matter shall not occur within one hundred fifty (150) feet of the outer edge or parameter of any public street; or within one hundred fifty (150) feet of the outer edge or parameter of any residential structure not associated with the LCO.
- D. All Waste Lagoons shall: be located within the LCO's Animal Confinement Site; be professionally engineered, designed, and constructed to accommodate the intended volume of use; have a minimum capacity that includes provisions for a 25 year Storm event; be lined to prevent permeation and seepage; and if required, be approved by the appropriate State or Federal agency.
- E. Off-site storage of LCO solid Waste Matter and Compost is regulated by the standards set forth in Chapter 6 of the JCZO.

#### 13-7. PROCEDURE FOR ACQUIRING AN LCO PERMIT

- A. To obtain an LCO Permit, an Applicant must complete the application form available at the Administrator's Office. The application form demonstrates compliance with this Chapter.

- B. The Applicant shall file with the office of the Administrator the original application plus the “appropriate number” of copies. The “appropriate number” equals the number of current Commission members at the time the application is filed, plus two additional copies (e.g. 7 commission members + 2 additional copies = 9 copies + 1 original = 10 total). At any time during the proceedings, the Applicant shall supply up to three additional copies of the application if requested by the Administrator to do so (e.g. 10 total from above + up to 3 additional copies = a possibility of 11 to 13 final submissions). All duplicate applications shall include all worksheets, maps, documents, and other attachments found in the original.

#### 13-7.01 LCO PERMIT APPLICATION

The LCO Permit Application shall include the following items:

1. PERSONAL INFORMATION

The date of application, name, signature, complete address and telephone number(s) of the applicant, and if different, the owner of the property upon which the LCO is to be located.

2. LEGAL DESCRIPTION

The legal description of the real property and real property summary sheets of the property upon which the LCO Site will be constructed and operated, along with directions from the intersection of Main and Lincoln streets in Jerome, Idaho.

3. PRESENT USE

A full description of the present use of the property upon which the LCO Site will be constructed and operated, including the present zoning of such property.

4. LCO DESCRIPTION

A full, written description of the proposed LCO.

5. PARCEL MAP(S)

Parcel map(s) of all the property of the proposed LCO Site.

6. VICINITY MAP

A Vicinity Map on an aerial photograph showing the LCO Site and all properties within a one (1) mile radius from the boundaries of the proposed LCO Site. The Vicinity Map shall be drawn to a minimum scale of 1" = 400'. All of the following that exist within the parameters of the described one (1) mile radius shall be clearly identified on the Vicinity Map:

- a. The boundaries of the proposed LCO Site.
- b. All private and community domestic water wells, irrigation wells, monitoring wells, and injection wells as documented by IDWR.
- c. All irrigation canals and laterals, rivers, designated wetlands, streams, springs, and reservoirs.
- d. All adjoining residences and public thoroughfares.
- e. Traffic access to the LCO Site.
- f. Areas designated for Waste Matter storage/containment of both solid

- and liquid waste; and any lands that such waste might be spread and applied to.
- g. Windbreaks or Berms when required per section 13-6.04 of this Chapter.
- h. Total number of acres that comprise the LCO Site.
- i. Setback distance between abutting or adjacent public road(s), buildings, structures, and Animal Confinement Areas.
- j. Setback distance between potable water wells and proposed liquid or solid waste storage facilities.
- k. Setback distance between external boundary of proposed LCO Site and residences outside the site.
- l. Setback distance between the external boundary of proposed LCO Site and: liquid waste treatment lagoons and separators; liquid and solid waste storage areas; and composting facilities.
- m. Setback distance between the external boundaries of the proposed LCO Site and external boundaries of any neighboring A-2 Rural Residential, Commercial Corridor, Commercial General, City Impact Area, or Preservation Zone.

7. ANIMAL CONFINEMENT SITE PLAN

An Animal Confinement Site Plan of the proposed LCO, the minimum size of which shall be 18" x 24," and the minimum scale of which shall be 1" = 100'. The site plan shall identify the location of the following items that are within the Animal Confinement Site or otherwise associated with the LCO:

- a. The boundaries of the proposed Animal Confinement Site.
- b. All buildings and structures, as well as the dimensions of such structures and any applicable setback measurements.
- c. Areas designated for Waste Matter storage/containment of both solid and liquid waste; and any lands that such waste might be spread and applied to.
- d. Abutting or adjacent public roads.
- e. Traffic access to the LCO Site.
- f. Area lighting fixtures.
- g. All private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by the IDWR.
- h. All irrigation canals and laterals, rivers, designated wetlands, streams, springs, and reservoirs.
- i. Rock outcroppings.
- j. Sink Holes.
- k. All setback measurements as set forth in 13-6.03 of this Chapter.
- l. Individual animal confinement areas such as, but not by way of limitation, corrals, pens, stalls, stables, barns, parlors, etc.
- m. Silage areas.

8. FLOOD ZONE

FEMA Flood Zones or other appropriate flood data for the LCO Site and land application sites owned or leased by the Applicant. This information is obtainable from the Administrator's office.

9. WASTE SYSTEM PLAN

A waste system plan specifically designed for the LCO by a professional engineer or certified Nutrient Management Planner for the handling of all aspects of solid and/or liquid waste; and if required, shall also be approved by the appropriate state agency.

10. ODOR MANAGEMENT AND PEST CONTROL

A written odor management and pest control plan, along with a written explanation as to why such plan is the best suited for the proposed LCO.

11. WINDBREAK OR BERM PLAN

If Windbreaks or Berms are required per 13-6.04(E) a detailed plan, as described by 13-6.04 (D), shall be included in the application.

12. IRRIGATION SYSTEM PLAN

A complete Irrigation System Plan identifying all aspects of the proposed irrigation system, whether physically on the LCO Site or not, that is intended to be used in the distribution or sprinkling of any liquid waste produced by the LCO.

13. NATURAL DRAINAGE FLOWS

A statement of how any natural drainage flows will be diverted around, and kept from entering, the Animal Confinement Site(s), along with a sketch of where any flow-diverting system (berms, ditches, pipes, etc.) will be located within the LCO Site, and how such will operate so as to create the intended diversion. An engineered drawing is not required.

14. LANDS WITH APPLIED WASTE

A description of the lands that will undergo waste application, whether within the LCO Site or not, and that are owned or controlled by the LCO operator, with such description including the following information, if available, as it pertains to such lands:

- a. Annual precipitation as contained in the Idaho Waste Management Guidelines.
- b. Soil characteristics from NRCS, including:
  - i. Topographical map
  - ii. Soils map
  - iii. Soils profile
- c. Hydro-geological factors from IDWR, ISDA and USGS including:
  - i. Depth to first water-yielding zone and first encountered water
  - ii. Direction of ground-water movement and gradient
  - iii. Sources and estimates of recharge
  - iv. Seasonal variations in water level and recharge characteristics
  - v. Susceptibility to contamination

- vi. Ground water/surface water relationships
- d. Water quality data from IDEQ, ISDA, IDWR and USGS, including:
  - i. Microorganisms (bacteria or single-cell)
  - ii. Nutrients
  - iii. Pharmaceuticals and organic compounds
- 15. NUTRIENT MANAGEMENT PLAN
 

Documentation that a Nutrient Management Plan, if required, has been approved by the appropriate state agency.
- 16. PUBLIC AGENCY COMMENTS
 

Certified statement that site assessment comments have been requested from the appropriate: Highway District, Irrigation Delivery Department, Utility Company, and School Board; as well as from the South Central Health District, Department of Agriculture, Department of Water Resources, Department of Fish & Game, and/or other agencies designated by the Administrator. The applicant shall attach to the LCO application any agency responses that have been received prior to the application's filing, and shall continue to submit any responses to the Administrator that are received subsequent to the filing. The Board may place conditions on the LCO Permit as requested by these agencies.
- 17. WATER RIGHTS
 

Written comment from the Idaho Department of Water Resources, including a profile of all water rights necessary for the operation of the LCO or, if those rights have not yet been granted, proof that an application for transfer or other suitable application has been filed with the department of water resources which, if granted, would allow sufficient water rights to permit a lawful operation of the new LCO.
- 18. FEE
 

A nonrefundable fee, in an amount set by the county must be included with any application for an LCO.

13-7.02 LODGING AND FILING OF APPLICATION

- A. The Administrator shall review all applications lodged with his office for the purpose of assuring that the information and documentation required by the above section has been included in or with the application. The Administrator shall notify the Applicant of any missing information or documentation and shall notify the Applicant that no further action on the application will be taken until the missing information or documentation has been provided. Any application that has consistently remained inactive for the ninety (90) days immediately following the above notice shall be returned to the Applicant without refund of the application fee, unless otherwise authorized by the Board. A new fee shall be required for resubmitted applications.
- B. Upon the Administrator's satisfaction that an application contains all the necessary information and documentation, he shall notify the Applicant of

such determination and shall date and mark with the word "Filed," the original and each copy of the application. Although such determination shall create a presumption that the application is complete, the Commission and/or Board shall be free to examine the issue on their own accord. The Board shall be responsible for making the ultimate determination on the application's "completeness".

- C. Applications shall be considered and determined based upon the provisions of the JCZO in effect on the date the Application was filed.
- D. A copy of the filed Application shall be forwarded by the Administrator to the Idaho Department of Agriculture Siting Team upon a resolution of the Board to such effect.

### 13-7.03 SUBMISSION TO THE PLANNING AND ZONING COMMISSION

#### A. SETTING A HEARING; PROVIDING NOTICE; AND APPLICATION INSPECTION

- 1. Upon receipt of a written response by the state siting team, the Administrator shall set the matter for a public hearing before the Commission.
- 2. The Administrator shall give notice of the public hearing, which shall explain that the purpose of the hearing is to receive evidence and testimony from interested persons as to whether or not the application complies with the requirements of this chapter.
- 3. Notice shall be served in the manner and upon the persons described and identified by Idaho Code; but in any event shall be mailed by the Administrator to those persons owning property within one mile of the boundaries of the LCO Site. Notified property owners shall be responsible for causing the notice to be forwarded to all other joint property owners and all primary residents located on such property, *and the notice shall notify the property owner of this responsibility*. The Applicant shall be financially responsible for all costs of publication
- 4. The Application and any written comments or other documentation received pursuant to Chapter 23 of the JCZO, shall at all times prior to Commission's hearing be available for public inspection at the Office of the Administrator.

#### B. HEARING

Before recommending to the Board that the LCO application be either approved or denied, the Commission shall hold a public hearing on the matter and consider the relevant evidence presented therein.

#### C. RECOMMENDATION

- 1. After proper receipt of all evidence, the Commission shall deliberate on the matter using the criteria set forth under section 13-7.04(C). Upon doing so, the Commission shall accordingly recommend to the Board whether the applications should be approved or denied, and shall state the reasons behind the Commission's recommendation.

2. The Commission may also recommend any conditions that it believes should be imposed on the application in the event that it is approved by the Board.

#### 13-7.04 SUBMISSION TO THE BOARD

##### A. SETTING A HEARING; PROVIDING NOTICE; AND APPLICATION INSPECTION

1. Upon receipt of the Commission's recommendation, the Administrator shall set the matter for a hearing before the Board.
2. The Administrator shall give notice of the public hearing, which shall explain that the purpose of the hearing is to receive evidence and testimony from interested persons as to whether or not the application complies with the requirements of this chapter.
3. Notice shall be served in the manner and upon the persons described and identified by Idaho Code; but in any event shall be mailed by the Administrator to those persons owning property within one mile of the boundaries of the LCO Site. Notified property owners shall be responsible for causing the notice to be forwarded to all other joint property owners and all primary residents located on such property, and the notice shall notify the property owner of this responsibility. The Applicant shall be financially responsible for all costs of publication and notice.
4. The Application; the Commission's recommendation; and any written comments or other documentation received pursuant to Chapter 23 of the JCZO, shall at all times prior to the Board's hearing be available for public inspection at the Office of the Administrator.

##### B. HEARING

Before approving or denying an LCO application, the Board shall hold a public hearing on the matter and consider the relevant evidence presented therein.

##### C. CRITERIA FOR ISSUANCE OF AN LCO PERMIT

1. The Board shall approve an application and issue a permit if the application:
  - a. Complies with this Chapter and the JCZO as a whole.
  - b. Is complete.
  - c. Contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed LCO meets, or will meet, the standards specified in this Chapter and the JCZO as a whole.
2. The Board shall deny an application and permit if:
  - a. The application fails on its face to meet the standards for approval as set forth in 13-7.04(C).
  - b. The application is found by the Board, upon clear and convincing information in the record, to be in non-compliance with the applicable standards of this Chapter or those of the JCZO as a whole.
  - c. The Board makes a scientifically defensible finding of fact, that is based

on reliable and credible information that clearly and convincingly shows the proposed LCO would jeopardize public health or safety to an unusual and startling degree, regardless of whether the parameters of 13-7.04(C)(1) have been complied with in all other respects.

D. RECORD OF DECISION

1. The Board shall issue its decision in writing, which shall conform to the standards and criteria set forth in Idaho Code Section 67-6535, as amended.
2. If the application is approved by the Board, a copy of the Board's written decision shall be affixed to the original and one copy of the application; with such applications in turn being signed by the Board's chair, dated, and marked with the word, "Approved". The complete, signed copy shall be returned to the applicant to serve as the approved permit. The omission of one or more of the requirements of this paragraph shall not nullify the applicant's permit.

13-8. PROCEDURE FOR ACQUIRING AN LCO OCCUPANCY PERMIT

An LCO Occupancy Permit shall be issued and operation of the LCO may commence upon occurrence of the following:

1. The Administrator receives certification from the Applicant that the LCO has been constructed according to the parameters of the permit issued by the Board, and the Administrator agrees and signs off on such certification.
2. The Administrator receives:
  - a. Notice from the appropriate state agency that the LCO's waste system has been constructed according to state approved specifications.
  - b. A letter or other certification from the Idaho Department of Water Resources that shows the Applicant to have sufficient water rights to operate the facility as permitted.
  - c. Notice from the appropriate state agency that the LCO's Nutrient Management Plan has been approved.

13-9. PROCEDURE FOR ACQUIRING A PRE-ESTABLISHED LCO PERMIT

- A. Any Pre-Established LCO without a related permit shall complete and file the application form for such a permit, available at the Administrator's Office, no later than forty-five (45) days after service of written notification by the Administrator that a Pre-Established LCO Permit is required.
- B. A Pre-Established LCO Permit does not require approval from the Administrator or the Board, but rather shall be issued, without a fee, upon the following information being submitted to the Office of the Administrator:
  1. The date of application for the permit, name, signature, complete address and telephone number(s) of the Applicant, and if different, the owner of the property upon which the Pre-Established LCO is located.
  2. A legal description of the real property and real property summary sheets

of the property upon which the Pre-Established LCO is located, along with directions from the intersection of Main and Lincoln streets in Jerome, Idaho.

3. The zoning district in which the Pre-Established LCO is located; and the number of acres which make it up.
4. The type of animal; animal family and animal units on the site.
5. A full description of the Pre-Established LCO Site and a detailed topographical map of the LCO Site that shows the location of all structures, feed storage areas, animal confinement areas, waste storage areas, and setback measurements.

#### 13-10. PROCEDURE FOR ACQUIRING AN LCO MINOR MODIFICATION PERMIT

- A. To obtain an LCO Minor Modification Permit, an Applicant must complete the related application form available at the Administrator's Office. The application form demonstrates compliance with this section.
- B. The Applicant must file with the office of the Administrator one (1) original and (1) copy that includes all worksheets, maps, documents, and other attachments found in the original.

#### 13-10.01 LCO MINOR MODIFICATION PERMIT APPLICATION

The LCO Minor Modification Permit Application shall include the following items:

1. The date of application, name, signature, complete address and telephone number(s) of the Applicant, and if different, the owner of the property upon which the modified LCO is located.
2. Name and address of the modified LCO.
3. Real property summary sheet(s) pertaining to the permitted LCO.
4. A full description of the type of modification to the LCO that is being proposed.
5. A complete and detailed map of the Animal Confinement Site that conforms to the requirements of Section 13-7.01(7) by illustrating, both "before" and "after" stages of the proposed modification, such things as: location of all structures, feed storage areas, animal confinement areas, waste storage areas, rock outcroppings, sink holes, area lighting fixtures for the proposed facility, signage, scales, traffic access, and public thoroughfares; and shall indicate all "before" and "after" building heights and setback measurements.
6. If the minor modification involves a shift in the current boundary lines of the LCO Site that are outside the Animal Confinement Site, then the following shall also be provided:
  - a. A legal description of the newly proposed property lines of the LCO Site.
  - b. A parcel map showing the LCO Site's current property lines, and the proposed relocation of such lines.
  - c. The total amount of acreage that comprises the LCO Site after the proposed property line adjustment.

13-10.02 LCO MINOR MODIFICATION PERMIT APPLICATION PROCEDURE

- A. The Administrator shall approve or deny the application using the same criteria delineated in Section 13--7.04(C) of this Chapter, except any modification resulting from a mandate by new federal or state regulations shall be approved provided there is no compromise to existing setbacks.
- B. The Administrator may, in approving the application, impose conditions as outlined in Section 13-14. of this Chapter, except in no event does the Administrator have authority to deviate from the standards of this Chapter pursuant to Section 13-15.
- C. If the LCO Site Administrator approves the application, he shall then cause the Applicant to be given a complete, duplicate copy of the approved application, stamped, "Approved," dated and signed by himself, to serve as the approved Minor Modification Permit.
- D. If the Administrator denies the application, he shall issue a decision in writing, which shall conform to the standards and criteria set forth in Idaho Code Section 67-6535, as amended. A denied applicant shall have all remedies of appeal as provided in Chapter 23 of this Ordinance and the Idaho Code, and shall be notified of such in the Administrator's written decision.

13-11. DURATION AND EXPIRATION OF PERMIT

- A. An LCO Permit issued pursuant to this Chapter shall be deemed "active" and shall remain so upon the following conditions having been met:
  - 1. Permitted construction or expansion has begun within two (2) years of issuance of the permit.
  - 2. An Occupancy Permit has been obtained and animals have begun populating the new or expanded LCO within five (5) years of issuance of an LCO Permit.
- B. An LCO Minor Modification Permit issued pursuant to this Chapter shall be deemed "active" and shall remain so upon the condition that the permitted modification has physically begun within two (2) years of issuance of the permit.
- C. Any active permit issued pursuant to this Chapter shall remain active regardless of whether the LCO operator exercises the full authority granted by the permit.
- D. An LCO Permit or Pre-Established LCO Permit shall lapse upon the LCO having discontinued operations for a period in excess of ten (10) years.
- E. All time periods stated in this section shall be stayed during all times of any litigation that is ongoing and has as its primary issue the validity of the issuance of the permit in question.

13-12. TRANSFER OF PERMIT

- A. A permit and the privileges granted thereby shall run with the land and remain valid despite a change in ownership or control over the property upon which the LCO facility is located, so long as the new owner/operator abides by the terms of the permit.

- B. Upon change in ownership or control of the LCO, the new owner/operator of the facility shall file with Administrator's Office the following information:
  - 1. The name and address of the new owner/operator.
  - 2. A copy of the document transferring ownership or control of the LCO.
  - 3. The date of transfer.
- C. The Administrator shall record the transfer by placing the information submitted pursuant to the above paragraph in the file of the relevant LCO.

13-13. PERMIT TERMS

A permit and the privileges granted thereby shall be conditioned on the LCO operator's compliance with the standards of this Chapter and the JCZO as a whole as well as, commitments made in the application for the permit. A violation of the JCZO; the permit; or a failure to comply with the commitments made in the application, may result in suspension and/or termination of the permit as provided in the following section.

13-14. CONDITIONS AND SAFEGUARDS

In granting an LCO Permit, the Board may prescribe, require and/or attach appropriate conditions, bonds, or safeguards to the permit so as to:

- 1. Minimize adverse impacts, such as sight, smell and noise that the LCO will have on neighboring, residential or commercial development.
- 2. Control the sequence and timing of development of the LCO.
- 3. Control the duration of construction.
- 4. Assure that the LCO is maintained properly.
- 5. Designate the exact location and nature of equipment or other structures associated with the LCO.

13-15. DEVIATING FROM IMPLEMENTED STANDARDS

If deemed necessary, an imposed condition or safeguard implemented by the Board may be such that requires:

- 1. A more restrictive standard be implemented over that which is required by a state agency in the Nutrient Management Plan, Waste Distribution Plan or other agency documents.
- 2. A more restrictive standard be implemented over those required by this Chapter (*e.g.*, lowering the number of animal units per acre, increasing setback distances, etc.).

13-15.01 PROCEDURE FOR DEVIATION

A. Before the Board deviates from a prescribed standard pursuant to 13-15 (2), it shall first find clear and convincing evidence in the record that shows such deviation is necessary to satisfy the standards, purposes and goals set forth in the JCZO and that such cannot be satisfied by some other manner currently provided for in this Chapter.

- B. If the Board, following its hearing, contemplates a deviation pursuant to 13-15. (2), it shall, before deciding on such deviation, notify and allow the Applicant at least thirty (30) days to prepare a response or rebuttal. The Board shall then reopen its hearing on the matter pursuant to Chapter 23 of the JCZO, for the sole purpose of allowing the Applicant to submit evidence in response or rebuttal to the proposed deviation. The Board may ask questions of staff and any witness providing such rebuttal. After conclusion of such response or rebuttal, the reopened hearing shall be closed and the Board shall then deliberate on all remaining, undecided issues, and particularly on the issue concerning the need for the proposed deviation. Before implementing such deviation, the Board shall identify in its written decision the evidence that supports the 13-15 (2) findings, and shall explain why the evidence supporting the need for the deviation has more weight than that provided in the response or rebuttal evidence presented by the Applicant.
- C. The Applicant may waive or shorten any of the thirty (30) day time periods prescribed above and may also waive the process for reopening the hearing and submitting rebuttal evidence if the Applicant stipulates or has no contention to the proposed deviation, or for any other purpose the Applicant may have.

13-16. COMPLIANCE MONITORING

- A. The Administrator shall monitor the LCO's continued compliance with this Chapter and the JCZO as a whole, as well as with the terms and conditions of its permit.
- B. If the Administrator wishes to inspect a permitted facility for compliance, he shall serve notice to the person in control of the LCO requesting the right to physically view the permitted facility at a reasonable time and date.
- C. If the person in control of the LCO refuses the Administrator's request to view the permitted facility, and if the Administrator believes there is probable cause to believe a violation of this Ordinance exists, then the Administrator may request the assistance of the county prosecutor to obtain a search warrant from the district court to search the facility for evidence of the suspected violation.
- D. Upon a determination of non-compliance, the Administrator shall issue a written notice to the person in control of the LCO describing the circumstances of non-compliance and directing that such be remedied and complied with within five (5) days of issuance of the written notice.
- E. If the non-compliance as described in the written notice continues past the stated time period, the Administrator may take further action as provided in the JCZO, including but not limited to requesting the filing of a criminal complaint and summons, or bringing a summons and complaint for injunctive relief. The failure to cause notice to be given as described above shall in no way prevent the Administrator from taking any such other action allowed

pursuant to the JCZO.

- F. If the person in control of the LCO disputes the charges of non-compliance, such person may request a hearing in writing within five (5) days of receipt of the Administrator's written notice. The request for a hearing shall be submitted to the Administrator who, upon receipt of such, shall schedule a hearing before the Board for the purpose of determining the disputed claims. The Administrator shall notify the requestor of the hearing of the date and time for the scheduled hearing, but no further specialized notice shall be required for such hearing.
- G. At the hearing, the Board may hear from the Administrator and the person in control of the LCO, and shall examine all other evidence for and against the charge of non-compliance. Although general public comment shall not be allowed at the hearing, the Board may hear from any individual(s) that possess direct, specific evidence of a relevant issue(s).
- H. Expenses for compliance monitoring (including any expenses arising from third-party contractors hired by the County for investigative purposes) may be charged to the party found in non-compliance and collected as restitution in any civil or criminal action taken by the County.

#### 13-17. NUISANCE ABATEMENT

##### A. NUISANCE DEFINED

Waste products, dead animal, hazardous materials, or waste matter that is not being treated or disposed of in a permitted manner, or that is left unattended or abandoned as a result of the LCO facility not currently functioning in a permitted capacity.

##### B. ADMINISTRATIVE ACTION

It shall be the duty of the Administrator to investigate reports of a nuisance and administratively act upon any substantiated claims. The type of action taken shall be determined by the discretion of the Administrator; but may involve informal communications with the responsible party in attempting to have the issue resolved and the nuisance extinguished in as much of a colloquial manner as possible.

If the Administrator concludes that the nuisance will not be abated through his actions, he shall then report the matter to the Board for its consideration. The report to the Board shall include the original claim, the Administrator's findings on the claim, and the administrative steps taken thus far.

##### C. NOTICE OF NUISANCE

Upon concluding that administrative actions have been exhausted, or won't be successful, the Board may then cause written notice to be served upon the responsible party, requesting such party abate the nuisance within ten (10) days of such notice. The ten (10) day time period may be extended by the Board in writing to a date certain for the purposes of accommodating a continuing good faith effort to abate the nuisance or for other just causes.

D. NO RELIEF FROM NON-ISSUANCE OF NOTICE

The notice described above is for abatement purposes only; and the non-issuance of such notice shall in no way relieve such person from being held responsible for any violations of the permit; the JCZO; or any state or federal regulations.

E. BOARD ACTION AND COLLECTIONS OF COSTS

If the person, to whom the above notice is directed, neglects, fails or refuses to abate the nuisance within the specified time, the Board may immediately cause the nuisance to be abated. The expenses of abatement and abatement proceedings (including any expenses arising from contractors hired by the county to perform said abatement and any investigatory costs) shall be charged to the responsible party who has created, caused or maintained the nuisance. Said costs shall attach and be recorded as a lien upon the subject property if unpaid.

13-18. VIOLATIONS AND PENALTIES

13-18.01 VIOLATION

- A. It shall be unlawful for any person to violate, or fail, neglect or refuse to comply with, any provision of this Chapter; or to operate or maintain an LCO, or any regulated aspect thereof, outside the parameters of this Chapter, or outside the parameters or conditions of such LCO's permit or approved site plan; or for any person to allow an LCO, or any aspect thereof, to be so operated or maintained.
- B. It shall be unlawful for any person to create or maintain a nuisance as described in this Chapter; or to knowingly make any false material statement, or to make a known material omission, in any document required to be submitted under the provisions of this Chapter.
- C. Each twenty-four (24) hour period a violation under this section continues shall be considered a separate offense under this Chapter.

13-18.02 PENALTIES

- A. Any person who pleads guilty to or is found guilty of a violation of Section 13-18.01, Chapter 13 of the JCZO, shall be guilty of a misdemeanor and, for a first offense:
  - 1. Shall pay a fine of not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00);
  - 2. May have alterations made to, or additional conditions placed on, the permit from which the violation stems, as deemed necessary by the court.
- B. Any person who pleads guilty to or is found guilty of a violation of Section 13-18.01, Chapter 13 of the JCZO, who has previously been found guilty of, or has pled guilty to a violation of the provisions of Section 13-18.01, Chapter 13 of the JCZO with in the last ten (10) years, notwithstanding the form of the prior

judgment(s) or withheld judgment(s), shall be guilty of a misdemeanor, and:

1. Shall pay a fine of not less than seven hundred fifty dollars (\$750.00), nor more than one thousand dollars (\$1,000.00);
  2. May be imprisoned for an amount of time not to exceed six (6) months;
  3. May be both fined and imprisoned, for any such offense;
  4. May have alterations made to, or additional conditions placed on, the permit from which the violation stems, as deemed necessary by the court.
- C. Any person who pleads guilty to or is found guilty of a violation of Section 13-18.01, Chapter 13 of the JCZO, who has twice previously been found guilty of, or has pled guilty to, two violations of the provisions of Section 13-18.01, Chapter 13 of the JCZO with in the last ten (10) years, notwithstanding the form of the prior judgment(s) or withheld judgment(s), shall be guilty of a misdemeanor, and:
1. Shall pay a fine of not less than one thousand dollars (\$1000.00);
  2. May be imprisoned for an amount of time not to exceed six (6) months;
  3. May be both fined and imprisoned, for any such offense;
  4. Shall have the permit from which the violation stemmed revoked by the court, and shall be prohibited from reapplying for such a permit with Jerome County for the next five (5) years.