

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 52067

ISAAC LUDWIG, an individual,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Boise, June 2026 Term
	)	
ROBERT HOWARD a.k.a. BOB HOWARD,	)	Opinion Filed: October 13, 2026
an individual; HOWARD GRAZING	)	
ASSOCIATION, LLC, an Idaho limited	)	Melanie Gagnepain, Clerk
liability company; IDAHO	)	
TRANSPORTATION DEPARTMENT, an	)	
executive department in the State of Idaho,	)	
	)	
Defendants-Respondents,	)	
	)	
and	)	
	)	
DOES I -V,	)	
	)	
Defendants.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Theodore Fleming, District Judge.

The judgment of the district court is affirmed.

Evan S. Mortimer, Litster Frost Injury Lawyers, Boise, for Appellant, Isaac Ludwig. Evan S. Mortimer argued.

Ryan B. Peck, Pocatello, for Respondent, Robert Howard a/k/a Bob Howard. Ryan B. Peck argued.

Raúl R. Labrador, Idaho Attorney General, Tyler D. Williams and Reid K. Peterson, Nelson Williams, Special Deputy Attorneys General, Boise, for Respondent, Idaho Transportation Department. Reid K. Peterson argued.

Robert R. Gates, Eagle, for Respondent, Howard Grazing Association, LLC. Robert R. Gates argued.

MEYER, Justice.

In 2019, Isaac Ludwig was traveling eastbound on I-84 at night when he came upon and struck a cow that was on the roadway in Elmore County, Idaho. Ludwig was injured from the

collision and his vehicle was totaled. Seeking redress, Ludwig filed suit, asserting negligence claims against Robert Howard, the owner of the cow; Howard Grazing Association, LLC (HGA), the named owner of the grazing permits near the scene of the wreck; and the Idaho Transportation Department (ITD). The district court granted summary judgment on Ludwig's claims against Howard and HGA (collectively, the Howard Defendants), concluding they were entitled to immunity under Idaho Code section 25-2118 because the collision occurred on open range. The district court also granted summary judgment on Ludwig's claims against ITD, concluding that ITD did not have a duty to prohibit livestock from entering the highway or warn motorists of livestock and that ITD was entitled to immunity under the Idaho Tort Claims Act.

On appeal, Ludwig challenges the district court's summary judgment rulings on multiple bases. He argues, among other things, that (1) federal law preempts Idaho's open range laws; (2) the collision did not occur on "open range" land under Idaho Code section 25-2118 because I-84 was enclosed by fencing along the right-of-way; and (3) ITD owed or assumed a duty of care to maintain I-84 and had a duty to warn Ludwig of the potential presence of cattle on I-84. For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Interstate 84 (I-84) is an interstate highway that runs from Portland, Oregon to its junction with Interstate 80 near Echo, Utah. While designated as a federal interstate, the portion of the interstate highway system that runs through Idaho is under the administration of ITD. I.C. § 40-502; 23 U.S.C. § 116(b). ITD maintains cattleguards across the on-ramps and off-ramps at the two exits closest to the collision site, as well as fencing on both sides of I-84 along the right-of-way boundary. According to ITD Administrative Policy 5046, this fencing is "used extensively to delineate the acquired control of access to a highway" and "may reduce the likelihood of encroachment onto the highway right-of-way." Idaho Transp. Dep't, Admin. Policy 5046, Right-of-Way Fencing at 2 (Jan. 2014), <https://itd.idaho.gov/wp-content/uploads/2025/08/A5046.pdf>.

In March 2019, ITD crews performed brush clearing on a livestock culvert (known as the "Hot Creek Tunnel") after receiving a request from Howard. Hot Creek Tunnel, a large culvert designed to allow livestock to pass under the interstate from one grazing allotment to another, is the nearest livestock culvert to the collision site. Howard has gated off Hot Creek Tunnel to restrict his cattle from crossing under the interstate between the grazing allotments for over 20 years. On March 30, 2019, one or both of the Howard Defendants herded livestock through Hot Creek

Tunnel. Thereafter, one of Howard's cows was struck by Ludwig while traveling through a construction zone on the interstate. As a result of the collision, Ludwig sustained significant injuries, and his vehicle was damaged beyond repair. The day after the collision, Howard inspected the right-of-way fencing along the northern side of I-84 and found a hole in the fence "about a hundred yards" from the entrance of the Hot Creek Tunnel.

In 2021, Ludwig filed suit against the Howard Defendants and ITD, asserting claims of negligence and recklessness. In his complaint, Ludwig alleged that (1) the Howard Defendants and ITD were negligent by failing to warn him that the cow was obstructing eastbound traffic on I-84, (2) the Howard Defendants breached their "duty to protect the safe transit of motorists" by allowing their cow to stray onto I-84, and (3) ITD breached its duty to maintain safe, design-compliant fences along federal interstates.

The Howard Defendants filed motions for summary judgment, arguing that they were entitled to immunity under Idaho Code section 25-2118 because the collision occurred on open range. Sections 25-2118 and 25-2119 grants the owner of any domestic animal immunity from a negligence action arising from highway collisions caused by such animals on "open range" or when the animals are "lawfully on any highway[.]" I.C. §§ 25-2118, 25-2119. Pertinent here, "[o]pen range" means all uninclosed lands outside of cities, villages and herd districts, upon which cattle by custom, license, lease, or permit, are grazed or permitted to roam." I.C. § 25-2118.

In response, Ludwig argued that the location of the collision did not qualify as "open range" because I-84 had wire fences and cattleguards; therefore, the land was not unenclosed for purposes of section 25-2118. Ludwig also argued that Idaho's open range laws were preempted by the Federal-Aid Highway Act, 23 U.S.C. §§ 101–190, which established a federal funding program for highway systems. However, Ludwig subsequently took the position in his response to Howard's motion for summary judgment that it was "unnecessary to deal with the preemption question at this stage of the case, as federal interstate laws . . . [do] not conflict with Idaho open range laws."

The district court denied the Howard Defendants' motions for summary judgment, concluding that there were genuine disputes of material fact regarding whether I-84 was "fenced out" and, if so, whether the cow breached the fence due to the Howard Defendants' or ITD's negligence. Howard filed a renewed motion for summary judgment, which was joined by HGA. Howard argued that his cattle were not being fenced out by ITD because the fencing was designed

to delineate the right-of-way of I-84. The district court denied the Howard Defendants' renewed motion for summary judgment, concluding again that there was a genuine issue of material fact whether I-84 was unenclosed for purposes of section 25-2118.

Howard filed a motion to reconsider the denial of his renewed motion for summary judgment, which was joined by HGA. Citing *Moreland v. Adams*, 143 Idaho 687, 690, 152 P.3d 558, 561 (2007), Howard argued in pertinent part that the Idaho Legislature did not intend to limit the definition of "open range" by including the word "uninclosed" in section 25-2118. Thereafter, ITD filed a motion for summary judgment, arguing that (1) it owed no duty to prohibit livestock from entering the highway or warn motorists of livestock, and (2) that it was entitled to highway design and discretionary function immunity under the Idaho Tort Claims Act.

The district court granted the Howard Defendants' motion to reconsider, as well as ITD's motion for summary judgment. The district court agreed with the Howard Defendants that, under *Moreland*, the issue of whether I-84 was "uninclosed" was not relevant to determining whether the collision's location was open range land; instead, the proper test was whether the land fell outside any city, village, or herd district. Applying that test, the district court concluded that the Howard Defendants were entitled to immunity as a matter of law under section 25-2118 for the damages caused by the collision.

Next, the district court concluded that ITD did not have a statutory duty or assumed duty to Ludwig regarding the repair and maintenance of the control of access fencing. It further concluded that ITD did not have a duty to warn Ludwig regarding the presence of livestock on the interstate. The district court also concluded that ITD was entitled to design immunity under Idaho Code section 6-904(7) and discretionary function immunity under Idaho Code section 6-904(1).

The district court entered a final judgment dismissing Ludwig's claims against the Howard Defendants and ITD on April 3, 2024. Fourteen days later, Ludwig filed motions to reconsider the "dismissal" of the Howard Defendants and ITD, along with a declaration from Ludwig's counsel. However, Ludwig did not state any basis for the relief sought in these motions. Instead, Ludwig stated in both motions that he would "file a memorandum in support of [his] motion[s] for reconsideration in accordance with the timelines set forth under" Idaho Rule of Civil Procedure 7(b)(3). Ludwig, however, never filed memoranda in support of his motions. After Ludwig's deadline to file his memoranda had passed, Howard and ITD objected, arguing that Ludwig's motions did not comply with Rule 7(b)(3) because Ludwig did not file supporting memoranda,

and (2) failed to direct the district court to any evidence or legal argument that would allow the court to grant his motions.

On May 28, 2024, the district court held a hearing on Ludwig's motions to reconsider. In an exercise of its discretion, the district court allowed Ludwig to present argument on his motions. Relevant here, Ludwig argued that section 25-2118 was preempted by federal law due to "the level of control the federal government through its regulations has over the [i]nterstate system."

On June 7, 2024, the district court denied Ludwig's motions to reconsider on two bases. First, the district court denied Ludwig's motions for failing to comply with Idaho Rule of Civil Procedure 7(b)(3) and Fourth District Local Rule 8.1, the latter of which "requires that every motion 'must be accompanied' by a separate memorandum or brief that must not exceed 15 pages, unless the motion concerns a routine or uncontested matter." The court emphasized that Ludwig put the opposing parties at a disadvantage because they could not properly or meaningfully respond to the motions and that Ludwig "essentially document-dumped the court with no explanation of the exhibits' relevance." (Quotation modified.) Second, the district court alternatively denied Ludwig's motions to reconsider because he failed to establish that Idaho's open range law was preempted by federal law.

Ludwig filed a notice of appeal on July 16, 2024.

II. STANDARDS OF REVIEW

"This Court exercises de novo review of a grant of summary judgment" *Summerfield v. St. Luke's McCall, Ltd.*, 169 Idaho 221, 228, 494 P.3d 769, 776 (2021) (citing *AED, Inc. v. KDC Inv., LLC*, 155 Idaho 159, 163, 307 P.3d 176, 180 (2013)). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a)). "[A] mere scintilla of evidence or merely casting a slight doubt of the facts will not defeat summary judgment." *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012) (citation omitted). When determining "whether the evidence shows a genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences in favor of the nonmoving party." *Id.* (citation omitted). "Questions of law are reviewed de novo." *Safaris Unlimited, LLC v. Sligar*, 174 Idaho 239, 248, 552 P.3d 1183, 1192 (2024) (citing *Berkshire Invs., LLC v. Taylor*, 153 Idaho 73, 80, 278 P.3d 943, 950 (2012)).

"This Court exercises free review over jurisdictional issues." *Riverton Citizens Grp. v. Bingham Cnty. Comm'rs*, 171 Idaho 898, 903, 527 P.3d 501, 506 (2023) (alteration omitted)

(quoting *Nemeth v. Shoshone County*, 165 Idaho 851, 854, 453 P.3d 844, 847 (2019)). “The interpretation of the Idaho Appellate Rules, like the Idaho Rules of Civil Procedure, is a matter of law.” *Id.* (citation omitted). Likewise, “[t]he interpretation of a statute is a question of law.” *Idaho Dep’t of Health & Welfare v. McCormick*, 153 Idaho 468, 470, 283 P.3d 785, 787 (2012) (citing *State, Dep’t of Health & Welfare v. Housel*, 140 Idaho 96, 100, 103, 90 P.3d 321, 328 (2004)). “Further, whether Idaho law is preempted by federal law is also a question of law.” *Id.* (citing *Christian v. Mason*, 148 Idaho 149, 151, 219 P.3d 473, 475 (2009)).

III. ANALYSIS

A. Ludwig timely filed his notice of appeal.

As an initial matter, ITD urges this Court to dismiss Ludwig’s appeal for lack of jurisdiction. It argues that Ludwig’s appeal is time-barred because he failed to specify any grounds for his motions to reconsider as required by Idaho Rule of Civil Procedure 7(b), and, therefore, his motions to reconsider did not terminate his 42-day deadline for filing a notice of appeal after entry of the judgment. *See* I.A.R. 14(a) (“The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action[.]”). In response, Ludwig does not dispute that his motions to reconsider failed to comply with Idaho Rule of Civil Procedure 7(b). Instead, Ludwig cites *Department of Environmental Quality v. Gibson*, 166 Idaho 424, 435, 461 P.3d 706, 717 (2020), for the proposition that a motion to reconsider terminates the time to appeal unless it is both “improperly *and* untimely filed.” He contends that his motions to reconsider were not improper or untimely as each was filed within 14 days of the judgment and was “supported by additional evidence and extensive oral argument”; therefore, his time for filing the appeal was terminated. For the reasons set forth below, we conclude that Ludwig timely filed his notice of appeal.

Rule 7 of the Idaho Rules of Civil Procedure “governs motion practice in civil proceedings.” *Ward v. State*, 166 Idaho 330, 332, 458 P.3d 199, 201 (2020). In pertinent part, Rule 7(b)(1) requires that a motion “state with particularity the grounds for the relief sought” I.R.C.P. 7(b)(1)(B). “The purpose of the state-grounds-with-particularity requirement is to provide the opposing party with notice.” *Gibson*, 166 Idaho at 434, 461 P.3d at 716.

Rule 14(a) of the Idaho Appellate Rules provides that appeals from the district court must be made “within 42 days” of the entry of judgment or appealable order. I.A.R. 14(a). “Failure to

observe this timing requirement renders [this] Court without jurisdiction to hear the appeal.” *Evans v. Wright*, 174 Idaho 330, 336, 554 P.3d 591, 597 (2024) (citing I.A.R. 21). However, this requirement “is terminated by the filing of a timely motion” that “if granted, could affect any findings of fact, conclusions of law or any judgment in the action[.]” I.A.R. 14(a). “A motion for reconsideration falls under this category.” *Evans*, 174 Idaho at 336, 554 P.3d at 597 (citation omitted).

A motion to reconsider any order is timely if it is filed: “(1) at any time before the court enters a final judgment or (2) within fourteen days after the court enters a final judgment.” *Id.* (citing I.R.C.P. 11.2(b)(1)). Where a motion for reconsideration terminates the time to appeal from an order, the time to appeal from the order “commences to run upon the date of the clerk’s filing stamp on the order deciding such motion.” I.A.R. 14(a). Critically, “Idaho Appellate Rule 14 does not require a successful motion, simply one that, if granted, would alter the findings and conclusions or final judgment.” *Gibson*, 166 Idaho at 435, 461 P.3d at 717.

Here, the district court entered a final judgment on April 3, 2024. Fourteen days later, on April 17, 2024, Ludwig filed two motions to reconsider the district court’s orders granting summary judgment. The district court entered its order denying Ludwig’s motions to reconsider on June 7, 2024, and, thirty-nine days later, on July 16, 2024, Ludwig filed his notice of appeal. Thus, Ludwig filed his motions to reconsider and notice of appeal within the timing requirements set forth in Idaho Rule of Civil Procedure 11.2(b) and Idaho Appellate Rule 14(a), respectively. The question before this Court is whether Ludwig’s motions for reconsideration terminated his time to appeal from the judgment given his failure to provide any “grounds for the relief sought” in his motions as required by Idaho Rule of Civil Procedure 7(b)(1)(B).

We addressed a similar question in *Gibson*. In that case, a district court entered judgment in favor of the Idaho Department of Environmental Quality (DEQ) in a civil enforcement action against Gibson following a bench trial. 166 Idaho at 431–32, 461 P.3d at 713–14. Twelve days after the district court entered its final judgment, Gibson filed a motion requesting that the district court “‘reconsider’ its findings, conclusions, and judgment pursuant to Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure (an outdated rule citation).” *Id.* at 433, 461 P.3d at 715. Noting that Rule 11.2(b) “does not provide a mechanism for seeking reconsideration of a final judgment[.]” the district court construed the motion as a motion to amend the court’s findings and conclusions under Idaho Rule of Civil Procedure 52(b) and, ultimately, summarily denied Gibson’s motion. *Id.*

at 432–34, 461 P.3d 706, 714–16. Gibson appealed and the DEQ requested that this Court dismiss the appeal as untimely under Idaho Appellate Rule 14(a), arguing that Gibson’s motion to reconsider was “facially deficient under Idaho Rule of Civil Procedure 7” because Gibson failed to specify valid grounds for his motion which “left the district court without jurisdiction” *Id.* at 433–34, 461 P.3d at 715–16. Thus, DEQ contended, this Court also lacked jurisdiction to hear the appeal. *Id.*

We rejected DEQ’s argument. First, we explained that the district court did not err by construing Gibson’s motion under Rule 52(b) because (1) “that rule was the procedurally proper mechanism for Gibson’s request[,]” and (2) the district court had discretion whether to strictly enforce Rule 7’s requirements and did not abuse such discretion. *Id.* at 434, 461 P.3d at 716. We explained that even though the motion “failed to abide by the letter of the rule[,]” “the purpose of the state-grounds-with-particularity requirement is to provide the opposing party with notice” and DEQ had adequate notice of Gibson’s claim. *Id.* Second, this Court determined that “Gibson’s motion properly invoked the jurisdiction of the court because his motion, once properly construed, was timely filed under the proper rule.” *Id.* at 435, 461 P.3d at 717. However, this Court noted that, “when a motion for reconsideration is improperly *and* untimely filed, it will not serve to toll the time to appeal.” *Id.* (citing *Shelton v. Shelton*, 148 Idaho 560, 564, 225 P.3d 693, 697 (2009)).¹

Ludwig contends that his motions to reconsider terminated the time to file his appeal under *Gibson* because his motions were neither “improper” nor “untimely”—as each was filed within 14 days of the judgment and supported by argument during the hearing. However, with respect to our statement in *Gibson* indicating that a motion to reconsider will not terminate the time to appeal if it is “improperly *and* untimely” filed, that language was not necessary for the disposition of Gibson’s appeal and is dicta. See *Luck v. Rohel*, 171 Idaho 51, 59, 518 P.3d 350, 358 (2022) (“If the statement is not necessary to decide the issue presented to the appellate court, it is considered to be dictum and not controlling.” (citation omitted)). Thus, the statement in *Gibson* that “when a motion for reconsideration is improperly *and* untimely filed, it will not serve to toll the time to appeal” is not controlling, and we now disavow that dicta.

¹ In *Evans*, we clarified that “Rule 14(a) of the Idaho Appellate Rules is not a tolling provision; rather, it terminates the appeal-filing time[.]” 174 Idaho at 336, 554 P.3d at 597.

Even so, we agree with Ludwig that his motions for reconsideration terminated his time for filing his appeal from the judgment. During the hearing, the district court exercised its discretion to allow argument on Ludwig's motions regardless of his failure to comply with Rule 7(b)(1)(B)'s particularity requirement, stating that it was "interested to hear the parties' arguments because [the court] want[ed] to get this right" given the likelihood of an appeal. While the district court ultimately denied the motions, "Idaho Appellate Rule 14 does not require a successful motion" *Gibson*, 166 Idaho at 435, 461 P.3d at 717. Nor does Rule 14 require a party to submit a motion or supporting memorandum that complies with the state-grounds-with-particularity requirement of Idaho Rule of Civil Procedure 7(b)(3)(A). Instead, it simply requires a motion that, "if granted, would alter the findings and conclusions or final judgment." *Id.* Ludwig's motions to reconsider satisfied this requirement. Therefore, we conclude that Ludwig's motion was timely under Idaho Appellate Rule 14(a).

B. Ludwig failed to challenge the district court's alternative ground for denying his motions for reconsideration, and we affirm the district court on the unchallenged ground.

In challenging the order denying his motion for reconsideration, Ludwig argues that the district court erred by concluding that Idaho Code section 25-2118 was not preempted by federal law. In response, the Howard Defendants argue that Ludwig failed to challenge the district court's alternative basis for denying Ludwig's preemption argument—that Ludwig's motions for reconsideration failed to comply with Rule 7(b)(3) and Fourth District Local Rule 8.1, which specifically required the filing of a supporting memorandum.

We agree with the Howard Defendants. "Where a lower court makes a ruling based on two alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested basis." *Pickering v. Sanchez*, 173 Idaho 478, 490, 544 P.3d 135, 147 (2024) (quoting *Schweitzer Basin Water Co. v. Schweitzer Fire Dist.*, 163 Idaho 186, 194 n.4, 408 P.3d 1258, 1266 n.4 (2017)). Here, Ludwig initially raised his federal preemption argument when responding to the first summary judgment motions filed by HGA and Howard. However, Ludwig abandoned this argument, taking the position that it was "unnecessary to deal with the preemption question at this stage of the case, as federal interstate laws . . . [do] not conflict with Idaho open range laws." Ludwig later raised his preemption argument during the hearing on his motions for reconsideration. However, the district court denied Ludwig's motions to reconsider on two bases: (1) for failing to comply with Idaho Rule of Civil Procedure 7(b)(3) and Fourth District Local Rule 8.1; and (2) "[a]lternatively," it "similarly denied" Ludwig's motions to reconsider on its merits.

Inasmuch as the district court's ruling was based on two alternative grounds, Ludwig was required to challenge both grounds to preserve his preemption argument. Because he assigned no error to the district court's ruling concerning his noncompliance with Rule 7(b)(3) and Fourth District Local Rule 8.1, we "must affirm on the uncontested basis." *Pickering*, 173 Idaho at 490, 544 P.3d at 147 (citation omitted).

C. The district court did not err by concluding that the Howard Defendants were entitled to immunity for damages caused by the collision.

The district court concluded that the Howard Defendants were entitled to immunity for damages caused by the collision under Idaho Code section 25-2118 because it occurred on open range. In its order, the district court explained that the issue of whether I-84 was "uninclosed" was not a relevant factor in determining whether the land was open range under *Moreland v. Adams*, 143 Idaho 687, 690, 152 P.3d 558, 561 (2007). Instead, the district court concluded that, to hold the Howard Defendants liable, Ludwig had the burden to demonstrate the land where the collisions took place fell within a city, village, or herd district, which he failed to do. The district court further determined that the "fence out rule would only be relevant in this case if the subject cow had damaged property that was fenced out and belonging to the State."

On appeal, Ludwig argues that the district court's interpretation of section 25-2118 renders the term "uninclosed" superfluous, and the district court erred in applying *Moreland* because it is distinguishable. He further contends that Idaho's "fence out" rule applies to personal injury damages including those from motor vehicle collisions. In response, the Howard Defendants contend that the district court properly applied *Moreland* when it determined that the collision occurred on open range and, therefore, they are entitled to immunity under section 25-2118. For the reasons set forth below, we affirm.

"When construing a statute, the focus of the Court is to determine and give effect to the intent of the legislature." *Adamson v. Blanchard*, 133 Idaho 602, 605, 990 P.2d 1213, 1216 (1999) (quoting *George W. Watkins Fam. v. Messenger*, 118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990), *abrogated on other grounds by, Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011)).

Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void,

superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Arreola v. Scentsy, Inc., 172 Idaho 251, 257–58, 531 P.3d 1148, 1154–55 (2023) (citation modified). Furthermore, “[w]hen there is controlling precedent on questions of Idaho law ‘the rule of stare decisis dictates that we follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.’” *Id.* at 257, 531 P.3d at 1154 (quoting *Greenough v. Farm Bureau Mut. Ins. Co. of Idaho*, 142 Idaho 589, 592, 130 P.3d 1127, 1130 (2006)).

“Livestock areas in Idaho fall into two categories outside cities and villages: open range areas and herd districts.” *Adamson*, 133 Idaho at 606, 990 P.2d at 1217. “Open range” includes “all uninclosed lands outside of cities, villages and herd districts, upon which cattle by custom, license, lease, or permit, are grazed or permitted to roam.” I.C. § 25-2118. Section 25-2118 provides that “[n]o person owning, or controlling the possession of, any domestic animal running on open range, shall have the duty to keep such animal off any highway on such range, and shall not be liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal.” *Id.* In other words, section 25-2118 “relieves owners of livestock roaming on open range of the duty to keep such stock off the highway and grants absolute immunity from liability for any damages stemming from ‘a collision between the vehicle and the animal.’” *Adamson*, 133 Idaho at 607, 990 P.2d at 1218 (quoting I.C. § 25-2118). “In herd districts, however, animals may not roam freely and owners incur a duty to keep livestock fenced.” *Id.* (citing *Whitt v. Jarnagin*, 91 Idaho 181, 187, 418 P.2d 278, 284 (1966)); *see also* I.C. §§ 25-2407, -2408.

In *Moreland*, this Court clarified the standard for determining whether land is open range. In that case, a motorcyclist, Rodney Moreland, died after colliding with a calf on a roadway. 143 Idaho at 688, 152 P.3d at 559. “While corrals and fencing appeared in some areas on the land alongside the road, signs posted around the area designated the land as open range.” *Id.* “The calf was owned by Randy Adams and the land adjacent to the road was owned in part by Royce Adams.” *Id.* Following the collision, Moreland’s family filed a wrongful death action against the Adamses “based on the negligence of Royce in failing to repair and maintain the fence on his land, and Randy in failing to keep the calf within the enclosed area.” *Id.* The district court granted the

Adamses' motion for summary judgment, concluding that the land was classified as open range and, therefore, the Adamses were entitled to absolute immunity under section 25-2118. *Id.*

On appeal, the Morelands argued the district court erred because it “failed to apply a three-prong statutory test for open range land as required by [section] 25-2118.” *Id.* at 689, 152 P.3d at 560. According to the Morelands, section 25-2118 only granted immunity if “the land is (1) ‘uninclosed,’ (2) falls ‘outside of cities, villages and herd districts,’ and (3) is land ‘upon which cattle by custom, license, lease, or permit, are grazed or permitted to roam.’” *Id.* at 690, 152 P.3d at 561.

We rejected the Morelands' three prong test and affirmed the district court's grant of summary judgment. *Id.* at 691, 152 P.3d at 562. We explained that the proper standard for determining whether land was open range is whether the land “fell outside any city, village, or herd district.” *Id.* at 690–91, 152 P.3d at 561–62. While recognizing that all parts of a statute should be given meaning, we concluded that the use of “[u]ninclosed” in section 25-2118 “indicates that open range immunity does not protect a livestock owner against liability for damage done by livestock when a landowner does ‘fence out’ livestock off his property.” *Id.* at 691, 152 P.3d at 562. This Court further concluded that reading “uninclosed” as a “requirement that open range land contain no fences” would conflict with the statutory language, the companion herd district statutes, and the historical meaning of open range under Idaho law:

To read “uninclosed” as a requirement that open range land contain no fences is to create a test that is unworkable and could not have been intended by the legislature in adopting this statutory scheme. In contrast to a rule that all land outside cities, villages and herd districts is open range, courts would be analyzing cases on a very fact specific basis. Courts would be forced to ask: what type of fence makes land enclosed; is immunity lost only when the livestock owner, as opposed to anyone else, erects a fence; must the fence enclose cattle and be gated; does a fence erected for any purpose render the land no longer “uninclosed”? As a policy matter, requiring that land contain no fences whatsoever in order to qualify as open range would discourage ranchers from erecting fences, for any purpose, on open range land, lest they waive their open range immunity. Further, the herd district provisions would be meaningless, with de facto herd districts created anytime a fence was constructed, thereby shifting liability to livestock owners for damage caused by unfenced animals. The statutory reading the Morelands propose violates Idaho's historical policy that open range land is “fence out.” Indeed, the Morelands would construe the statute to violate the inherent presumption of Idaho's “fence out”/“fence in” system that both open range and herd districts will contain fences, with the difference lying in the purpose the fencing serves.

Id. at 690–91, 152 P.3d at 561–62. Therefore, this Court held that the district court “correctly placed the burden of proof on the Adamases to demonstrate the land fell outside a city, village, or herd district” and, consequently, the district court’s summary judgment order was affirmed. *Id.* at 691, 152 P.3d at 562.

In this case, Ludwig is essentially making the same arguments that we rejected in *Moreland*. Ludwig, however, has not asked us to overrule *Moreland*. Instead, he argues that *Moreland* is distinguishable because, in this case, (1) “the collision occurred on a federal interstate, with a speed limit of 80 mph, not a two-lane county road” and (2) unlike the sporadic corrals and fencing in *Moreland*, I-84 “was fully enclosed by lawful fences” that were “built by ITD to protect the traveling public.” Ludwig contends that “[t]hese differences are crucial in analyzing whether I-84 is considered ‘open range’ . . . because, in *Moreland*, there was no need for the Court to determine if the roadway was enclosed . . . under [s]ection 25-2118 because the fences and corrals were built by the landowner/rancher to ‘fence in’ cattle.”

Ludwig’s argument is unpersuasive. First, it is unclear why the location of the collision on a federal interstate highway, or the highway’s speed limit, is a material distinction. Section 25-2118 provides that owners of livestock roaming on open range have no duty “to keep such animal off *any* highway on such range” I.C. § 25-2118 (emphasis added). The statute does not, therefore, exclude federal interstate highways or highways with higher speed limits from its ambit. Second, we did not need to address the issue of whether the roadway was fully enclosed in *Moreland* because we concluded that it was not part of the test for determining whether land was open range. *Id.* at 690–91, 152 P.3d at 561–62. Instead, we determined that the relevant test for determining whether land was open range is whether the land “fell outside any city, village, or herd district.” *Id.* Thus, Ludwig’s assertion that the fences and corrals in *Moreland* were built by the landowner to fence in cattle is immaterial.

In conclusion, Ludwig failed to demonstrate why this Court’s decision in *Moreland* should not apply to the facts of this case. Therefore, we conclude that the district court properly applied *Moreland* when it determined that Ludwig had the burden to demonstrate that the land where the collision took place fell within a city, village, or herd district to hold the Howard Defendants liable. Because he did not meet this burden below, we affirm the district court’s order granting summary judgment to the Howard Defendants because they were entitled to immunity under Idaho’s open range law.

D. The district court did not err by concluding that ITD owed no duty in tort to Ludwig.

Ludwig's negligence claim against ITD is subject to the Idaho Tort Claims Act ("ITCA"), set forth in Idaho Code sections 6-901 to -929. ITCA "abrogates the doctrine of sovereign immunity and renders a governmental entity liable for damages arising out of its negligent acts or omissions" while still "preserv[ing] the traditional rule of immunity in certain specific situations." *S. Hill Meat Lockers Inc. v. Idaho Transp. Dep't*, 176 Idaho 10, ___, 573 P.3d 151, 160 (2025) (quoting *Lawton v. City of Pocatello*, 126 Idaho 454, 458, 886 P.2d 330, 334 (1994)). "The purpose of the ITCA is to provide much needed relief to those suffering injury from the negligence of government employees." *Stoddart v. Pocatello Sch. Dist.* #£25, 149 Idaho 679, 683, 239 P.3d 784, 788 (2010) (citation modified).

The district court granted summary judgment on Ludwig's negligence claims against ITD, concluding that ITD did not owe any duty to Ludwig individually, and that ITD was entitled to design and discretionary function immunity under Idaho Code section 6-904. Ludwig challenges both conclusions on appeal. However, because we hold that the district court correctly concluded that ITD did not owe any duty to Ludwig, we need not address Ludwig's arguments concerning design and discretionary function immunity. See *S. Hill Meat Lockers Inc.*, 176 Idaho at ___, 573 P.3d at 167 ("A reviewing court is free to consider issues related to duty and immunity under the ITCA in the order of its choosing." (citation modified)).

In this case, Ludwig contends that ITD owed him both a statutory and common law duty to prevent livestock from entering I-84 or to warn motorists of livestock on highways. Next, he contends that a "special relationship" exists between ITD and Ludwig, such that the imposition of a duty of care is reasonable. Third, he contends that ITD assumed a duty to prevent livestock from entering I-84 because it performed brush clearing in the Hot Creek Tunnel. Fourth, he argues that ITD had a duty to warn the public of dangerous conditions on public highways. Each argument is addressed in turn.

1. Ludwig has not established that ITD owed him a common law or statutory duty actionable in tort to prevent livestock from entering I-84.

Ludwig argues that ITD owed him both a common law and statutory duty to reasonably maintain and repair I-84, including the right-of-way fencing, for the protection of the traveling public under Idaho Code section 40-201 and 23 U.S.C. § 116(b). ITD acknowledges that it has a statutory duty to maintain highways within the state. However, ITD argues that the district court properly determined that these statutes do not impose a duty of care to ensure that right-of-way

fencing prohibits livestock from entering the right-of-way. It further argues that these statutes do not give rise to an affirmative duty under Idaho's public duty rule because they confer a benefit to the general public rather than a particular class of people. We agree with ITD.

“No liability arises from the law of torts unless the defendant owes a duty to the plaintiff.” *Udy v. Custer County*, 136 Idaho 386, 389, 34 P.3d 1069, 1072 (2001). “The question of whether a duty existed is generally a question of law.” *Yellowstone Log Homes, LLC v. City of Rigby*, 173 Idaho 288, 297, 540 P.3d 990, 999 (2023) (citation modified). “Under Idaho law, one owes the duty to every person in our society to use reasonable care to avoid injury to the other person in any situation in which it could be reasonably anticipated or foreseen that a failure to use such care might result in such injury.” *GSN Cap., LLC v. Shoshone City & Rural Fire Dist.*, 173 Idaho 345, 352, 541 P.3d 703, 710 (2024) (citation modified). “However, one also owes no affirmative duty to act to assist or protect another absent unusual circumstances, which justify imposing such an affirmative responsibility.” *Udy*, 136 Idaho at 389, 34 P.3d at 1072 (citation omitted).

“One such ‘unusual circumstance’ is when a statute establishes an affirmative duty.” *GSN Cap., LLC*, 173 Idaho at 352, 541 P.3d at 710 (citation omitted). “This Court has recognized that to give rise to an affirmative duty, a statute must require a particular action by an agency to benefit a particular class of people rather than a duty running to the general public.” *Id.* at 16, 137 P.3d at 403 (citation modified). The latter is known as the “public duty rule,” which provides that “the duty imposed on state agencies and public officials is one owed to the public generally, and breach of this duty does not provide an individual with a cause of action.” Caroline Forell, *The Statutory Duty Action in Tort: A Statutory/Common Law Hybrid*, 23 Ind. L. Rev. 781, 807–08 (1990). “Whether a statutory duty exists is a question of law subject to free review.” *GSN Cap., LLC*, 173 Idaho at 352, 541 P.3d at 710 (citing *Udy*, 136 Idaho at 388, 34 P.3d at 1071).

Here, ITD's duty to maintain the highway is not based on the common law. Rather, “ITD retains exclusive custody and control over the maintenance of the highway by virtue of statutory authority[.]” *Udy*, 136 Idaho at 390, 34 P.3d at 1073; *see also Industrial Indemnity Co. v. Columbia Basin Steel & Iron, Inc.*, 93 Idaho 719, 721–25, 721 n.1, 471 P.2d 574, 576–80, 576 n.1 (1970) (common law principles abrogated by statutory enactments). Idaho Code section 40-201 imposes upon the State the duty to “improve and maintain the highways” within its jurisdiction:

The improvement of highways and highway systems is hereby declared to be the established and permanent policy of the state of Idaho, and the duty is hereby imposed upon the state, and all counties, cities, and highway districts in the state,

to improve and maintain the highways within their respective jurisdiction as hereinafter defined, within the limits of the funds available.

I.C. § 40-201. The legislature, in turn, “placed the responsibility of maintaining State highways . . . on the ITD.” *Udy*, 136 Idaho at 388, 34 P.3d at 1071 (citation modified); *see also* I.C. § 40-120(5) (defining “State highway system”). Idaho Code section 40-502 provides that, “[a]ll state highways shall be maintained by the [ITD] at state expense . . .” I.C. § 40-502. Congress has likewise provided that “[i]t shall be the duty of the State transportation department or other direct recipient to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts.” 23 U.S.C. § 116(b).

Notably, these statutes do not explicitly require ITD to build fencing or deter livestock from entering a state highway. However, in *Udy*, we stated that Idaho Code section 40-201 “indicates that the State of Idaho, through its [Transportation Department], has a statutory duty *to remove rocks and other obstructions* as part of its maintenance of the State’s highways.” 136 Idaho at 389, 34 P.3d at 1072 (emphasis added). Even so, neither Idaho Code section 40-201 nor 23 U.S.C. § 116(b) identifies a “particular class of people” that benefits from ITD’s maintenance duty. *See GSN Cap., LLC*, 173 Idaho at 352–53, 541 P.3d at 710–11 (citation omitted). Rather, the duty appears to run to the general public. Therefore, a breach of this duty does not provide Ludwig with a cause of action under the public duty rule. Accordingly, we affirm the district court’s conclusion that ITD did not owe an affirmative duty specific to Ludwig under Idaho Code section 40-201 or 23 U.S.C. § 116(b).

2. *Ludwig did not establish that a special relationship exists between ITD and Ludwig that would give rise to an affirmative duty to protect.*

The district court determined that “a special relationship does not exist between Ludwig and ITD” because “ITD did not possess custody or control over Howard’s livestock” or “over Ludwig to any degree that would impose a higher level of care be extended such that would create a duty.” On appeal, Ludwig argues that a special relationship exists between ITD and Ludwig because “ITD is rightfully considered the ‘possessor’ of the [i]nterstate,” which imposed a duty of ordinary care on ITD to reasonably maintain I-84 because it is open to the public. In response, ITD argues that the district court properly determined that no special relationship exists between ITD and Ludwig because ITD did not have custody and control over Ludwig himself. We agree with ITD.

“An affirmative duty of care can arise based on a special relationship between the parties.”

GSN Cap., LLC, 173 Idaho at 353, 541 P.3d at 711 (citation omitted). “When determining whether an affirmative duty should be recognized on the basis of a special relationship, the first question must be whether a special relationship exists.” *Id.* at 355, 541 P.3d at 713. “The determination of whether there is the requisite special relationship is a question of law over which we exercise free review.” *Id.* at 356, 541 P.3d at 714.

“For tort-law purposes, Idaho recognizes two categories of special relationships.” *Spears v. Antelope Mountain Resort, LLC*, 177 Idaho 70, ___, 585 P.3d 314, 322 (2026). “The first exists between the actor and a third person which imposes a duty upon the actor to control the third person’s conduct.” *Id.* (citation modified). Examples of these relationships include “a parent’s duty to control his child, an employer’s duty to control an employee while at work, or a law enforcement officer’s duty to control a dangerous prisoner.” *Id.* (quoting *Henrie v. Corp. of President of Church of Jesus Christ of Latter-Day Saints*, 162 Idaho 204, 209, 395 P.3d 824, 829 (2017)). “The second category of a special relationship ‘exists between the actor and the other which gives the other a right to protection.’” *Id.* at ___, 585 P.3d at 322–23 (quoting *Turpen v. Granieri*, 133 Idaho 244, 248, 985 P.2d 669, 673 (1999)). One such relationship exists between a land possessor and invitee: “[a] possessor of land who holds his land open to members of the public who enter upon the land in response to his invitation’ creates a ‘special relationship’ that imposes on the possessor of land an affirmative duty to act.” *Oswald v. Costco Wholesale Corp.*, 167 Idaho 540, 552, 473 P.3d 809, 821 (2020) (quoting *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 401, 987 P.2d 300, 313 (1999)).

In this case, Ludwig has not argued that ITD has the ability or obligation to control the conduct of the Howard Defendants. Nor has he asserted that ITD exercises custody or control over him personally. Instead, Ludwig contends a special relationship arose under a commercial premises liability theory: because ITD “maintained complete and exclusive control over I-84,” which is open to members of the public, ITD is therefore “under a duty to protect those that respond to that invitation against unreasonable risk of physical harm.” We disagree.

First, commercial premises liability principles are inapposite to this case. The affirmative duty that arises between a land possessor and an invitee “reflects the age-old principle that, because the land possessor effectively throws open his property to the public for business, an invitee is entitled to visit and assume that the premises have been made safe for his visit.” *Oswald*, 167 Idaho at 552–53, 473 P.3d at 821–22 (citations omitted). “An invitee is one who enters upon the premises

of another for a purpose connected with the business conducted on the land, or where it can reasonably be said that the visit may confer a business, commercial, monetary or other tangible benefit to the landowner.” *Id.* at 552, 473 P.3d at 821 (quoting *Ball v. City of Blackfoot*, 152 Idaho 673, 677, 273 P.3d 1266, 1270 (2012)).

Here, ITD’s operation and maintenance of public highways is devoid of any commercial purpose; instead, these are governmental functions that serve the public’s interests. *See* I.C. § 40-310(4) (The Idaho Transportation Board “shall . . . [l]ocate, design, construct, reconstruct, alter, extend, repair and maintain state highways, and plan, design and develop statewide transportation systems when determined by the board to be in the public interest.”). Furthermore, Ludwig was not responding to a commercial solicitation when traveling on I-84 nor did his use of the highway confer any benefit on ITD.

Second, ITD does not owe a duty to protect individual motorists like Ludwig driving on state highways. As we discussed above regarding whether Idaho Code section 40-201 and 23 U.S.C. § 116(b) gave rise to statutory duties actionable in tort, these statutes contain no mandate for the benefit of a specific class. Thus, as a general matter, ITD had no obligation specific to Ludwig that was not owed to every member of the public. Under these circumstances, ITD did not have a duty to protect Ludwig indicative of a special relationship. *See GSN Cap., LLC*, 173 Idaho at 356, 541 P.3d at 714 (holding that a city fire district did not have a special relationship with a company where the district’s statutory duty to preserve life and protect property benefitted every taxpayer within its territory).

For these reasons, we conclude that the district court correctly determined that no affirmative duty of care arose based on a special relationship between ITD and Ludwig.

3. *ITD did not have a duty to warn Ludwig regarding the potential presence of livestock on I-84.*

The district court determined that ITD had no duty to warn Ludwig of the potential for livestock on the interstate. On appeal, Ludwig argues the district court erroneously required proof that ITD had actual knowledge of a dangerous condition rather than constructive knowledge. Ludwig contends that ITD had a duty to warn because “ITD knew or, through the exercise of reasonable care, should have known that splitting cows and calves on opposite sides of the [i]nterstate created a dangerous situation for the traveling public” and that “the unauthorized ‘tunnel gates’” would “significantly increase the chances of a cow pushing through the right-of-way fencing[.]” In response, ITD argues that there is no evidence that ITD was aware that the cow

Ludwig struck had strayed onto the interstate and, even if it had a duty to warn motorists regarding livestock, it complied with that duty by “includ[ing] a warning about the presence of livestock on the roads” in the Idaho Driver’s Manual.

“The State is not immunized from liability when with respect to a public highway, the State maintains a known dangerous condition on the highway and fails to properly warn motorists of such a condition.” *Haight v. Idaho Dep’t of Transp.*, 163 Idaho 383, 390, 414 P.3d 205, 212 (2018) (citation modified). Here, Ludwig did not present a scintilla of evidence that establishes ITD had actual or constructive notice that (1) Howard had split cows and calves on opposite sides of the interstate, (2) that the tunnel gates increase the chances of a cow pushing through the right-of-way fencing, or (3) that a cow had broken through a fence. Accordingly, we affirm the district court’s conclusion that ITD did not have a duty to warn Ludwig regarding the potential presence of livestock on I-84.

4. *ITD did not assume any duty by performing brush clearing in the cattle culvert.*

The district court determined that “ITD did not undertake any actions that were outside of its statutory duties to erect, maintain, or repair the control-of-access fencing along I-84, and therefore, it did not assume a duty above what is typically done or required to do.” On appeal, Ludwig first argues that ITD assumed a duty to use ordinary care in maintaining and repairing the right-of-way fences to deter livestock because ITD had the responsibility to maintain and repair the right-of-way fencing along I-84 under federal law, and “[a] lawful fence in good repair clearly serves to protect the interstate from unwanted livestock intrusions; a safety-related service.” Ludwig then argues that ITD assumed a duty “to keep the right-of-way fencing in good repair” because “ITD was actively helping the Howard Defendants to separate their cattle from one side of the interstate to the other” by clearing the Hot Creek Tunnel of tumbleweeds at Howard’s request. In response, ITD contends that “performing brush clearing in the cattle pass is not ‘assisting’ Howard in separating his cattle,” and there was no evidence that members of the motoring public relied on ITD’s brush clearing in the cattle pass to ensure their safety on I-84.

“Even when an affirmative duty generally is not present, a legal duty may arise if one voluntarily undertakes to perform an act, having no prior duty to do so.” *Beers v. Corp. of Pres. of Church of Jesus Christ of Latter-Day Saints*, 155 Idaho 680, 688, 316 P.3d 92, 100 (2013) (citation omitted). “A duty arises in the negligence context when one previously has undertaken to perform a primarily safety-related service; others are relying on the continued performance of the service;

and it is reasonably foreseeable that legally-recognized harm could result from failure to perform the undertaking.” *Id.* (citation omitted).

Ludwig’s first argument is unpersuasive because, as the district court concluded, he did not establish that ITD undertook any actions that were outside of its statutory duties to erect, maintain, or repair the control-of-access fencing along I-84. And while the control-of-access fencing may help to limit unwanted livestock intrusions, Ludwig has not established that the primary purpose of constructing the control-of-access fencing along I-84 was related to this purpose. Ludwig’s second argument is unpersuasive because there is no evidence that ITD failed to perform any safety-related service; ITD conducted the brush clearing on the cattle culvert at the Howard Defendants’ request to facilitate cattle movement through the tunnel, not to enhance travel safety on the interstate. Furthermore, as set forth above, Ludwig has not established that ITD was aware of Howard’s cattle management plan on the day of the collision, and the mere fact that ITD cleared brush in the cattle tunnel does not indicate that ITD was actively helping the Howard Defendants to separate their cattle. Therefore, we affirm the district court’s conclusion that ITD did not, by its actions, assume any duty to Ludwig under the facts of this case.

For these reasons, we conclude that the district court correctly determined that ITD did not owe Ludwig a duty in tort. Therefore, we affirm the district court’s order granting summary judgment to ITD.

IV. CONCLUSION

Based on the foregoing, we affirm the judgment of the district court. Costs are awarded to the Howard Defendants and ITD as a matter of course. I.A.R. 40(a).

Chief Justice BRODY, and Justices BEVAN, MOELLER, and ZAHN CONCUR.