

AN ACT

Be it Enacted by the Legislature of the State of Idaho:

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

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

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

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

(3) ~~"Aviation hazard area" means any area of land or water upon which an aviation hazard might be established if not prevented as provided in this chapter.~~ "Airport Influence Area" means a locally defined area, as determined by the political subdivision and in consultation with the department's Division of Aeronautics and the local public airport officials, that establishes airport operational boundaries for land use planning purposes.

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

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines and any object of natural growth, including but not limited to trees.

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

~~(8-7)~~ "State" or "this state" means the state of Idaho.

~~(9-8)~~ "Department" means the Idaho transportation department.

~~(10-9)~~ "Director" means the director of the Idaho transportation department or his agent.

~~(11-10)~~ "Board" means the Idaho transportation board.

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

21-502. AVIATION HAZARDS CONTRARY TO PUBLIC INTEREST. It is hereby found that an aviation hazard endangers the lives and property of users of the airport and of occupants of land ~~in its vicinity~~ within an airport influence area, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to ~~destroy~~ limit

or impair the utility of the airport and the public investment therein. It is further found that aviation hazards-endanger the lives of air flight participants and persons in the vicinity of the airport, adversely affecting their health, or otherwise-limit the accomplishment of normal air flight and airport activities. The public policy of this state is declared to be that any aviation hazard may cause disastrous and needless loss of life and property, that safety in air flight operations and the safety of persons in the vicinity and the continued operation of a public airport is of paramount importance for the protection and well-being of the people, that the use of the air space is constantly increasing and is vital to the continued growth, development and enjoyment of the great natural resources and economy of this state and that the general welfare of the citizens of this state requires, under the police powers of the state, that maximum safety precautions to air commerce be enacted and maintained. Accordingly, it is hereby declared:

- (a) That the creation or establishment of an aviation hazard is a public nuisance and an injury to the community served by the airport in question;
- (b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of aviation hazards be prevented;
- (c) That this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

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

SECTION 3. That Section 21-503, Idaho Code, shall be, and the same is hereby repealed.

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

21-503. Aviation Hazard Mitigation and Enforcement.

- (a) Marking of Aviation Hazards to Air Flight Operations. Any structure when determined by the director of the department to be an aviation hazard or potential aviation hazard shall be plainly marked, illuminated, painted, lighted or designated in a manner to be approved by the director, so that the same will be clearly visible to airmen.
- (b) Determination of Aviation Hazards. In determining the structures which are or may be an aviation hazard, the director shall consider the terrain and uses to which the Structure and surrounding property may be adaptable, and the scope and type of air flight operations expected to be conducted in the area.
- (c) Procedure for Determination of Aviation Hazards. When the director determines that a Structure is an aviation hazard or potential aviation hazard within the meaning of this chapter, he shall notify the owner of the land, or operator or owner of the structure who shall have twenty (20) days after the receipt of such notice to show cause why such structure should not be determined to be an aviation hazard or potential aviation hazard.
- (d) Variances. The director may modify the determination and marking of aviation hazards when a literal application or enforcement of the regulations would result in practical difficulty and unnecessary hardship and the relief granted would not be contrary to the public interest or create undue hazards to air flight operations.
- (e) Judicial Review. Any person aggrieved by the decision of the director in making a determination within the meaning of this act may appeal such determination to the district court of the judicial district in which such structure is situated in the same manner in which appeals are taken from the board of county commissioners to the district court.
- (f) Rules and Regulations. The director of the Idaho Transportation Department shall adopt and may, as conditions require, amend such rules and regulations as he deems necessary to

- provide reasonable standards of marking, painting, lighting, illuminating, designating and maintaining any such aviation hazards to the end that the same will be made clearly visible to airmen in order that maximum safety may be provided for air flight operations.
- (g) Enforcement and Remedies. Each violation of any regulations, orders, or rulings promulgated or made pursuant to this section shall constitute a misdemeanor and shall be punishable by a fine of not less than \$100, or imprisonment for not more than six (6) months or by both such fine and imprisonment. Every subsequent period of 30 days during which such person neglects to comply with the provisions of this section, shall constitute a separate offense and be punishable as provided herein. In addition, the department on behalf of the state may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of any order or ruling made in connection with the administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto.
- (h) Acquisition of Air Rights. In any case in which: (1) it is desired to remove, lower, or otherwise eliminate a structure or use that is an aviation hazard; or (2) it appears advisable that the necessary approach protection be provided by acquisition of property, the Department may acquire, by purchase, grant, or condemnation in the manner provided by the law under which the state is authorized to acquire real property for public purposes, such air right, navigation easement, or other estate or interest in the property or structure or use in question as may be necessary to effectuate the purposes of this act.

SECTION 5. That Section 21-504, Idaho Code, shall be, and the same is hereby repealed.

SECTION 6. That Section 21-505, Idaho Code, shall be, and the same is hereby repealed.

SECTION 7. That Section 21-505A, Idaho Code, shall be, and the same is hereby repealed.

SECTION 8. That Section 21-505B, Idaho Code, shall be, and the same is hereby repealed.

SECTION 9. That Section 21-506, Idaho Code, shall be, and the same is hereby repealed.

SECTION 10. That Section 21-507, Idaho Code, shall be, and the same is hereby repealed.

SECTION 11. That Section 21-508, Idaho Code, shall be, and the same is hereby repealed.

SECTION 12. That Section 21-510, Idaho Code, shall be, and the same is hereby repealed.

SECTION 13. That Section 21-513, Idaho Code, shall be, and the same is hereby repealed.

SECTION 14. That Section 21-515, Idaho Code, shall be, and the same is hereby repealed.

SECTION 15. That Section 21-516, Idaho Code, shall be, and the same is hereby repealed.

SECTION 16. That Section 21-517, Idaho Code, shall be, and the same is hereby repealed.

SECTION 17. That Section 21-518, Idaho Code, shall be, and the same is hereby repealed.

SECTION 18. That Section 21-519, Idaho Code, shall be, and the same is hereby repealed.

SECTION 19. That Section 21-520, Idaho Code, shall be, and the same is hereby repealed.

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

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

- (a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.
- (b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.
- (c) To ensure that the economy of the state and localities is protected.
- (d) To ensure that the important environmental features of the state and localities are protected.
- (e) To encourage the protection of prime agricultural, forestry, and mining lands for production of food, fibre, and minerals.
- (f) To encourage urban and urban-type development within incorporated cities.
- (g) To avoid undue concentration of population and overcrowding of land.
- (h) To ensure that the development on land is commensurate with the physical characteristics of the land.
- (i) To protect life and property in areas subject to natural hazards and disasters.
- (j) To protect fish, wildlife, and recreation resources.
- (k) To avoid undue water and air pollution.
- (l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.
- (m) To protect public airports as essential community facilities that provide safe transportation alternatives and economic development opportunities.

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

67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

- (a) Property Rights -- An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.
- (b) Population -- A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.
- (c) School Facilities and Transportation -- An analysis of public school capacity and transportation considerations associated with future development.
- (d) Economic Development -- An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.
- (e) Land Use -- An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

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

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

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

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

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

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

(l) Housing -- An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient to maintain a competitive market for each of those housing types and to address the needs of the community.

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

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

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

(p) Public Airport Facilities--An analysis, prepared in consultation with Idaho Transportation Department Division of Aeronautics and local public airport officials identifying, but not limited to, facility locations, the scope and type of airport operations, existing and future planned airport development and infrastructure needs, the airport influence area and the economic impact to the community.

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

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

67-6509. RECOMMENDATION AND ADOPTION, AMENDMENT, AND REPEAL OF THE PLAN. (a) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts, local public airport officials and Idaho Transportation Department Division of Aeronautics, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(b) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following consideration by the governing board, if the governing board makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the governing board adopts, amends or repeals the plan.

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

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

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

67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. If a public airport or airport influence area, as defined in section 21-501(3) of the Idaho Code, is located within the boundaries of the jurisdiction, the zoning ordinance shall include an airport influence area zoning district and/or an airport zoning district. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each

class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

Ordinances establishing zoning districts shall be amended as follows:

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

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

(c) If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts and public airports, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to section 67-6511(b), Idaho Code.

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

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

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the

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

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

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

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

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

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

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

67-6513.SUBDIVISION ORDINANCE. Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school

districts and local public airports, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

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

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

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

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

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

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

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

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

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

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

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

(8) For the purposes of this section:

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

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

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

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

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

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