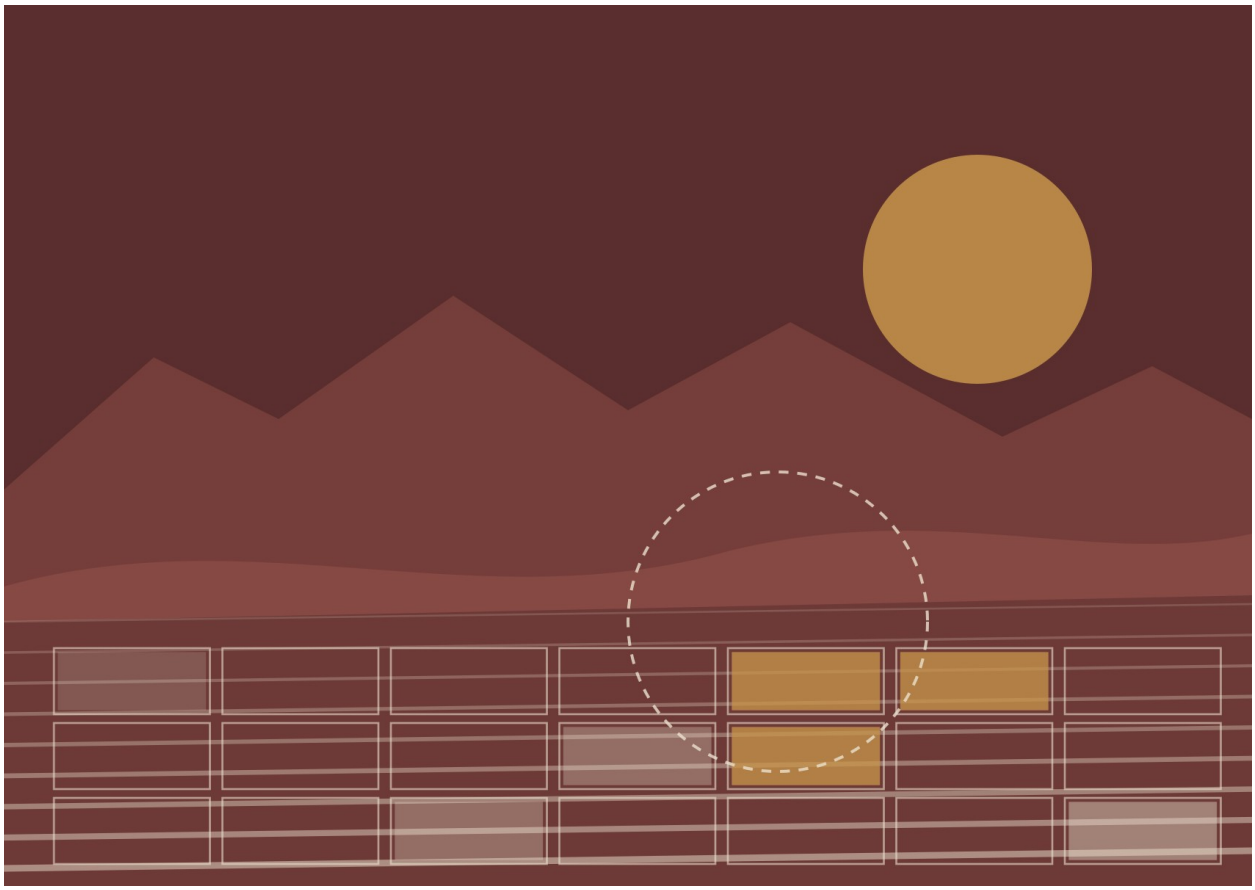


IDAHO DATA CENTER PUBLIC GUIDE · GUIDE 3 OF 9

LOCAL CONTROL AND ZONING

What Idaho Counties Can Enforce on Data Centers

Where a county's zoning power is strong, where state agencies take over, and how to write conditions an inspector can actually check.

Jeff A. Pierson

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Public edition · November 2026 · Version 6

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AT A GLANCE

A county decides where a data center can go and what it must live with

Idaho counties can make a data center a permitted, conditional or prohibited use, and they can attach measurable conditions to any approval. They cannot hand out water rights, write air permits or set electric rates; state agencies do that. The strongest county rules govern what a facility builds, uses, emits and leaves behind, and they are adopted before the first application arrives. This guide separates what Idaho law already allows from proposals still on the drawing board.

15 days
minimum published notice before a conditional use permit hearing

300 feet
radius for mailed notice to nearby property owners under state law

28 days
to seek court review of a final land-use decision, after local remedies

180 days
Bannock County's data center pause, July 30, 2026 to Jan. 26, 2027

Inside this guide

01 Who decides what
02 How Idaho land use law works
03 The county toolbox under Idaho law
04 What Idaho counties have done
05 Where counties hit legal limits
06 What you can do
07 Words to know and where to look
08 Sources

How to read the numbers

LAW means an Idaho statute, court ruling or adopted county ordinance. PROPOSAL means a model ordinance or policy idea, not law until a county adopts it. RISK means a provision likely to draw a legal challenge.

HOW THIS GUIDE WAS CHECKED

Statute numbers, notice periods and deadlines were checked against the Idaho Code. Court rulings, the 2026 water and power laws and the Bannock and Kootenai County actions were confirmed against official records and news coverage in November 2026. This guide is public education, not legal advice for a specific case.

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Version 6 · November 22, 2026

PART 01

Who decides what

Start every question by asking which government holds the pen. Mixing them up is how good conditions get struck down.

Decision	Who decides	What the county can still require
Where a data center may locate, how big, setbacks, noise, lighting, traffic, closure	**County** (or city, inside city limits) under the Local Land Use Planning Act	Zoning districts, conditional use permits, measurable conditions, financial assurance
Water rights: new wells, transfers, changes of use	**Idaho Department of Water Resources**	Proof of a lawful supply before building; a site water balance and meters
Cooling water for centers starting construction on or after July 1, 2026	**State law** (Idaho Code § 42-252, H.B. 895)	Consumptive cooling use only from a city, water district or water-and-sewer district system
Backup generator air permits	**Idaho Department of Environmental Quality**	A copy of the DEQ permit before work begins; local noise and testing-hour rules
Electric service contracts and rates	**Idaho Public Utilities Commission** (Idaho Code § 61-335)	Proof of utility service; a load schedule; notice when demand grows
Foreign ownership of land and sensitive data deals	**State law and federal agencies** (CFIUS, Justice Dept.)	Truthful ownership disclosure; referral of concerns to the right agency

Inside an area of city impact, county zoning generally applies, and the county must give the city written notice at least 15 days before covered hearings. Annexation can move a parcel into city jurisdiction.[1]

TWO 2026 STATE LAWS COUNTIES SHOULD KNOW

H.B. 895 (Idaho Code § 42-252) bars consumptive cooling water for data centers that begin construction on or after July 1, 2026, unless the water comes from a municipal, water district or water-and-sewer district system. It passed the House 58–10 and was signed April 2, 2026.[2] **H.B. 911** (§ 61-335) governs electric contracts of 50 MW or more. Neither law takes away a county's general zoning power.

Few states have a water rule like Idaho's. Only a handful have passed any data center water law, and most of those just require reports. About 10 states have a large-customer power law like § 61-335, by the counts of Clean Energy Group and MultiState, so most of the country still has none.[3][4]

[1] Idaho Const. art. XII, § 2; Idaho Code §§ 31-714, 67-6503, 67-6526(4)(e)–(f).

[2] Idaho H.B. 895 (2026), Sess. Laws ch. 291; Idaho Capital Sun, Mar. 26, 2026.

[3] Idaho Code §§ 67-6508, 67-6511; Love v. Board of County Commissioners of Bingham County, 108 Idaho 728 (1985).

[4] Idaho Code § 67-6512(a), (d), (e).

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PART 02

How Idaho land use law works

Idaho leaves most land use choices to its counties and cities. State law sets the process they have to follow.

What the state does, and what it leaves alone

Idaho has no statewide land use plan and no state agency that approves local zoning. The Local Land Use Planning Act, passed in 1975 and found in Idaho Code Title 67, Chapter 65, requires every city and county to plan and zone, and it spells out the procedure. The choices are local. Oregon and Washington run statewide growth laws that draw urban growth lines and protect farm and forest land. Idaho never adopted one.[5]

State agencies, boards and special districts have to follow local plans and zoning unless another law says otherwise (§ 67-6528). A few other state laws reach into local land use:

- **Farmland stays farmable.** A county ordinance can't deprive an owner of full use of agricultural land to grow crops or raise animals (§ 67-6529).
- **Right to Farm Act** (§ 22-4501 and following). Protects established farms from nuisance suits when new neighbors arrive.
- **Agricultural protection areas** (Title 67, Chapter 90). Owners can ask the county to designate them. A 2025 amendment, S.B. 1133, bars wind, solar and other non-farm uses inside them unless they add to farm production.[6]
- **Regulatory Takings Act** (§ 67-8001 and following). An owner can ask for a written analysis of whether a decision takes private property.

How local planning and zoning work

Every county runs on two documents. The comprehensive plan is the guide, with maps and policies for where growth, farms, industry and public services should go. State law lists 17 subjects it has to cover, from property rights and agriculture to public utilities and national interest electric transmission corridors (§ 67-6508). The zoning ordinance is the law that carries the plan out.

Every use in a district is either permitted, conditional or left off the list. Permitted uses go ahead if they meet the written standards. Conditional uses need a public hearing and a permit with conditions. Uses that aren't listed aren't allowed. A planning and zoning commission holds hearings and recommends, and the county commissioners or city council make the final call on most decisions.

Tool	What it does	Idaho Code
Comprehensive plan	Sets policy and the future land use map. Zoning has to agree with it.	§ 67-6508
Zoning ordinance and map	Divides the county into districts and lists the permitted and conditional uses in each.	§ 67-6511
Rezone	Moves a parcel into a different district. A rezone of one property is decided like a court case, on the record.	§ 67-6511
Development agreement	A recorded promise tied to a rezone. If the developer doesn't keep it, the county can reverse the rezone after a hearing.	§ 67-6511A
Conditional use permit	Allows a listed conditional use at one site, with conditions.	§ 67-6512

[5] Idaho Code § 67-6511A.

[6] Idaho Code §§ 67-6509, 67-6512, 67-6519(4).

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Tool	What it does	Idaho Code
Variance	Bends a dimensional rule like a setback when the land itself creates a hardship. It can't be used to allow a new use.	§ 67-6516
Moratorium	Pauses applications: up to 182 days in an emergency, up to a year while new rules are written.	§§ 67-6523, 67-6524
Area of city impact	Sets which rules apply on land at the edge of a city.	§ 67-6526

Conditional use permits: why counties use them

A conditional use permit is the tool for projects that fit some places and not others: gravel pits, feedlots, battery storage, power plants and data centers. The ordinance has to list the use as conditional in that district first. Then the county decides site by site whether it fits, and on what terms.[7]

The steps under § 67-6512:

- The owner applies, and county staff write a report measuring it against the ordinance's standards.
- Notice goes out. It's published at least 15 days before the hearing, posted on the land at least a week before, and mailed to owners within 300 feet plus any wider area the commission finds substantially affected. Very tall structures need wider mailed notice.
- At least one public hearing, where anyone affected can testify.
- The county may require studies of social, economic, fiscal and environmental effects first.
- A written decision that names the standards, the facts and the reasons (§ 67-6535).

State law lists the kinds of conditions a county can attach. They can limit harm to other development, control timing and how long the use lasts, require upkeep, fix the exact location and footprint, require public facilities on or off the site, set stricter standards than the ordinance usually requires, and make the project cover its load on schools, fire districts and other services. One permit sets no precedent for the next, and a permit can't be moved to a different parcel.[8]

The legal limits

Limit	What it means
The use has to be on the list	A county can't grant a conditional use permit for a use its ordinance doesn't list as conditional in that district. Changing the list takes an ordinance amendment with its own notice and hearing.
Standards written ahead of time	Every decision has to rest on standards already written into the plan or ordinance, so applicants and neighbors know the test before the hearing (§ 67-6535).
A reasoned written decision	The decision has to name the standards, the facts relied on and the reasons. The Idaho Supreme Court threw out a Boise permit in 2025 for falling short of this.
A fair hearing	A permit hearing is decided like a small court case. Commissioners have to keep an open mind, disclose contacts outside the hearing and decide on the record.[9]
Conditions tied to the impact	A condition that takes land or money has to be connected to the project's impact and roughly proportional to it.[10]
Consistency with the plan	A permit can't conflict with the comprehensive plan (§ 67-6512(a)).
Takings analysis on request	An owner can ask for a written analysis of whether the decision takes private property, and the decision has to say so (§ 67-8003).

[7] Veterans Park Neighborhood Ass'n v. City of Boise, No. 51027 (Idaho Jan. 22, 2025); Idaho Code § 67-6535.

[8] Idaho Code §§ 67-6521(1), 67-6535(2)(b).

[9] Idaho Code §§ 67-6523, 67-6524.

[10] Idaho Code § 67-8003; Idaho Attorney General, Regulatory Takings Act guidelines.

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Limit	What it means
Stay in the county's lane	Water rights, air permits and power rates belong to state agencies. A county condition on those subjects has to work through those agencies.
Short deadlines	Ask for reconsideration within 14 days of the written decision. A court petition follows within 28 days after local remedies run out (§§ 67-6535, 67-6521).
Opposition alone isn't a reason (MY READ)	Testimony counts when it speaks to a written standard. A decision that rests only on how many people showed up is weak in court.

WHY THIS MATTERS FOR DATA CENTERS

A county that wants a real say has to do the work before an application arrives. Put data centers in the right districts as a conditional use, write measurable standards, and plan for the power, water and road capacity in the comprehensive plan. Rules written after an application is filed usually don't apply to it.

PART 03

The county toolbox under Idaho law

Plan first, then ordinance

Zoning must agree with the county's comprehensive plan. The Idaho Supreme Court has said that means a factual look at the plan's goals and present conditions, not an exact match to every map color.[11] So the order of work matters: document land, water, power and service capacity in the plan, then write use categories, siting maps and performance standards into the ordinance.

Conditional use permits and development agreements

A conditional use permit can be granted only for a use the ordinance lists as conditional, where services can be provided and the plan is not contradicted. Conditions may limit adverse impacts, control timing and location, require maintenance and on-site or off-site facilities, and set stricter standards than usual. The county may require social, economic, fiscal and environmental studies.[12] For a rezoning, a recorded development agreement can bind future owners.[13]

Notice and written reasons

- Publish notice at least **15 days** before the hearing and post the property at least one week before.
- Mail notice to owners and purchasers of record within **300 feet**, plus any wider area the commission finds substantially affected.[14]
- Issue a **written decision** that names each standard, the contested facts, the evidence relied on and how it leads to the result.

That last step is not a formality. In January 2025 the Idaho Supreme Court threw out a Boise conditional use permit because the council's decision did not explain its reasoning well enough.[15] An affected neighbor or the

[11] Sheetz v. County of El Dorado, 601 U.S. 267 (2024).

[12] Kootenai County Resolution 2025-23 and Ordinance No. 620 (Oct. 2025); Spokane Public Radio, Oct. 2, 2025.

[13] Bannock County Ordinance No. 2026-02; county release, July 31, 2026.

[14] Quorum, "Quorum Tracked 486 Data Center Measures in 2025–2026. Only 42 Became Law," Oct. 26, 2026; NCSL, "As They Consider New Data Centers, States Target Water Use," 2026; Florida CS/CS/SB 484 (2026).

[15] Quorum, Oct. 26, 2026; Clean Energy Group, "States are stepping up to protect households from rising energy bills due to data centers," 2026; Edison Electric Institute tariff count as reported by Environment+Energy Leader, 2026; MultiState, June 4, 2026.

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applicant can seek court review within **28 days** after local remedies, and a challenge to the written findings requires a reconsideration request within 14 days.[16]

Pauses, takings and fairness to existing uses

An emergency ordinance needs written findings of imminent peril and lasts up to 182 days. An interim moratorium, adopted with ordinary notice and hearing while the plan is updated, can last up to a year.[17] Final decisions must tell the owner of the right to request a regulatory takings analysis.[18] Money or land demanded as a permit condition must be tied to the project′s impact and roughly proportional to it, even when the demand is written into an ordinance.[19] Lawful existing uses are protected against abrupt shutdown, so new rules should apply only to future applications and define what counts as an expansion.

PART 04

What Idaho counties have done

Where	Action	Status
Kootenai County	After a 2025 emergency moratorium, Ordinance 620 bars data centers in the commercial zone and allows them in light-industrial and industrial zones only with a conditional use permit, with proof of water rights from an IDWR-approved source, a water management plan and no siting over the Rathdrum Prairie Aquifer.[20]	LAW
Bannock County	Ordinance 2026-02: 180-day emergency moratorium on accepting or processing data center applications in unincorporated areas, July 30, 2026 to Jan. 26, 2027, while staff draft a standalone ordinance.[21]	LAW
City near Boise hosting Meta	Water and wastewater agreements were rewritten after the project's redesign, an example of documenting supply and capacity in a utility agreement separate from zoning.	LAW

Cities are acting too. On Nov. 10, 2026, the Boise City Council approved a six-month moratorium on new land-use applications for large data centers (Idaho Capital Sun, Nov. 10, 2026; Boise City Council minutes).

A model ordinance being discussed

A working model ordinance reviewed for this guide puts large data centers in heavy industrial zones with conditional approval and adds measurable standards. None of it is law until a county adopts it, and each number needs its own evidence in the record.

Model provision	What it would do	Type
Size tiers	Up to 5 MW in set commercial or industrial zones; over 5 to 20 MW in industrial zones; over 20 to 250 MW only in heavy industrial; a 250 MW campus cap. Conditional review above 5 MW.	PROPOSAL
Counting capacity	Total peak electric demand for the whole campus, IT and support loads together, across related phases and adjoining parcels under common control.	PROPOSAL
Distance	1,000 feet from homes and other protected uses; 200-foot planted buffer.	PROPOSAL
Noise	Day and night limits at receptors, with tests for tones and low-frequency hum.	PROPOSAL

[16] Cooper v. Board of County Commissioners of Ada County, 101 Idaho 407, 614 P.2d 947 (1980).

[17] Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013); Sheetz v. County of El Dorado, 601 U.S. 267 (2024).

[18] Idaho Code §§ 67-6501 to 67-6538; Boise State University Public Policy Center, The Role of the State in Idaho Land Use Planning, Mar. 2011.

[19] Idaho Code § 67-9001 and following, as amended by S.B. 1133 (2025).

[20] Idaho Code § 67-6512(a).

[21] Idaho Code § 67-6512(d), (e).

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Model provision	What it would do	Type
Cooling water	No routine evaporative cooling with drinking water or new groundwater; metered water balance for every operating mode.	PROPOSAL
Wider notice	Notice within 1 mile; mailed notice to homes within 25 miles for projects of 20 MW or more.	PROPOSAL
Closure money	Bond at 150% of an independent closure estimate, adjusted yearly and re-estimated every three years.	PROPOSAL

Watch the edges: a project of exactly 20 MW would trigger the wider notice while still falling in the industrial tier, so the two tests should be written separately.

PART 05

Where counties hit legal limits

Zoning regulates land and its physical effects. It gets into trouble when it tries to regulate who a data center's customers are.

Idea	Why it is risky	A sounder route
Ban foreign customers	Federal commerce and foreign-affairs limits; federal law already covers sensitive ownership and data deals.	Require truthful ownership disclosure; refer concerns to state or federal authorities. Idaho Code §§ 55-103 and 55-115 already limit certain foreign ownership of land.
Ban serving certain lawful content	First Amendment scrutiny; the county would have to judge speech.	Apply the same physical siting standards to every project.
Ban data brokers or surveillance clients	Weak link to land use when the building's impacts are the same.	Limit the county's own data sharing; Idaho already regulates government license-plate readers (§ 49-1432).
Ban crypto mining	Hard to define and monitor inside a multi-tenant building.	Define on-site mining as its own use if the record shows different load, noise or hours; require review for conversions.

A COUNTY CAN SAY NO TO SUBSIDIES

A county can adopt a fiscal policy refusing discretionary grants, fee waivers, below-market land deals, guarantees and optional property-tax breaks such as those under Idaho Code § 63-602NN. It cannot erase state exemptions the Legislature created. Those stayed in place after H.B. 897, which would have narrowed them, passed both chambers without a no vote in 2026 but died before the House accepted the Senate's amendments. A county can still publish a ledger showing what the project receives and what it costs the public.

TWO SIDES OF THE ARGUMENT, IN FAIRNESS

For protective zoning: a rural county can make its standards clear before the first proposal arrives. Industrial siting, measured limits, closure money and a defined operating envelope give applicants a way to show compliance and give residents terms they can check after opening.

Against overreach: a permit can fail in court when its conditions reach beyond county authority, impose unrelated costs or lack evidence. A workable ordinance sends each issue to the right agency and keeps only conditions the county can monitor and enforce.

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PART 06

What you can do

The time to set the rules is before the first application. After it is filed, the county generally reviews it under the rules then in effect.

> **THE STANDARD TO HOLD EVERY COUNTY TO**
>
> Real public notice, public hearings and public numbers. No confidentiality agreements on water or power use, a bond that covers full cleanup, prime farmland protected, no public land and no subsidies. Every condition must name a limit, a place, a method, an inspector and a remedy.

Test any proposed condition with five questions

- ☐ What is the exact limit, in units (decibels, gallons, megawatts, hours)?
- ☐ Where and how is it measured, and how often?
- ☐ Who checks it, and who pays for the checking?
- ☐ What happens on a violation: notice, cure period, penalty, suspension?
- ☐ Which state agency handles the parts the county cannot, and is that permit in the file?

Build a permit file a new inspector can use

- Zoning text and effective date, the application, agency letters, hearing exhibits and signed findings.
- A condition register: limit, units, location, method, frequency, responsible party and proof of compliance.
- An annual signed compliance report, public, with only legally protected material withheld.
- Transfer rules: a new owner must sign on to every operating and cleanup obligation, and the bond stays in place.

Show up

Comment in writing on comprehensive plan updates and zoning text amendments, not just on individual applications. Ask your commissioners to schedule data center rules now, and ask staff which office will enforce them.

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PART 07

Words to know

Comprehensive plan. The county's adopted policy framework that zoning must agree with.

Conditional use permit. A site-specific approval for a listed use, with findings and conditions.

Development agreement. A recorded contract tied to a rezoning that can bind later owners.

Exaction. A demand for land or money as a condition of approval.

Financial assurance. A bond or similar instrument that pays for an obligation if the owner does not.

LLUPA. Idaho's Local Land Use Planning Act, Idaho Code title 67, chapter 65.

Moratorium. A temporary pause on accepting or approving certain applications.

Operating envelope. The physical and operating limits approved for the site.

Overlay district. Mapped rules added on top of the base zoning.

Preemption. When state or federal law displaces a local rule.

Protected receptor. A home or other place where a setback or noise limit applies.

Quasi-judicial. A decision about one property made like a small court case, on evidence and written standards.

Regulatory taking. Government action that requires compensation under the Constitution.

Variance. Permission to bend a dimensional rule, like a setback, because of a hardship in the land itself.

Vested right. A legal right to proceed under rules in effect at a certain time.

Where to look it up

Idaho Code title 67, chapter 65 legislature.idaho.gov The Local Land Use Planning Act: plans, zoning, permits, notice and appeals.

Idaho Attorney General ag.idaho.gov Regulatory Takings Act guidelines and checklist for local governments.

Idaho Department of Water Resources idwr.idaho.gov Water rights search, transfers and permits.

Idaho DEQ air permits deq.idaho.gov Permits for backup generators and public comment notices.

Bannock County data center page bannockcounty.gov/datacenter Moratorium details and draft ordinance updates.

Your county planning office county website or courthouse Zoning maps, pending applications, hearing calendars and comprehensive plan updates.

Revision history

Revision	Date	What changed
Rev. 1	Nov. 2026	First public edition. Data checked against the source research papers and original records.
Rev. 2	Nov. 9, 2026	Reviewed against Idaho's 2026 laws in force July 1 (H.B. 895 and H.B. 911) and the failed H.B. 897. Series expanded to six guides. Revision history added.
Rev. 3	Nov. 9, 2026	Layout check. A trial page watermark was removed. Earlier versions moved to the Old Revisions folder.
Rev. 4	Nov. 10, 2026	Added a part on how Idaho land use law works: the state's role, local planning and zoning, how and why conditional use permits are used, and their legal limits. Added how Idaho's 2026 water and power laws compare with other states. Removed a company name from the cover and footer.
Rev. 5	Nov. 16, 2026	Fact-check against primary sources and a ChatGPT cross-check. Replaced 'about 15' states with about 10, sourced to Clean Energy Group and MultiState. Confirmed H.B. 895 votes and signing date. Series is now nine guides.
v6	Nov. 22, 2026	Cross-guide review against bill texts and county records. Water law start date now reads 'on or after July 1, 2026' to match the statute. Added Boise's Nov. 10, 2026 moratorium. Bannock and Kootenai County actions reconfirmed. Version and date stamp added to every page.

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PART 08

Sources

Short citations appear as footnotes on each page. Full references follow. The model ordinance discussed is a working draft, not adopted law.

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