# Idaho Land Use Analysis


**October 2010**

**Idaho Land Use Analysis Steering Committee:** Boise State University, University of Idaho, Idaho Smart Growth, the Idaho District Council of the Urban Land Institute, and the Idaho chapter of the American Planning Association.

*Thanks to: the Community Planning Association of Southwest Idaho, the Idaho Association of Counties, the Association of Idaho Cities, Sage Community Resources, Canyon County Alliance for Responsible Growth, Conservation Voters for Idaho, Idaho Conservation League, Idaho Rivers United, Idaho Smart Growth, Kootenai Environmental Alliance, Land Trust of the Treasure Valley, Salmon Valley Stewardship, The Nature Conservancy, Valley Advocates for Responsible Development, and the Greater Yellowstone Coalition.*

## INTRODUCTION AND BACKGROUND

The Idaho Local Land Use Planning Act (LLUPA) was passed in 1975. In 2010, Idaho is the 12th fastest growing state in the country. Idaho Code requires each city and county to have a comprehensive plan (a written vision for their community) and land use zoning. Unlike some of its neighboring states, Idaho does not have a statewide land use agency or any state-based funding for cities and counties to carry out their land use planning work. Furthermore, many Idaho cities and counties have limited or nonexistent budgets for planning staff- in some cases, city clerks, city treasurers, and city engineers serve that role. Because of these limitations, many communities are using comprehensive plans and zoning ordinances that were put in place shortly after the state law was enacted in 1975.

Prior to the recession of 2009-10, Idaho was the sixth fastest growing state (by population) in the country. Idaho Smart Growth and partner organizations constantly received inquiries from cities and counties all over the state who were looking for help with the stresses of growth. Even now, as the economic downturn reduces the pressures of growth, cities and counties strive for good planning that will reflect their community values and needs.

Idaho Smart Growth convened a steering committee including teams from the University of Idaho and Boise State University to complete a comprehensive analysis of Idaho's laws, state, county, and city policies, rules and permitting provisions to examine the extent to which Idaho county and city comprehensive plans are meeting the goals and requirements of the Idaho Local Land Use Planning Act and meeting the needs of local communities. To undertake this task comprehensive plans for all county and county seats, as well as a number of other large cities were analyzed for congruence with state enabling planning and land use statues, a survey was completed, and focus groups where held around the state.

Four research questions provided guidance for the efforts.

1. Are the objectives of Idaho's Local Land Use Planning Act (LLUPA) clear? Does LLUPA enable vibrant communities?
2. How are Idaho's cities and counties applying the state statute for land use planning?
3. Are comprehensive plans consistent with the objectives with LLUPA?
4. What reforms, if any, will ensure that the objectives of LLUPA are met?

### Idaho History

The State of Idaho passed its first planning and zoning legislation in 1935. That early legislation with its many amendments failed to address a variety of local planning related concerns. Prior to 1975, Idaho's land use legislation (Idaho Code Chapters 11 & 12) also failed to define a comprehensive plan and lacked procedures for adopting plans and ordinances. Procedures for granting permits and appealing local decisions were absent as was the authority for local governments to place a moratorium on building permits (League of Women Voters, 1979). As Idaho's population grew, planning concerns naturally deepened. In the mid 20th century, urban areas were expanding rapidly

into the countryside creating a need for negotiation between cities and counties in the governance of those areas (LWV, 1979).

The 1967 Idaho legislature passed a variety of planning laws in an effort to address emergent problems related to growth. One outcome of the legislation was the creation of the State Planning and Community Affairs Agency which worked to coordinate planning in Idaho counties (Haden, 1973). The agency also created a model subdivision ordinance, assisted cities on a request basis, and coordinated state and federal programs with local governments. However, the 1967 wave of legislation still failed to coordinate all laws on the books into one comprehensive package. There were too many gaps in the regulations and ordinances written were often a result of a specific problem rather than a long-range plan (Haden, 1973).

Governor Cecil Andrus was instrumental in garnering support for extensive land use legislation. In a 1973 speech titled "The need for land use planning", Andrus expressed the growing need for planning in Idaho with accounts of subdivision proposals quadrupling the size of some towns. Many developments were costing more in services than they gained in revenues and staggering losses of prime farm land and wildlife habitat were being felt around the state. Governor Andrus's 1973 vision of an effective land use bill incorporated a process for establishing policies, plans, goals and implementation at the local level. Andrus listed several necessary measures for effective legislation including; provisions for balanced representation on all planning and zoning commissions, state review of local plans, a statewide planning framework for local planning agencies, coordination of programs and services of state agencies that affect land use, a central information system of land use resources, and a means to deal with large developments as well as areas of critical concern (Haden, 1973).

In the process of developing language for the bill that would eventually become the Local Land Use Planning Act of 1975, the legislative council formed an interim study committee (Haden, 1973). The Committee Chair was Senator Dave Bivens. This committee anticipated controversy around the state and in an attempt to minimize conflict, conducted 14 hearings around Idaho to gauge public opinion and concerns. The hearings took place in the summer and fall of 1973. Responses to the hearings ranged from the sentiment that action should have been taken much earlier to those who were opposed to any involvement of government which would restrict landowners (LWV, 1979). Overall the response was primarily favorable to the proposed legislation and highlighted a broad desire to see planning at the local level with technical and monetary assistance from the state (Idaho Statesman 1974). An Idaho Statesman article from Feb. 15, 1974 indicates that the legislation proposed by the committee received near overwhelming approval at a public hearing. Of the 57 witnesses, supporters included Dick Eardley, mayor of Boise, Floyd Decker, executive director of the Association of Idaho Cities, Scott McDonald, representing the South Eastern Idaho Council of Governments, and Bart Bailey of the Ida-Ore Regional Planning and Development Association. Other groups supporting the legislation included: Idaho Association of Counties, Idaho Conservation League, AAUW, League of Women Voters of Idaho, Idaho Farm Bureau and Boise Cascade. Among those in opposition were

realtors and legislator (and later Governor) Phil Batt. The model land use planning bill, SB 1111, developed as a result of the interim study, died in the 1974 legislature.

The following year SB 1094, which was essentially the same, was sponsored by Senator Bill Onweiler. The interim committee had developed a package of bills to address land use issues in Idaho The bills incorporated public sentiments from the hearings and research into other states approaches to land use planning. Senate Bill 1094 was the key bill in the governor's package it dealt with local planning and required mandatory planning and zoning in all cities and counties in Idaho (Haden, 1973). SB 1094 also included an Area of City Impact provision which gave cities a significant role in determining developmental regulations in urban fringe areas. In addition, SB 1094 required public hearings and citizen involvement throughout the planning process (Baker, 1981). The other bills are as follows:

SB 1095 State Assistance: state review and comment on comprehensive plans

SB 1096 Regional Impact: state control over matters that adversely affect state or two or more counties

SB 1097 Areas of Statewide Concern: if local governments don't act, the state will after hearings and subject to veto by legislature

SB 1098 Subdivisions: change from 5 to 3 minimal number of acres for subdivisions

SB 1099 State Planning Process: state agency for data research/forecasts could be used in development of comprehensive plans as a coordinating body

SB 1111 Timetable Bill: comply with the local planning act by 1/78 or the state will do the job

Only Senate Bill 1094 became law and the statute can be found in Idaho code title 67 chapter 65. The Senate passed the bill on March 10, 1975 by a margin of 23 to 12. The House passed the bill on March 20, 1975 with a smaller margin of 37 to 33. On March 28, 1975, Governor Andrus signed the bill into law (LWV, 1979). The Land Use Planning Act is enabling legislation which allows cities and counties the powers to plan and gives them statutory guidelines to follow. The Act directs localities to plan, but contains no provisions for state enforcement, with the intent being for local people to make local plans (Brown, 1980).

Several attempts have been made to eliminate the Land Use Planning Act of 1975, however none have been effective. In 1976, the House approved a bill which would have required written approval from a landowner before his or her property could be placed in a comprehensive plan. The Senate committee did not report out the measure (Baker, 1981). Another attempt to weaken the Act was in 1980 when the legislature passed a bill that would allow local elections to determine if individual municipalities would have planning and zoning. The governor vetoed this bill. (Brown, 1980). The Act has also been amended several times including in 1995 when the name changed adding the word "local" to the title. The 1995 amendment also added a section on property rights and a provision that

at least one-half of county commissioners must reside outside the boundaries of any city's area of impact. The Act was amended in 1999 for the purpose of clarifying language.

After passage, workshops were held at 16 locations around the state to explain the new law (LWV, 1979). The Bureau of State Planning and Community Affairs prepared a publication titled, "Planning Handbook for Local Government". The publication was meant to familiarize local governmental officials with the planning process as well as to aid in the preparation of comprehensive plans and ordinances (LWV, 1979). Half a dozen officials from the Bureau of State Planning and Community Affairs were placed in regional offices around the state to work with local governments to provide assistance with the new requirements. They mainly worked with county government and encountered a mix of adopters and resisters of the new law (Cunningham, Personal Communication, July 2009). Work was coordinated and supported by Councils of Government (COG's). Eventually state funding for technical assistance to local governments in preparation of plans was cut (Cunningham, 2009).

**National Context: Changes in the Factors Influencing US Development Patterns**

The pattern of development in Idaho is a local expression of the nation's sprawling pattern of development between 1945 and 2000. Twentieth Century sprawl in the US was not the result of "free market forces" but a mixture of factors, including:

- Rising household incomes and wealth
- Population growth and internal migration (influenced by Federal investments)
- Demographic changes, including changes in household size
- Racism and its expression as "white flight" in response to increasing racial diversity in cities
- Consumer preferences in housing locations, types and tenures, particularly preference for new homes in greenfield locations and avoidance of housing in polluted and decayed inner neighborhoods
- Federal mortgage insurance underwriting
- Generous Federal investments in highways and limited investment in transit
- Federal investments in water projects (important in Idaho and across the arid West)
- Federal disaster insurance which allowed for development in areas of natural hazard
- Federal support for urban clearance and renewal
- Federal tax treatment of homes and real estate investments
- Absence of comprehensive Federal urban policy
- Absence of state urban and rural development and conservation policies
- Generous state and local government funding for new infrastructure made possible by a booming economy
- Local government finances based on property and sales taxes, which created competition for commercial and industrial development that contributed to their tax base
- Private standards of design and development adopted by professional associations
- The use by local governments of zoning to segregate types uses and to separate housing based on its type, correlated to the residents' income
- Local regulations requiring parking for commercial uses

- Highway and road design standards and methods of analysis, divorced from land use planning and built with the benefit of a dedicated funding source
- Private development and financing mechanisms based on these preferences and policy frameworks

Most of these policies promoted or supported a pattern of decentralized, auto-dependent patterns of development and disinvestment in downtowns and older neighborhoods.

In this century many of these factors have changed:

- Middle class household incomes and wealth are stable or declining
- An aging population wants different types of housing and communities
- With both parents working, there is less time for home and yard care
- Increased racial tolerance and a new market segment of people preferring racially diverse neighborhoods
- Many central cities have reversed their decline, aided in part by the relocation of heavy industry to other countries and a decline in crime as a result of a shrinking share of the population made up of young males
- Significant segment of the housing consumers prefer more dense types of housing and inner city or older neighborhood locations (estimated to be 1/3 to ½ of the market)
- Stable or declining Federal funding for highway investments
- Increased Federal funding for transit investments
- Aging infrastructure competing for funding with proposed new infrastructure
- Flat or declining state and local revenues available for infrastructure maintenance or investment
- Establishment of some Federal, state and local policies favoring conservation and more compact growth
- The Great Recession and resulting dramatic tightening of private finance for development (although it is not known how long this will last)

Efforts to reform land development and conservation and Idaho will benefit from many of these changes in demographics, market forces, government finance and policy. These national trends will make it easier, although not easy, to persuade legislators and local officials to change investments, laws and regulations in ways that will help direct development towards existing communities and infrastructure.

**Sprawl, Smart Growth and the Hierarchy of Development Patterns**

In considering what can be done to improve the patterns of development and conservation in Idaho, it is helpful to think of sprawl, and it's opposite, using a simple hierarchy of patterns of growth and development.

The hierarchy presented below is oversimplified since there is so much overlap in geography and content between the categories but it still helps to clarify our thinking about reforms.

***1. Urban Repopulation**:* The pattern of growth that would be most beneficial to existing communities and have the least impact on the land and other aspects of the environment would be to add population and jobs to existing homes and businesses, especially in dense urban areas well-served by transit.

This would result in no additional development of lands now being used for farming, ranching, forestry, wildlife habitat and water supply. It would entail a minimal use of energy and resources to build new structures and infrastructure and would maintain opportunities to travel on foot, by bicycle or by transit.

One example is larger families (including immigrant) families occupying homes formerly home to just two or three people. Another example is the redevelopment and re-use of partially vacant commercial buildings downtown, something that has happened in many parts of the country, including Boise.

***2. Urban Redevelopment**:* The next best pattern of Smart Growth development is redevelopment and infill using green design (viz. buildings designed to have reduced environmental impact in construction and operation.) This approach is especially effective in dense urban areas with decayed infrastructure that have previously experienced falling populations and land values, but that have retained a mixture of uses and are supported by transit systems. A high priority within this category is the redevelopment of brownfield sites, lands that were, or are believed to have been, contaminated by earlier industrial and commercial uses.

***3. Inner Suburban & Commercial Strip Redevelopment**:* After urban repopulation and urban redevelopment, the next best pattern of development is higher density redevelopment and infill in inner-ring suburbs – those built before 1960 – using green design, especially in inner-ring suburbs that have experienced falling populations and declining private investment. This form of redevelopment results in an increased mixture of uses and better transit service, reducing the need for travel by single occupancy vehicles. Of particular potential importance are abandoned or low-occupancy malls and commercial strips, which contain large amounts of land and low-value buildings that could be redeveloped. Commercial strips that adjoin residential areas with stable or increasing home values are especially primed for redevelopment. The redevelopment of these strips will face less political opposition than many other properties.

***4. Outer Suburban Redesign & Redevelopment**:* Outer-ring suburbs – those built after 1960 – occupy a large amount of the urban land in the U.S. They are characterized by large areas of single-family homes on larger lots, distant from shopping, schools and jobs, often with minimal amenities in the form of parks, libraries or community centers. These suburbs are ill-adapted to twenty-first century one- and two-person households and impose significant costs in time and money for travel to jobs and services.

Because they occupy such a large area, the redevelopment of outer ring suburbs to allow a mixture of commercial uses and the evolution of some homes into multifamily homes offers great potential for reducing land consumption per capita. An element of this strategy would be to redesign large single-family homes into small group homes for aging Baby Boomers.

***5. New, Contiguous, Smart Growth Suburb**:* In fifth place in the Smart Growth-sprawl development hierarchy is compact green-field development adjoining existing urban areas, using green design in higher density patterns with a mixture of uses including non-commercial jobs, served by transit and with opportunities for walking and biking within the development and to nearby urban areas. This kind of New Urbanist development is on the rise.

***6. New Standard Suburb with Smaller Lots**:* The next best pattern of development is greenfield development contiguous to an existing urban area using a typical suburban development pattern, but with lots of less than 10,000 square feet.

Even if nothing else is done, reducing the minimum lot size, and thereby reducing both cost and land consumption, can save enormous amounts of land. Assume that in a particular state or urban area 100,000 new single family homes are built over a decade. Building those new homes on 5,000 square foot lots instead of 10,000 square feet would save 11,500 acres or about 18 square miles. Another option would be allowing accessory dwelling units, which would effectively double the gross density of an area, create affordable housing units for elderly and young adults, in addition to providing potential income from property.

***7. Contiguous New Standard Suburb with Big Lots**:* In seventh place is greenfield development contiguous to previously urbanized areas in a typical suburban development pattern with separation of uses and residential lots of more than 10,000 square feet.

***8. New Urbanist Communities in Rural Greenfield***: New Urbanist communities (compact, with a mixture of uses) on greenfields separated from urban areas have more impacts than standard suburban development because of the impact on surrounding uses and the likelihood of significantly increased driving per person. But depending on design and location, this pattern may rank higher than a new standard suburb contiguous to an urban area.

***9. Noncontiguous Large Lot New Suburban Development in Rural Greenfield*:** This pattern is the same as Contiguous New Standard Suburb with Big Lots (number 7), but takes place on greenfields in a rural area, forming an island of sprawling suburban development.

***10. Exurban Development in Low Natural Resource Value Area**:* Among the development patterns with the greatest impact is exurban development (2- to 80-acre homesites) in areas of moderate or low natural resource value adjoining or near an urban area. If extensive enough this pattern will be accompanied by a sprinkling of commercial and service uses such as gas stations, convenience stores

and schools. This exurban pattern is typically associated with commuting to employment areas, often suburban, that are more than double the average commuting distance or time.

***11. Exurban Development in High Natural Resource Value Area*:** The development pattern with the greatest impact is exurban development (2 - to 80-acre homesites) in areas of high natural resource value distant from urban areas and containing a large percentage of part-time residents.

Common sense and the data show that it is entirely possible for a state or metropolitan region to experience both sprawling and non-sprawling patterns of development concurrently. For example, metropolitan New York, Chicago, Charlotte, North Carolina and Boise, Idaho have all experienced significant redevelopment in their cores but also substantial exurban sprawl.

Moving significant amounts of development upward on this hierarchy constitutes effective action to curb sprawl, even if the resulting development would not meet the definition of "Smart Growth."

State governments and local governments have more or less influence on some of these shifts than on others: For example, the expansion of major transportation networks that could stimulate a new wave of low-density suburban and exurban development would be undertaken by the state. By contrast, it is local governments that would change zoning to reduce rural lot sizes from 10 acres per home to 1 acre per home.

Each of the three parts of the analysis project are summarized below. Full reports for each part are available at www.idahosmartgrowth.org.

PART 1:
**Idaho Statewide Land Use Analysis Project**
**County and County Seat Comprehensive Plan Analysis: Evaluation of data used to create plans**
**University of Idaho**
**January-December 2009**

**Team Members:** Assistant Professors Tamara Laninga and Sandra Pinel, and Research Assistant Jase Brooks with help from Monica Walker, Morgan Bessaw, Liza Pulsipher, Karla Nelson and Matt Brookshier.

**I. Comprehensive Plan Scoring Method**
A total of 40 out of 44 Idaho county comprehensive plans; 30 out of 44 county seat plans; and 31 other city plans were collected.[1] These "other cities" often include the largest city in a county, especially if it was not the county seat. Plans were collected from county and city websites and direct request.

[1]The following county plans are not included: Jerome, Clark, and Butte. Idaho County does not have a plan. The following county seat plans are missing: American Falls (Power), Bonners Ferry (Boundary), Burley (Cassia), Councils (Adams), Fairfield (Camas), Gooding (Gooding), Idaho City (Boise), Murphy (Owyhee), Paris (Bear Lake), Shoshone (Lincoln), St. Maries (Benewah), Weiser (Washington), Dubois (Clark). Nezperce (Lewis) does not have a plan.

Each collected plan was reviewed for congruency with the Idaho Local Land Use Act's thirteen required elements, outlined in Title 67, Chapter 65 §67-6508. A document called *Smart Towns: A Guide to Growth Management for Idaho City and County Officials* available from the Association of Idaho Cities expounds on the specific data requirements for each of the thirteen elements and presents a user-friendly interpretation of data needs for each element. To score the plans, a rubric for each element was created using the suggested interpretations of the Local Land Use Planning Act requirements as described in the 2007 *Smart Towns* guide distributed by the Association of Idaho Cities, which is an organization of Idaho municipalities that works to increase the capacity of cities to practice effective governance. The document is well aligned with the state code, but does include some items that are not explicitly required as stated in the statues.

The bold items in the *Smart Towns* list are explicitly asked for in the statues. The other topics may be implicit in the statute's request for an 'analysis' or are recommended by the Association of Idaho Cities as part of a comprehensive, well-informed element. For the sake of maintaining reliable scoring, all plans were subject to the same rubric parameters despite the planning capacity of each jurisdiction. The final score is the sum of the number of rubric items included in each county and city plan. The maximum score is 58 points. No plan received a perfect score of 58. The highest county comprehensive plan was Madison County (48); the highest county seat comprehensive plan was Jerome (47); and the highest "other city" comprehensive plan was Meridian (49).[1]

A number of additional elements were also considered during the comprehensive plan analysis. These elements came from previous studies that have looked at comprehensive plans.

**II. Findings from Comprehensive Plan Analysis**

This section provides descriptive statistics for the county, county seat and other city comprehensive plans that were analyzed for this project. Appendix C lists all the counties, county seats and other cities included in the analysis along with their plan score.

**A. State Code Congruency (all plans)**

Overall plan congruency with state statutes, when considering the specific data items listed in the *Smart Town* guide, is fairly low. Many plans only include goal and policy information with very little data as required by state code. Some plans include data, but it is so outdated that it would be useless for decision-making and analysis. Some plans reference additional reports used by planning commissions to create each element. However, those plans still did not include much of the data required by Idaho State code as described by the *Smart Towns* document.

The Property Rights element is the strongest element, but also the easiest to meet. The State Attorney General's Takings Checklist must be present in the plan or it must be referenced in this element's narrative. The weakest elements statewide are Community Design and Hazards. The state standards for the Community Design element require information about signs, landscape, and building design. These are usually found in city code as ordinances, which means that they may be present, but were neglected to be included in the comprehensive plan. It is notable that one of the weakest element congruency happens to be the element that Idahoans may perceive as most invasive to private property rights. The Hazards element should include information about flooding, avalanche and

mudslides, irrigation ditches, railroad crossings, and bulk fuel storage. Very few plans included information on all five topics with most plans just including information about flooding or mudslides and avalanches.

**B. Plan Scores**

The mean score for all plans reviewed is 30.3, with a standard deviation of 11.74. The distribution of score is slightly skewed to the left, with several peaks in frequency through the range. The mode, or the score that appears most frequently, is 34. A larger sample of plans may help to correct the distribution. The average age of comprehensive plans is about 6 years; the median year of adoption is 2005; and the mean number of pages is 94.

Most common additional or elected components are Vision (31%) and History (42%). Some plans, but not many, also included citizen participation sections.

**C. County Comprehensive Plan Findings**

The mean score for county comprehensive plans is 30.5, with a standard deviation of 11.88. The mean plan age of county comprehensive plans is about 6 years; the median year of adoption is 2000; the mean number of pages is 104. Seven county plans used consultant assistance (17.5% of available plans). The following county plans are drafts as of this evaluation: Franklin, Kootenai, Lewis, Madison, Twin Falls (12.5% of available county plans; 11.36% of all counties). The elective element history is included in 41% of the plans and vision is included in 23%.

**D. County Seat Comprehensive Plan Findings**

The mean score for county seat comprehensive plans is 30.42, with a standard deviation of 12.08. The average age of county comprehensive plans is about 9 years; the median year of adoption is 2003.5; the mean number of pages is 88. Five county seat plans used consultant assistance. The median year of adoption is 2003.5. The elective element history is included in 40% of the plans and vision is included in 40%.

**E. All City Plan Findings** (includes county seats)

The mean score for all city plans reviewed is 30.16, with a standard deviation of 11.74. The average age of county comprehensive plans is about 7.51 years. The median year of adoption is 2004.

**III. Summary Comments**

- The way entities interpreted 'analysis' is highly variable. Some included great detail and others included only goals and policies, but referenced back office reports that were not included in the public document. Other plans included very little analysis, but included factual data requested in the statutes. This complicated the determination of congruence based on code verbiage alone and required the use of a third party document (the *Smart Towns* guide) to ground inter-rater reliability, which is about 95% for this project.
- The variability of interpretation of the code suggests that research into city and county planning capacity would be useful for a deeper interpretation of this data. Capacity is influenced by a wide range of factors including resource availability, staff, and funding dedication.

- Professionally created plan scores have high variability. Newer consultant-created plans tend to receive higher scores, but this is not consistently true.
- A "high" score is anything above 40 points; this represents plans with above 70% congruency with Idaho code.
- Many rural counties, like Lemhi and Boundary, have well informed plans with high congruence. Urban counties or counties near urban centers round out the highest scores list. This raises questions about what factors contribute to an entity's capacity to create a plan with high congruence. Preliminary regression analysis suggests a complex model is required to uncover relationships between large numbers of variables describing many aspects of these communities.
    - Counties with scores above 40 points include: Boundary, Bonner, Lemhi, Fremont, Madison, Jefferson, Blaine, Boise, Gem, Payette, Ada and Twin Falls.
    - County seats with scores above 40 points include: Driggs, Emmett, Jerome, Moscow, Mountain Home, Payette, Rexburg, and Rigby.
    - Other Cities with scores above 40 points include: Fruitland, Kuna, McCall, Meridian, Nampa and Plummer.
- A "low" score is anything between 1 and 19 points; this represents comprehensive plans with less than 33% congruency with state code.
    - Counties with scores of 19 or below include: Bannock, Bonneville, Caribou, Franklin, Gooding, Latah, Owyhee, Power and Shoshone.
    - County seats with scores of 19 or below include: Boise, Idaho Falls, Malad City, Salmon, and Sandpoint.
    - Other cities with scores of 19 or below include: Aberdeen, Dietrich, Island Park, Kellogg, Melba, Rathdrum, Sugar City, Ucon and Wilder.

**IV. Deliverables**

In addition to providing descriptive statistics on comprehensive plans regarding congruence with state statutes, as well as plan age, number of pages, and consultant developed, several other outputs were produced by the University of Idaho comprehensive plan analysis team. One output is an on-line database with links to all county and county seat comprehensive plan, and plans for a number of other Idaho cities. The website is: http://www.bioregionalplanning.uidaho.edu/IdahoPlanning/default.aspx. Maps have also been developed which shows the score analysis visually. The maps are available in the full report at www.idahosmartgrowth.org.

**List of Counties, County Seats and Other Cities included in analysis**

| Counties | Score | County seats | Score | Other Cities | Score |
|---|---|---|---|---|---|
| Ada | 45 | Arco | 30 | Aberdeen | 17 |
| Adams** | 30 | Blackfoot | 37 | Acequia | 34 |
| Bannock** | 17 | Boise | 12 | Ashton | 29 |
| Bear Lake** | 35 | Caldwell | 34 | Bellevue | 26 |
| Benewah | 35 | Cascade | 30 | Dietrich | 16 |
| Bingham | 23 | Challis** | 22 | Eagle | 28 |
| Blaine | 44 | Coeur d' Alene | 23 | Fruitland | 49 |

| | | | | | |
|---|---|---|---|---|---|
| Boise | 40 | Driggs | 46 | Garden City** | 29 |
| Bonner** | 43 | Emmett | 42 | Hagerman | 28 |
| Bonneville | 18 | Grangeville | 31 | Hayden | 34 |
| Boundary | 41 | Hailey | 36 | Heyburn | 34 |
| Camas | 33 | Idaho Falls | 18 | Horseshoe Bend | 25 |
| Canyon | 17 | Jerome | 47 | Island Park | 12 |
| Caribou | 5 | Lewiston | 33 | Kellogg | 8 |
| Cassia | 29 | Malad City | 14 | Ketchum | 23 |
| Clearwater | 37 | Moscow | 45 | Kuna | 45 |
| Custer | 34 | Mountain Home | 43 | McCall** | 48 |
| Elmore | 27 | Nezperce | 32 | Melba* | 3 |
| Franklin* | 6 | Orofino | 34 | Meridian** | 49 |
| Fremont | 42 | Payette | 42 | Minidoka | 34 |
| Gem | 42 | Pocatello** | 39 | Nampa | 46 |
| Gooding | 13 | Preston | 21 | Paul | 34 |
| Jefferson | 46 | Rexburg* ** | 42 | Plummer | 40 |
| Kootenai* | 33 | Rigby* | 40 | Post Falls | 24 |
| Latah | 17 | Rupert | 34 | Priest River | 33 |
| Lemhi | 40 | Salmon** | 11 | Rathdrum** | 12 |
| Lewis* | 39 | Sandpoint | 11 | Star | 32 |
| Lincoln | 32 | Soda Springs** | 34 | Sugar City | 14 |
| Madison* ** | 48 | St. Anthony | 32 | Sun Valley | 39 |
| Minidoka | 34 | Twin Falls | 38 | Ucon | 13 |
| Nez Perce** | 37 | Wallace | 22 | Victor | 39 |
| Oneida | 21 | | | Wilder | 17 |
| Owyhee | 18 | | | | |
| Payette | 42 | | | | |
| Power | 12 | | | | |
| Shoshone | 14 | | | | |
| Teton | 26 | | | | |
| Twin Falls*** | 47 | | | | |
| Valley | 29 | | | | |
| Washington | 29 | | | | |

Asterisks Code: * indicates the plan is a draft. ** indicates a consultant was involved. *** indicates both conditions apply.

PART 2

**Idaho Statewide Land Use Analysis Project**
**Stakeholder Survey and Focus Group Report: Executive Summary**
**Boise State University's Public Policy Center**
**July 2009- July 2010**

**Conducted by:** Stephanie Witt, PhD, Carole Nemnich, MPA, Melissa Borg, Graduate Assistant
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## I. EXECUTIVE SUMMARY

In the summer and fall of 2009, a survey of local land use planners, public administrators, and others involved in the land use planning process was completed. Respondents to the survey answered questions about Idaho's Local Land Use Planning Act, local comprehensive plans, and land use ordinances. Additionally, the survey included a list of planning principles that were ranked by the value to the respondent and preference for including the principle in the planning process. Following the survey, focus groups were convened in sixteen cities across the state to engage respondents further.

Planners, those both publicly and privately employed, and public administrators who work in the planning process generated half of the responses, and account for over a third of respondents to the survey. Other constituencies included landowners, citizen advocates, conservationists, elected officials, and others.

**Findings:**

- **Local Comprehensive Plans and Ordinances:** Ninety-four percent of respondents strongly agreed that the comprehensive plan is essential for planning a community's future. However, less than half of respondents believe the comprehensive plan adequately anticipates future conditions, or that local ordinances provide adequate guidance for the provision of public facilities and services. Focus groups indicate that expectations and satisfaction with comprehensive plans and ordinances varied, and some participants revealed confusion over the role of the plans and ordinances.

- **Support for Planning:**

    - Generally, Idaho's local land use planning statute is perceived as adequate in providing guidance to planning. However, less than half of respondents indicated agreement with a series of statements about the level of support for planning. Nearly half of respondents believe that the level of technical information available for land use planning is insufficient. Fifty-four percent of respondents believe that costs associated with developing the comprehensive plan are not adequately covered. Fifty-eight percent said costs associated with implementing the comprehensive plan were not adequately covered.

- Forty-one percent of respondents agreed that the state should enact sanctions for communities that do not fulfill the responsibilities outlined in LLUPA. Respondents were almost evenly divided on the question of the state having a stronger role in the planning process.

- **Planning Procedures:** A majority of respondents indicated agreement for eight of eleven statements about the adequacy and efficacy of planning procedures. Seventy-five percent of respondents agreed that the public has adequate opportunities to participant in the planning process. However, in survey comments, respondents noted that applicants (for development) have "too much influence in the process" and that developers get more time to testify in public hearings than citizens do. Regarding the issue of "takings", survey comments noted that Idaho's emphasis on property rights often hinders proactive planning and good public policy.

- **Planning Decision Making:**

  - Sixty-nine percent of survey respondents believe that the public generally misunderstands the process for making planning decisions. Twenty-nine percent of respondents agreed that planning decisions are fair, predictable and cost effective. Comments related to this note that local decision-makers, public agencies, developers and community members do not have the necessary knowledge or skills to implement comprehensive plans properly; decisions about planning are often made based on political motives or from the most vocal constituency; and, comprehensive plans are often ignored for political reasons.
  - Survey comments noted the need for information (plans, ordinances, codes and maps) available online. Without a 'NIMBY' issue, it is difficult to engage the public in local land use planning processes. The inadequacy of the comprehensive plan process to assist in future planning for a community and the lack of statutory requirements for capital infrastructure development plans were cited as weaknesses to the comprehensive planning process.

- **Planning Implementation:** Fifty-eight percent of respondents agreed that criteria for allowing conditional use permits are clearly identified and followed in the local zoning code. Fifty-percent also agreed that development agreements are identified in the local zoning code. Respondent comments indicate that the criteria for conditional use permits are too vague or insufficient. A majority also said that conditional use permits are approved that conflict with the comprehensive plan and that decision-makers may lack the proper training to make appropriate conditional use decisions. The need for additional training and education for elected officials, decision-makers and developers in planning was also frequently noted.

- **Unincorporated Land:**

  - Respondents favored maintaining the character of land uses in the planning process. Fifty-seven percent of the survey respondents agreed that unincorporated land should be preserved as working farms, ranches and open space. Respondents noted in their

survey comments that unincorporated lands tend to be an "easy target" for out of state developers. Eighteen percent agreed that lands outside incorporated cities should allow for urban style development. Ninety percent of respondents disagreed with the statement that land outside incorporated cities should not be regulated. Several respondents noted that development in unincorporated areas has impacts on needed infrastructure and some indicated that this is a burden for cities and counties when this development occurs.

- The Area of City Impact generated much interest noting that it is a constant point of tension and that LLUPA is not currently configured to deal effectively with these tensions. Focus group participants identified the Area of City Impact as an issue where city and county responsibilities and willingness to collaborate were unclear, or where cities and counties had different philosophies or capacity for planning.

- **Impact Fees:** Respondents generally supported impact fees (in addition to those already allowed by statute) for public schools (71%), trails and sidewalks (70%), local roads (63%) and public transportation (63%). The most common sentiments expressed were that "growth should pay for itself" and developers should be held responsible for funding additional infrastructure where needed. A common concern is that the current impact fee structure is not useful; administration is too costly and it is a burden to small communities.

- **Planning and Growth Principles:** Environmental concerns were ranked most highly as planning principles, both as a principle value and for inclusion in planning. Transportation considerations, citizen input, public investment options and housing principles followed. Aesthetic principles (what is pleasing to our senses) were not ranked highly enough to make the comparative list.

- **Constituencies:** Respondents were asked which constituencies were most represented in the comprehensive plan. Business and economic development were viewed as the most dominant priority (84%), followed by elected and appointed policy makers (74%), and transportation reform advocates were viewed as the least recognized constituency (23%).

PART 3

**Changing Development Outcomes**
**Robert Liberty**
**August 2010**

The final task of this report was to assess the inventory and survey information gathered by the University of Idaho and Boise State University, consider examples from other communities, and to lay some foundation for changes to state statutes and local codes and the manner in which planning is carried out at the local level in order to address issues raised by local communities.

In the last 40 years, many states and regions have adopted growth management laws, passed tax incentives for development and conservation, promoted comprehensive planning requirements, facilitated community discussions, adopted regional vision statements and made other attempts to reshape the pattern of development away from sprawl and toward compact development.

These programs have attracted the attention of researchers in academe, think tanks and a variety of nonprofit organizations. In addition to research by these organizations, national data sources provide a growing body of evidence about what planning programs have worked, worked partially and haven't worked.

<u>Summary</u>

- State laws mandating comprehensive local land use planning – without explicit sprawl reduction goals - have not had any effect on sprawling development patterns. This is true regardless of whether the comprehensive plan is merely advisory or mandatory (that is, directly controlling over land use decisions or executed through consistent zoning regulations.) This conclusion should not be surprising since so much of the nation's sprawl is the *result* of planning and land use regulations.

- Focusing state infrastructure investments on existing or planned compact growth areas and limiting or prohibiting it in rural areas designated for conservation has been tried by several states and regions. It has had either very limited or no impact in stopping sprawl, because (1) the state's role in infrastructure provision is limited; and/or (2) infrastructure built before the law or policy was adopted is sufficient to support continued sprawl; and/or (3) the state infrastructure investment policy is poorly implemented.

- Incentives and programs to promote urban reinvestment and development have had significant impacts in promoting more dense, compact growth in existing urban areas, but have had limited impact on stopping suburban and exurban sprawl. In addition, there are many examples of the renaissance in old urban centers that have occurred with little or no government programs or incentives.

- Conservation of rural lands through public incentives (government purchases of land, development rights or easements) and private conservation programs (donations of land or

easements to nonprofit organizations for free or at reduced costs and tax incentives to sell development rights or conservation easements) have saved important lands from development. However, with a few partial exceptions, these efforts are simply too expensive to conserve large landscapes. The purchased conservation approach is most useful as part of a larger strategy or when applied to particularly important natural resources.

- In parts of two states (Oregon and Washington) and in many cities and counties around the nation, the combination of drawing a boundary to urban growth, promoting urbanization inside the boundary and using regulations and incentives to curb development outside the boundary has had measurable impact in curbing urban sprawl and promoting more dense urban development. However, performance within these states and between these communities varies widely, reflecting differences in the rigor of implementation. These programs have had uneven results in stopping exurban sprawl.

- Comprehensive and convincing research is lacking about the performance of many other more geographically focused reforms, such as school siting and changes in the way development charges are levied. Anecdotal information and case studies suggest that some of these efforts have had important, local, impacts on reshaping development.

Recommendations

**1. Using Planning and Land Use Regulation to Direct Development towards Existing Communities and Infrastructure**

- **Persuade local governments to remove or reduce local zoning barriers to more intense residential development and redevelopment in residential zones, implement the recommendations from the Idaho Smart Growth ULI report "Quality Infill" January 2010 and the ULI Mayors Task Force Report 2010**

Zoning today still reflects century-old assumptions that apartments and other higher density housing causes social problems and lowers property values. Conversely, zoning large areas for single-family housing only, and establishing large minimum lot sizes would protect middle and upper class values, property and otherwise.

Reducing those minimum lot sizes, and nothing else, could dramatically shrink the amount of land consumed to accommodate future growth and reduce all public infrastructure costs that are sensitive to densities (lineal infrastructure like roads, power, water and sewer lines and distance-based services such as fire and police protection and school transportation.)

Adopting clear(er) height and bulk limits or requirements regarding building materials and landscaping could offset design objections to increased residential densities.


Allowing the conversion of corner lots into duplexes and a general authorization of accessory units, within existing

homes or as freestanding units, is a good way of gradually increasing the stock of ownership and rental housing in older neighborhoods.

Another approach to increasing density based solely on single-family residences clusters smaller homes (450 to 1,500 square feet) onto a common area. This arrangement can achieve densities of 6 to 12 units per acre with attractive common garden spaces.

- **Change local zoning to allow a much greater mixture of uses along arterials, especially transit streets; promote redevelopment with public investments in street amenities.**

Whether the community is Boise, Sandpoint or Pocatello, there are enormous stretches of very low density commercial strip development along arterials. These areas, if zoned properly for higher density residential and mixed uses, can accommodate a large share of Idaho's projected population growth.

In order to entice this kind of development, local governments should invest in new sidewalks, street trees, attractive lighting and landscaping. Priority should be given to places where the market is ready to respond to these public investments.

As part of this effort to accommodate and attract development along corridors, it is often appropriate to reduce the width of the streets. In many instances this can be done with minimal impacts on

congestion. Dan Burden is an expert on improving pedestrian access and redesigning streets. COMPASS brought him to the Boise region in 2010. He has a portfolio of successes that can be referenced to show that alternate approaches to road design work.[2]

- **Reduce or deregulate parking requirements for commercial uses, including multifamily housing**

Any kind of parking requirement for commercial uses, including multifamily rental housing and higher-density condo housing, has a significant effect on both design and profitability of this kind of development. A typical cost for a single parking space built in an underground parking garage is $40,000; surface parking spaces can cost as much as $20,000 per space. Imposing a requirement that builders of multifamily housing must build one or two spaces per unit sharply increases costs per unit, reduces the size of the market and renders many projects infeasible.

Tuck-under parking costs much less, but is still more expensive than surface parking. The effect of using surface parking to meet minimum parking requirements is to reduce density and to create urban dead zones.

One approach used to reduce commercial minimum parking requirements is to conduct careful surveys of actual parking usage in an area. In many cases there is ample parking but its use is limited to the patrons of a particular business. Shared parking arrangements can reduce development and operating costs or increase revenues for businesses. An example of shared parking is for spaces serving day-time commercial uses to be available for residents' parking at night.

- **Promote innovations in urban design through public and private actions, especially with respect to compact types of housing.**

Urban design competitions and awards for successful infill and redevelopment projects are a good way of calling public attention to a better approach to growth than greenfield development.

For the past six years, Idaho Smart Growth has given awards for developments that reflect Smart Growth principles, including awards in small communities and for redevelopment.

As Idaho Smart Growth understands, design competitions and awards can have multiple benefits.

First, they attract the public's interest to alternative housing and communities. A good local example that someone can visit is far more powerful than an editorial column. Real examples allow people to reconsider what they assumed were their preferences regarding housing and neighborhoods.

[2] His website is http://www.walkable.org/

Second, they educate local officials. If local officials observe that the public reception is favorable, it will reduce the officials' resistance to changing the regulations that are barriers to creating more of these kinds of projects.

Third, they provide both encouragement and free advertising to the developers and designers, many of whom are as motivated by professional pride as they are by profit.

Fourth, and possibly most important, successful redevelopment and infill projects provide comparables (projects demonstrating market demand and sales prices) for banks, making them more willing to make loans to similar projects in the same neighborhood. (This assumes a relaxation of the current extremely tight and conservative lending practices.)

**2. Integrating Land Use and Transportation Planning**

For many decades land use planning and transportation planning formed a feed-back loop that contributed to sprawl. Population and employment projections justified investments in new and wider roads. These roads increased access to existing jobs and services and made the land desirable for development. This new development coupled with land use regulations which mandated low residential densities and separated uses, generated significant automobile traffic. The traffic congestion then justified more and bigger roads.

This feedback loop occurred because transportation planning incorporated two flawed assumptions.

First, transportation planners assumed that if the miles of roads ("lane miles") in a congested area are doubled, that congestion would be reduced by one-half. That is, the same number of cars would occupy twice as many lane miles.

But in reality, if a new or bigger road is built, then travel time is reduced, at least at first. Before the new roads were built, drivers would choose not to make the 15-minute trip to the store to buy one item. Instead they would combine that errand with another or drive during a less congested part of the day. But once the new road capacity reduced congestion-caused delay, the shopper is willing to make a separate trip to the store. When roads or widened and new roads are built in an urban area people will make more trips, per capita – longer trips and additional trips.

In addition, some alternate routes chosen to avoid a congested road will be abandoned and the driver will change her route to take advantage of the wider road. These two phenomena rapidly use up much of the new road capacity.

Second, the models used by transportation planners treat future land use patterns as fixed. Different transportation improvements are analyzed based on the assumption they will serve the identical land development pattern.

This assumption flies in the face of reality. Transportation facilities do not passively serve the transportation demands for a fixed pattern of development; they help locate and generate additional development and can promote disinvestment as well. New roads and new access to roads has the effect of creating or increasing a customer base for commercial uses or making housing economically attractive by reducing the travel time from those houses to jobs, services, schools and recreation. The new roads can also disadvantage existing businesses on the older road network, leading to a reduction in the amount of retail and service activity; many old main streets in small Western towns have withered on the vine after the big box store was built at the new interchange with the interstate highway, two miles away.

On the other side of the planning process from the transportation planners in state highway and local transportation departments, are the local land use planners. Those planners often understand the site specific impacts of particular developments on congestion, such as authorizing a large retail use near a freeway interchange.

Densities in jobs and housing are critical for transit service. There are threshold densities of residents or jobs that are necessary to sustain transit operations assuming typical levels of public subsidy. Different levels of density are necessary for different frequencies of service and different types of vehicles, from bus/streetcar to bus rapid transit/light rail to heavy rail and subways. Zoning that suppresses densities can make transit service infeasible.

Diversity of uses and good urban design are also important determinants in how people choose to travel. Even high densities don't change travel patterns very much if housing, shopping, jobs and services are all separated into different areas. It is the diversity of uses and services nearby that make it convenient to walk, bike or take transit.

Good design (including creating a good walking environment) can also reduce driving even in the absence of transit service. For example, clustering uses near each other with shared parking can convert many driving trips on a congested arterial into a walking or biking trip on a quiet side street.

There are various state efforts in other states to integrate land use and transportation planning, including the New Jersey FIT program and the Pennsylvania Department of Transportation's emphasis on context sensitive design. These are policy-level efforts at integration.

A notable project-level effort to integrate land use and transportation was the Land Use Transportation Air Quality (LUTRAQ) project carried out by 1000 Friends of Oregon and allied organizations in the 1990s. The LUTRAQ project was undertaken by 1000 Friends' desire to find an alternative to a proposed ring highway, the Western Bypass, proposed for the southwest Portland, Oregon metropolitan region. To read more about this example, read the full report available at www.idahosmartgrowth.org.

- **Review of Idaho Transportation Plans, Policy, Procedures and Investments**

### a. State Transportation Plans

The Idaho Transportation Plan was adopted in 1996. The Plan is summarized as follows:

> *This Idaho Transportation Plan provides a future vision and long-range framework for planning, developing, operating, and maintaining Idaho's transportation system to serve the needs of all Idahoans for work, shopping, medical care, recreation, emergency services, commerce, and other purposes. It proposes an intermodal system that provides mobility while supporting economic and environmental goals. It is comprised of a vision, goals, objectives, strategies, and recommendations for multi-modal transportation both now and in the future. The goals and objectives are based upon existing state policy, federal law, and input from public meetings held in various Idaho cities. They are intended to serve as a guide for state and regional transportation plan development and for transportation decisions made by all levels of government, the private sector, and the public.*

The Idaho Transportation Plan establishes five transportation goals, each with associated subset of objectives and strategies. The goals are both substantive and procedural.

With respect to land use patterns, the relevant goals and some of the objectives in the Transportation Plan are:

> *Goal 1. Transportation improvements will promote and sustain the safe and efficient movement of people, goods, services and information.*
>
> *Goal 2. Transportation plans, programs, and strategies will integrate the intermodal transportation needs of the state.*
>
> *Objective B: Manage Transportation Demand*
>
> *Objective C: Coordinate Land Use and Transportation Decisions*
>
> *Objective D: Develop and Maintain Roadway, Bicycle, and Pedestrian Facilities*
>
> *Objective E: Develop and Improve Access to Transit Systems*
>
> *Goal 3. Transportation decisions will protect the environment and promote energy efficiency.*
>
> *Objective C: Optimize the Use of Energy Resources in Transportation*

Compared to other states, these are very enlightened goals for the state transportation system. But subsequent sections of this report will show that these progressive objectives and goals have not yet been the basis for decisions about investments in transportation programs and facilities. Nonetheless these goals can be useful as the policy foundation for changing those investment decisions.

In addition to this overall state plan, Idaho has separate state plans for each transportation mode; cars (the State Highway Plan of 1998), rail, bikes and pedestrians and aeronautics. (There is no marine port plan since only one city in Idaho has a port, Lewiston.)

*What should a state transportation plan be?*

Certainly a state transportation plan should include policies and goals (economic, environmental, equity and others) of the type now in the current state transportation plan.

But that should just be the starting point. Based on scenarios research and realistic assessment of resources it should describe general strategies for reaching the goals including changes to land use, demand management and other systems and operations programs, maintenance and investments in new facilities, roads, rails, airports and ports.

The underlying analysis for the state plan cannot, and should not be, as specific as corridor plans but it should be sufficient to make some preliminary decisions about priorities for investments in programs and facilities in particular places.

**b. State Transportation Policies**

The State Transportation Board has adopted transportation policies in the form of the goals in its 1996 Transportation Plan and most recently in the form of a transportation policy statement called *Idaho's Transportation Vision: Idaho's Transportation Future; Getting there together*. This document was prepared jointly by the state's Metropolitan Planning Organizations, tribes and non-metropolitan transportation planning agencies, called the Idaho Transportation Partners.

The partners conducted extensive public hearings and meetings on transportation policy beginning in 2000 and concluding in late 2003. The final report was published in 2004.

At the Idaho Transportation Board meeting on July 13, 2004 in Twin Falls, the Board received a staff report on the Idaho Transportation Vision. The Board passed a resolution that made it the official transportation (policy) plan for Idaho:

> *NOW THEREFORE BE IT RESOLVED, that the Board adopts and endorses Idaho's Transportation Future: Getting There Together as the long-range transportation plan for the Idaho Transportation Department and Idaho's Transportation Partners; and*
>
> *BE IT FURTHER RESOLVED, that the Board charges the Department with developing implementation products and initiatives to support the Vision document.*

The Transportation Vision includes the following principles and priorities:

***Principles***

- *Mobility for all users*

- *Compatibility with the environment*
- *Preservation of community assets*
- *Flexibility and responsiveness*

***Priorities***

- *Integrate the transportation system*
- *Support quality of life through endorsement and acceptance*
- *Provide flexible funding*
- *Integrate transportation and land use planning at state and local levels*
- *Support choices for all individuals*

In addition to principles and priorities, the Transportation Vision includes a hierarchy of implementation strategies. That hierarchy puts the construction of additional highway capacity in fourth place after the following:

- ***Recognize continuing growth in mobility demand and determine ways to reduce its impact.*** *If the travel need can be met in a non-travel manner, demands for construction to expand the existing system can be redirected. By starting with this educational strategy, it may be possible to eliminate, or at least reduce, the need for other strategies. When participants asked for an integrated approach to land use and transportation planning, they were focusing attention on addressing mobility through reducing personal vehicle use. Community development that occurs with significant density creates walking and bicycling options that can reduce the need to expand existing road networks. Similarly, information technology solutions can provide options that allow people to work or shop from home or neighborhood telecommute centers, using financial and/or physical incentives to slow the growth in travel demand.*

- ***Balance highway solutions with other modes.*** *In many instances, the first strategy will not completely address the growth in demand. This second strategy can balance road and highway expansion by using higher capacity vehicles or other related modes to address the demand for travel. For example, reliable and predictable public transportation service offers a high capacity solution within communities when conditions warrant….*

- ***Maximize the efficiency of the existing system****. The third strategy focuses on maximizing capacity of the existing system through transportation planning and preservation of multimodal corridors. Education will play a key role in maximizing options, while requiring additional financial and technical resources to do so. This strategy also provides stronger technological and operational ties between the state and local systems.*

But like other progressive policy statements it is not clear what effect, if any, the Vision's strategies are having on actual investment decision.

An appendix to the Transportation Vision report states that it is "a crucial component of the Idaho Transportation Department (ITD) long-range planning process. As a policy document, it contains the principles and priorities that will shape and guide the transportation decisions of ITD and other transportation stakeholders throughout Idaho."

### c. State Transportation Investment Program (STIP)

The State Transportation Improvement Program for 2010-2013 (approved in April 2010) contains no narrative, no articulation of strategy and no goals or principles; it is simply a spreadsheet of projects organized by district and mode.

There is no explanation of how or whether the projects implement the principles, priorities, and implementation strategies contained in the Transportation Vision.

The STIP does give priority to maintaining the existing system over expansion; $614 million out of a total $864 million capital improvement program is proposed to be spent on roads and highways is for pavement and bridge preservation and restoration.

But the STIP also includes substantial investments in road widening, from two lanes to five, from five lanes to seven, as well as some entirely new routes.

Although the Transportation Vision describes the need for investment in public transit, there is no state financial commitment to public transit in urban areas.

In District 3, which includes the Boise Metro area, $348 million in road and highway projects are proposed (for design, engineering, right of way acquisition and construction), with about two-thirds of the costs funded by state taxpayers. By contrast only $29.6 million of public transit projects are listed for this district, and the state contribution to these project costs is $0 (as is true statewide.)

### d. Metropolitan Regional Transportation Planning: COMPASS' *Communities in Motion*

Federal law requires that urban areas over 50,000 in population establish a Metropolitan Planning Organization (MPO) to guide the spending of the substantial share of federal tax dollars distributed to states for transportation infrastructure.

MPOs are governed by a board made up of local officials advised by staff and others serving on a technical advisory committee. MPOs are required to draw up a long range transportation plan and a Metropolitan Transportation Improvement Program (MTIP) to be used to guide the investment of federal (and state) transportation revenues.

In Idaho, there are five MPOs; southwest Idaho/metropolitan Boise (Community Planning Association of Southwest Idaho called "COMPASS"), Pocatello (Bannock Planning Organization), Idaho Falls (Bonneville MPO), Clarkston-Lewiston (Lewis-Clark Valley MPO) and Spokane-Coeur d'Alene (Kootenai MPO).

This report analyzes only a single one of those five MPO transportation plans, the Southwest Idaho Regional Transportation Improvement Program. This MTIP was adopted by COMPASS and is entitled *Communities in Motion.* It includes a set of desired outcomes that recognizes the relationship between land uses and transportation investments.

In its introductory section the Executive Summary for the 2010 update of *Communities in Motion* expresses support for:

- *Balance between housing and jobs*
- *Choices in housing types*
- *Choices in transportation and shorter commuting distance*
- *Connectivity through higher densities*
- *Preservation of open space and farmland*

*To develop* Community in Motion *in a new way, COMPASS outlined these guidelines when beginning the planning process in 2004:*

*1. Projects from prior plans would not be carried over automatically.*

*2. Projects would be selected by a rational evaluation process.*

*3. Land use preferences would start the planning process.*

*4. Regional perspectives and broad corridor-level projects would be the focus.*

*5. Public transportation would be considered in a meaningful way.*

*6. The plan would be financially constrained and include only projects that could be funded with existing levels of revenue over the next twenty-five years.*

*Communities in Motion* May 10 2010 Draft page 8.

All of these guidelines are impressively reform-oriented, especially the first and the third.

The document also reflects the idea that transportation investments are the means to an end, not an end in itself, which is a core concept for transportation reform:

> *"Community Choices" is still the preferred scenario for the 2010 update and offers a vision for a more cost-effective, multi-modal transportation system. To support this vision, funding for public infrastructure must be directed to areas of growth consistent with those outlined in Communities in Motion. If done, new growth patterns will mean that our region will:*

- *Consume less land*
- *Save more open space*
- *Offer more housing choices*
- *Foster the use of public transportation*
- *Cut one million daily vehicle miles of travel*
- *Ease traffic congestion*
- *Reduce fuel consumption*

| Trend | Community Choices |
|---|---|
| 125,400 acres | 42,200 acres |
| 72% single family | 55% single family |
| 20% new homes at transit density | 52% new homes at transit density |
| 20.7 Million Daily Vehicle Miles of Travel | 19.6 Million Daily Vehicle Miles of Travel |

The Community Choices referred to is the alternative land use pattern selected as the preferred alternative in the 2006 *Communities in Motion* update. That scenario called for much more compact growth in the region.

The list of road expansion projects contained in the Executive Summary of the 2010 update of *Communities in Motion* is a better indicator of the real focus of transportation planning and investment than the policies. These road projects include $1.5 billion (15% of all regional transportation investments) for widening I-84 from four to eight lanes in various sections, $315 million to convert State Highway 16 into a limited access highway and $193 million to widen Linder Road.

The very strong contrast between the Communities in Motion Guidelines and the reality of a continued focus on highway projects within the COMPASS planning area reveals the continuation of old ways of thinking about transportation planning and investments.

### e. State & Local Corridor & Transportation Project Planning

The Idaho Transportation Department's corridor planning process is a primary means of generating transportation projects in the State Transportation Improvement Plan (STIP).

According to the Department, the "purpose of corridor planning is to comprehensively address future transportation needs, and to recommend a package of improvements and management strategies for

the transportation system within a corridor." The corridor planning process is described by ITD as collaborative, integrating land use and transportation and exploring multi-modal and system management alternatives as well as highway construction.

The corridor planning process closely resembles the planning process used for other non-corridor highway projects. Both processes are supposed to satisfy the requirements of the National Environmental Policy Act, especially the development of alternatives and the analysis of these alternative's different environmental impacts.

ITD's Corridor Planning Guidebook (updated in 2006) lists as one of corridor planning's general guidelines, the relationship with state and local plans and policies:

> *Corridor plans should be consistent with existing plans, documents, and laws. Consistency should be sought with local comprehensive plans adopted within the planning area, along with the Idaho Transportation Plan (1996), and Idaho's Long-Range Transportation Vision (2003), the Idaho Transportation Department's Context Sensitive Solutions Guide, modal plans, the Idaho Code, regional plans and state guidance documents, and federal laws, rules, policies, and guidance.*

Despite these references to state planning documents and policies, the Corridor Planning Guidebook does not quote, describe or attempt to apply any of those plans and policies.

After presenting the "general guidelines" the Corridor Planning Guidebook outlines a nine-step process for corridor planning.

*Step 1—Develop a Corridor Work Plan*

*Step 2—Research Existing Conditions of the Transportation System*

*Step 3—Document Existing and Projected Environmental/Land-Use Conditions*

*Step 4—Analyze Future (20-Year) Travel Demand and Performance in the Corridor*

*Step 5—Review the Corridor Boundary, Develop a Statement of Purpose and Need, and Identify Goals for the Corridor*

*Step 6—Generate Alternatives to Meet Goals*

*Step 7—Identify Feasible Alternatives and Strategies*

*Step 8—Analyze Feasible Alternatives and Strategies to Generate Recommendations*

*Step 9—Prepare the Corridor Plan Document*

This nine-step process seems logical enough. But both in concept and in practice there is a built-in bias toward selection of the alternative to build or expand highways. For examples, read the full report at www.idahosmartgrowth.org.

To achieve better outcomes (consistent with the Transportation Vision and the COMPASS Communities in Motion plan), corridor and project planning should be reformed in the following ways:

- The problem definition, adoption of (at least a preliminary) purpose and need statements, study area and evaluation criteria should be adopted at the outset, before the review and evaluation of transportation data and land use information.

- The governing bodies ultimately responsible for the decision, and not their delegates or study advisory committees, should be required to formally consider and approve (a) an acceptable cost range at the outset of the project; (b) the purpose and need statement; (c) the evaluation factors; (d) the range of alternatives to be studied. These matters should not be delegated to an advisory committee.

- Land use causes of transportation problems and land use consequences should be a part of every analysis

- The list of alternatives for major highway capacity projects needs to be expanded beyond "no build", alternative highways investments and a transit alternative, to include (a) a spectrum of demand management and system operations; (b) alternative land use patterns; (c) investments in arterials.

- For large projects (*e.g.* $100 million or more) the different alternatives should be analyzed by competing firms or agencies.

- Consulting firms that bid on the analysis should be barred from being awarded engineering or construction contracts. Incentives should be created for contractors who develop low-cost alternatives.

- Use of a standardized cost benefit analysis which is applied to all of the alternatives. (This can also be described as a "return on investment" or "ROI" analysis.) The costs should include not only project costs (including finance charges) but also external pollution effects, land use price effects, construction related traffic delays and social justice measures. Benefits should include not just reduced travel time, but also progress toward pollution and greenhouse reduction goals, desirable land use impacts, job access and realistic benefits for freight movement.

- At the end of the process any amendment of a state or metropolitan transportation improvement program to add the project should identify what place in the list of priorities it occupies. Some kind of cost-benefit or ROI comparison ought to be applied to compare the proposed projects with other projects already in the STIP or MTIP.

Other recommended reforms to transportation planning and investments are as follows:

- State and metropolitan transportation plans must be reworked to describe the spectrum of objectives that transportation investments are supposed to achieve, treating those investments as means not ends. Thematic investment scenarios (investing primarily in highways, or transit, or arterials or using demand management and operations, or changing land use patterns that determine how much and how people travel) should be used to develop an investment strategy that emphasizes revitalization and redevelopment instead of sprawl.

- Eliminate fiscally unconstrained transportation project lists in the MTIPs; identify revenue sources and trade-offs with maintaining existing facilities. Under Federal law metropolitan transportation plans must include a "fiscally constrained" transportation plan and project list that reflects realistic estimates of revenue. Despite this requirement, the fiscally unconstrained project lists often dominate the discussion and politics. Once on the unconstrained project list, the projects can be moved from the unconstrained to the constrained lists.

- In other areas of government investment, a capital budget is developed based on a single revenue assumption; governments do not develop two different lists of capital projects based on alternative optimistic and pessimistic revenue assumptions. The same should be applied to transportation investments. There should be a single project list based on a realistic set of revenue assumptions.

- Metropolitan transportation plans should separately identify the costs and trade-offs between maintaining existing roads and transit system and expanding capacity.

- Require metropolitan transportation plans to describe land use consequences of transportation investments. A metropolitan transportation plan should present the results of an analysis of the impact of the proposed set of metropolitan transportation investments on development patterns. It should show where development will occur and what the effects will be on land values within the region. A projection about what will happen should lead to debate about whether these outcomes are good or bad for the region and individual neighborhoods.

**3. Local Planning for Capital Improvements in Idaho**

The Idaho Local Land Use Planning Act requires a local comprehensive plan to include

> *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*[3]

The LLUPA also requires

[3] Idaho Code 67-6508(h)

> *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.*[4]

There is no specific requirement of associating a financial plan or fiscal feasibility analysis for these capital improvements. However, the plan must require a generic

> *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.*[5]

Given the generality of these provisions it is not surprising that among the participants interviewed by Boise State University

> *[o]nly 25% of the respondents agreed with the statement that the provisions in the local comprehensive plan provide guidance in funding for capital improvements. The inadequacy of the comprehensive plans to assist in future planning for a community was noted in focus groups, which specifically mentioned the lack of capital infrastructure needs.*[6]

Infrastructure in Idaho, as in other states, is financed by a combination of federal, state and local government and special district sources. Federal funds are distributed through state agencies and directly. State funds are also spent both directly and redistributed to local governments and districts.

For a cursory summary of sources and spending, read the report at www.idahosmartgrowth.org.

*Funding for Local Government Infrastructure Investments*

For local governments around the nation, the major source of funding for local capital improvements for new development is development impact fees.

In Idaho, development impact fees charged by local governments must conform to the requirements of the Idaho Development Impact Fee Act,[7] ("IDIFA") which is found in Idaho Code § 67-8201 to 8216.

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[4] Idaho Code 67-6508(i)

[5] Idaho Code 67-6508(n)

[6] Boise State University: Stephanie Witt, Carole Nemnich, Melissa Borg *Idaho Statewide Land Use Analysis: Survey and Focus Groups* 2010 (draft) page 4.

[7] The *Idaho Land Use Handbook* published by the Givens & Pursley law firm summarizes (and reproduces) the Idaho Supreme Court decision in *Cove Spring Development* issued in 2008 that made it clear that local governments can only charge fees on development (no matter how such fees are characterized) only as authorized within the scope of the Idaho Development Impact Fee Act.

It allows local government to collect fees for new development in order to:

> *(2) Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;*
>
> *(3) Establish minimum standards for the adoption of development impact fee ordinances by governmental entities;*
>
> *(4) Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements; and*

Idaho Code § 67-8202 (Purposes).

That Act allows local governments to charge impact fees for:

> *(a) Water supply production, treatment, storage and distribution facilities;*
>
> *(b) Wastewater collection, treatment and disposal facilities;*
>
> *(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;*
>
> *(d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;*
>
> *(e) Parks, open space and recreation areas, and related capital improvements; and*
>
> *(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.*

Idaho Code § 67-8203(24) and § 67-8204.

As the basis for determining impact fees, IDIFA requires the development of a capital improvements plan describing planned new infrastructure for "service areas," Idaho Code § 67-8208, a requirement cross referenced with the local planning responsibilities under the Local Land Use Planning Act.

**In theory: Using infrastructure investments to reshape development patterns**

In theory, one of the most effective actions to discourage sprawl and promote infill and redevelopment is to limit the extension of urban infrastructure, like roads, water and sewer lines and schools into new areas and focus on maintaining and improving infrastructure in existing communities.

Of all the different types of infrastructure (and there are many) the most important in shaping development patterns is transportation.

Roads and rails are the backbone of development; without transportation access development isn't possible. This is not the same as saying that new roads and highways cause sprawl; building a highway through northern North Dakota is not going to result in sprawling development. But where there is a nearby market for residential or commercial development the extension or expansion of roads (or commuter rail) allows that market to shift, take route and bloom.

Another important qualification to make regarding the impact of limiting, or conversely extending or widening roads, especially in suburban or exurban settings, concerns the existing road network. If there is already an extensive road network and associated development, then as the market for development strengthens that network will accommodate substantial growth even without new or wider roads.

After roads, the most important infrastructure leverage on the extension of urban growth is through drinking water and wastewater infrastructure (pipes, pumps and processing facilities.)

Limits on water and sewer infrastructure will not stop exurban sprawl development that requires minimal infrastructure since it can be built using gravel roads and septic tanks.

Several states and urban areas have attempted to use investments in infrastructure to shift away from sprawling development

**From theory to practice: Experience in other states and regions attempting to shift development patterns by changing infrastructure investments**

Many states and regions have attempted to curtail sprawl by (a) limiting or prohibiting the extension of, or funding for, urban infrastructure in areas identified for rural or conservation uses; (b) giving preferences for the extension of, or funding for, infrastructure for areas targeted for urban redevelopment or more compact new greenfield development.

For a summary of the experience in Maryland, Vermont and the Minneapolis-St. Paul metropolitan region, which are broadly representative of such efforts around the nation, see the full report available at www.idahosmartgrowth.org.

Other places have had similar experiences with trying to reshape development patterns through re-targeting infrastructure investments (without using strong land regulatory measures as well.)

The weak performance of these state and regional efforts does not mean that strategic controls on infrastructure cannot change development patterns. It does mean that in order to be effective (1) they must be applied with rigor; (2) they must be applied at the state and local level; (3) they must be coordinated with changes in local land use plans and regulations.

**Conclusions and Recommendations for Infrastructure Reform Actions**

The very limited successes of governments' efforts to relocate development through providing or withholding infrastructure do not mean that this approach is necessarily ineffective. But the approach has some of the same weaknesses as other strategies.

First, it requires political will. In practice it appears that withholding taxpayer-funded investments for inappropriate development is almost as hard as adopting land use regulations to prohibit that development.

Second, it must be comprehensive; it does little good to target only state or local infrastructure funding, if significant development can occur around infrastructure provided by local governments or special districts. If the state builds the highways, and a water district provides the water lines, a school district builds the schools and a local government finances the local roads and sewers, it makes it harder to deny one set of urban services if others are already provided.

Third, this technique is better at stopping leapfrogging suburban development than it is in promoting compact redevelopment. To be effective, the latter requires rezoning and shifting of local government zoning and taxation incentives.

Fourth, in most cases and most places, withholding urban services and prohibiting or limiting road improvements will not curb exurban, low-density sprawl.

**4.Large-Scale Rural Conservation**

Idaho's growing population is creating pressure to develop our working lands. As of 2008, the current "inventory" of Idaho's private working lands is 13.8 million acres. Every Idaho county has working private working lands.

The American Farmland Trust evaluated ranchland conversion risk in seven Rocky Mountain States. Three of Idaho's counties ranked in the top 25 counties most at risk within the seven state area (263 counties).

Counties in Idaho with national forests, recreational opportunities, natural resources and aesthetic qualities experienced growth rates between 15 – 30% from 1990 – 2000. One consequence of this growth is loss of the things we value most about rural Idaho: wildlife habitat, open space, and our working lands.

When working lands become subdivisions, consequences include:

- Loss of the economic contribution those lands provided
- An increase in the need for services provided by local jurisdictions such as sewer, transportation and schools
- A loss of habitat and access to public lands

Changing the pattern of development and conservation in Idaho is important for the quality of life and the economy of its residents. Because of Idaho's great beauty and natural resources, it is also important for the nation. One goal of this study was to examine what's working in other states and create a menu of tools communities can consider to protect their working lands and open space.

For a summary of the experience in Oregon, Montana, Fauquier County, Virginia, New Jersey Pinelands, and Colorado, see the full report available at www.idahosmartgrowth.org.

**Public Acquisition of Land and Purchase of Development Rights: Useful Locally, Impractical Statewide**

Many officials hope that programs to purchase lands, the donation of conservation easement the purchase of development rights (PDR) or transfer development rights (TDR) can conserve rural lands without using regulations.

By and large, this hope is not supported by experience.

In geographically smaller but more populous and wealthier states, it is possible to conserve a substantial share of the remaining rural lands through purchase, purchase of development rights, transfer of development rights or conservation easements.

In other words, in order to protect rural lands through taxpayer and donor financed conservation, there must be a high ratio of taxpayers and donors to the amount of land to be protected. This is one way of describing the circumstances that made the protection of the Boise Foothills possible.

That is not the situation statewide in Idaho. The purchase of development rights, or public acquisition of private land, is far too expensive to conserve significant amounts of rural lands statewide in Idaho.

Consider the Boise Foothills Levy. As of June 14, 2010, the $9.6 million of the $10 million 2002 Boise Foothills levy has conserved or purchased 10,471 acres. This is an impressive performance, with conservation costing the public a bit less than $1,000 acre, a figure that reflects substantial private contributions to the fund and donations of development rights.

In 2010 the Federal government awarded two grants to the Idaho Forest Legacy Program to buy easements on private land totaling 4,447 acres that link the Selkirk and Cabinet-Yaak ecosystems in Northern Idaho. The Federal award was $5.8 million, representing 75% of the market value. Assuming the minimum local match ($1.9 million) this works out to about $1,742/acre for conservation easements on these two properties.

Let's put these conservation easement costs in the context of a statewide land conservation effort.

According to the 2007 National Resources Inventory, Idaho had about 18.5 million acres of nonfederal rural land; 6.5 million acres was rangeland, 5.25 million acres were cropland, 0.8 million acres were

cropland enrolled in the Conservation Reserve Program, 4 million acres was forest land, 1.3 million acres was pastureland and 0.6 million acres was classified as "other rural land".

Even at the extremely low estimate of $1,000 per acre to buy a conservation easement prohibiting all development (a PDR), to conserve all private farm, forest, range, crop and pasture lands in Idaho would cost $18 billion. This would require allocating about 20% of the state's General Fund (as of 2009) for 30 years.

Based on these two examples from the Idaho Forest Legacy Program, to protect one quarter of the private forest land in the six Forest Legacy Areas would require $1.4 billion, of which $350 million would need to come from state, local and private sources in Idaho. Even with the Federal financial support, this seems unrealistic.

The National Land Trust Census reported that as of a few years ago there were 4,127 acres owned by land trusts in Idaho, 29,987 acres were under conservation easement, 24,792 acres acquired and re-conveyed and conserved by other means and a total of 58,906 acres were conserved. This total acreage represents only 0.3% of the private rural land in Idaho.

In addition, conservation easements must be administered. This administration consists of education of new property owners, monitoring for compliance with the conditions of the easement and enforcement actions against property owners violating the easement. Easement administration is a significant cost and commitment.

**The limits of and opportunities for transferable development rights programs in Idaho**

Idaho has a statutory authorization for transferable development rights (TDR) programs.

In Idaho and elsewhere TDR programs are attractive to many planners and officials because they hold out that promise that a system of private transactions, without no or minimal public funds would protect rural lands from development. They are also attractive because of how they address concerns about fairness to property owners; they use the free market to balance the benefits and burdens of land use regulation.

In reality TDR programs are rarely even attempted. They have been applied effectively to conserve significant areas in only a few areas: The New Jersey Pinelands TDR program (described in the full report at www.idahosmartgrowth.org) is the best example.

The reasons for the failure to adopt or effectively implement TDR programs include:

- The complexity of the system discourages elected officials from adopting it and landowners from using it
- Landowners are not happy with the prospect of some future, contingent, and complex substitute for the simple entitlement to build.

- Despite the presumption that a market for TDRs will arise naturally, in almost all successful programs a "bank" has been capitalized by the implementing government for the purpose of buying, holding and selling the credits. It is this bank that actually establishes the market. Setting up a TDR bank requires time and money.
- In order for the system to operate vigorously, the demand for development in the landing zone must greatly exceed both the current entitlements to develop and the supply of transferable development credits; the result is a high value being placed on the TDRs which entices the owners in the take-off zone to sell them. It is often hard to get this kind of match within the boundaries of a local government.
- Overall, there simply isn't enough pent-up demand in either urban or rural areas that can only be satisfied by purchasing TDRs, to conserve large areas of rural land.

This assessment of the problems with TDRs does not mean that TDR programs should not be considered as part of a rural conservation strategy in Idaho; it should.

The roles that can be played by purchase and transferable development rights program are limited but still important: (1) The conservation of small areas of especially important land (*e.g.* Boise Foothills); (2) The legal or political amelioration of rural conservation zoning programs that are likely to be controversial or subject to legal challenge.

Let's consider a hypothetical for effective deployment of a TDR program in Idaho, starting with the state authorizing legislation.

Idaho Code Section 67-6515A authorizes local ordinances creating transferable development rights (TDRs). Givens and Pursley's land use handbook lists the statutory "ground rules" that apply to TDR ordinances:

> • *The transactions must be voluntary, both by the sending and the receiving party. Idaho Code §§ 67-6515A(1)(b), 67-6515A(3).*
>
> • *Prior to designating sending and receiving areas, the city or county must perform a market analysis to determine if receiving areas will have the capacity to accept the number of development rights expected.*
>
> *Idaho Code §§ 67-6515A(2). • An applicant cannot be forced to acquire TDRs if the applicant is entitled to develop under an existing ordinance or comprehensive plan. A city or county may not reduce density in an existing zone and then require TDRs to permit a zone change to increase the density. Idaho Code § 67-6515A(4).*[8]

Here is an illustration of how an effective TDR system might work in Idaho, under Idaho law.

Imagine that 10,000 acres of land surrounding a lake in northern Idaho are currently uniformly zoned for 10 acre homesites.

[8] Idaho Land Use Handbook page 48.

After much study and hearings, the county rezones 8,000 acres of the lakefront properties into a Lakefront Conservation district. This area was chosen because it was still being used by moose, and streams important to the water quality of the lake run through the area. In addition, research suggested that the groundwater would be contaminated if the area was fully built out with septic systems.

The new Lakefront Conservation zone prohibits any new homes or land divisions; about 7,000 acres have no homes on them at the time of the rezoning. The 219 owners of these properties were entitled to 614 homesites in total (because some of the parcels could not be evenly divided into 10 acre lots.)

The remaining two thousand acres of the lakefront is rezoned as a landing zone, called Lakefront Planned Development, subject to various design and environmental standards. This part of the lakefront was designated for this purpose because it was already served with good roads and it has a small commercial area. The area was popular as a summer resort and the land commanded high prices.

Ten-acre homesites are allowed as before in the Lakefront Planned Development zone. But in addition, planned unit developments with densities up to a maximum of 5 units per acre are conditionally permitted provided they are served by a community water system and sewer treatment facility.

Given the existing developed area and the design and environmental requirements for the Lakefront Planned Development zone, the County estimates that the maximum potential number of dwellings (homes, rental and ownership resort units, etc.) that could be authorized is 2,699.

However, in order to develop land at a density greater than one dwelling per ten acres, the landowners, or third-party developers, must buy development rights from the landowners in the Lakefront Conservation Zone.

In deciding how many development rights to allocate to the landowners in the Lakefront Conservation Zone, the county considers a number of factors; the value of the lost entitlement to build, the probable value of the dwelling rights in the Lakefront Planned Development zone, the transaction costs for the landowners, and perhaps some additional rights simply to reduce political opposition. As a result of this analysis, the county allocates 1,122 development rights to the 219 property owners owning previously developable property in the Lakefront Conservation zone, almost double potential homes than could have been built under the old zoning. Landowners, developers and brokers get into the market for the TDRs. After some fluctuation the prices paid settle into a predictable range. After several years, all of the development rights have been sold from the Lake Conservation District. Each sale of a development right translates into a conservation easement, held by the county, on the property from which the right was derived. If the TDR system is carefully designed, the exchange of rights compensates the property owners in the Lakefront Conservation Zone. The entire programs results in both a better pattern of compact development with less water

quality impacts along one part of the lake and a high level of conservation along the rest of the lakeshore. That increased conservation also enhances the value of the planned development properties and the existing homes in the Conservation Zone. System development charges for the new developments finance the water and sewer systems.

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**An Outline for a Legally, Politically and Technically Feasible Rural Conservation Zoning at State, Regional or Local Level in Idaho**

What follows is an outline for either a state, regional (metropolitan area counties) or county level rural land conservation program that would be effective. The focus of this program is to conserve large areas by protecting them from rural residential development. It reflects all of the prior comments.

**Program Framework & Administration**

To be effective in avoiding the multiple bad effects of exurban sprawl, the rural conservation program must have geographic, policy and administrative coherence; it cannot really succeed if it is applied like buckshot across the landscape.

Here are the key elements of the program framework and administration:

- A conservation plan is adopted, identifying the lands and resources to be conserved, with specific measurable goals or outcomes tied to performance dates. Preferably the program should be statewide but it could be adopted at a multi-county regional level, or within a single county. An intermediate approach would be a statewide *authorization* of the creation of these conservation area plans subject to minimum size requirements (1,000 square miles, 10% of the state's land area for example.) Different conservation plans might have different sets of objectives, *e.g.* farmland preservation, protection of wildlife, protecting lives and property from natural hazards.

- A new program with new staff is created and is supported by political leadership. It is preferable, but not essential, that the effort be vested in a new agency or department and given the execution of the conservation program as its sole mission.

- Funding for administration of the program and for various incentives in it must be provided. A modest assessment on government created "givings" (land value windfalls to property

owners resulting from rezoning and publicly financed infrastructure) would be an appropriate funding source.

- Conservation easement tax credits (described below) are used to help protect lands in the conservation areas.

- A property rights and responsibilities analysis is carried out as part of the overall effort. This is a fact-based analysis of property values, development opportunity, and the distribution of benefits (private and public) and burdens (private and public including infrastructure costs and service provision costs borne by taxpayers). The purpose of the analysis is to address issues of fairness in a comprehensive and open way and to make a transition from assumptions and ideology into facts and practical systems for addressing fairness

**Property Rights & Development Impact Analyses**

- As part of the property rights analysis the local government must analyze existing capital and service costs for conservation and development areas and how those costs are distributed among taxpayers. This analysis should be applied to projected build-out under existing zoning. Important costs to include in the study are school transportation, road construction and maintenance, fire protection and other emergency services.

- Another part of the analysis should be a projection of actual total development and values, within the conservation area. This can be used as part of the baseline for the TDR and cluster zoning analysis.

**Rural Cluster Zoning**

- Existing rural development entitlements are capped and stabilized. Prior authorization of new housing grandfathered in for current landowners and translated into mandatory cluster zoning. That is, if the land is currently zoned for one house for every 10 acres, then the owner of 40 acres would be entitled to four homes, but not the creation of four ten-acre homesites. The owners of parcels smaller than ten acres would be entitled to a new home if they would have been entitled to a home under the prior zoning regime.

- The implementation of rural cluster zoning should be exercised according to a set of state or local criteria and or maps, designed to protect the most valuable lands and to organize develop in ways that make sense for the provision of infrastructure and services. Conservation areas must be large enough to achieve program objectives, such as large enough for continued economically efficient farming, ranching or forestry, or big enough to sustain wildlife populations.

- New zoning establishes requirements for clustering of new homes onto smaller lots, preferably 1 acre or less, assuming adequate septic field capacity. Alternately, the state or county could require package treatment plants for large enough groups of homes.

- Remaining open space on the property must be protected by conservation zoning and/or by private or public easements, with an administering agency and made enforceable by government and by third parties.

**Conservation Easement Tax Credit Program**

- In order to increase the amount of rural land that is conserved, the state adopts generous income tax credits, or the county authorizes credits against one or more of its local taxes, for conservation easements (assuming these local credits do not contravene state constitutional provisions or state laws that define tax fairness.) Under a state system the credits should be transferable to third parties.

- Conservation easements would be publicly held by a state agency or the county itself and would subject to strict tests in order to be broken. Another arrangement that might protect the public interest in easements would be for them to be held jointly between the county government and a nonprofit with each party having veto rights.

- Only the lands identified in the conservation area plans qualify for tax credits.

***Transferable Development Rights in Rural Cluster Zoning***

To provide enhanced protection of rural lands, cluster zoning and the conservation easement tax incentives would need to be supplemented with a transferable development right program.

The TDR program should:

- Identify large areas (1,000 square miles or at least 25% of a county's land area) where no development or minimal development (e.g. one house per 320 acres) would be permitted on that land.

- Designate receiving areas that have a high and not currently satisfied demand for residential development. If it is a county based program, the receiving area should be in the same county although this is not essential. Overall the receiving areas should have much higher total entitlement for development using TDRs than there are TDRs. (Demand must greatly exceed supply.) Where possible, the TDR program should be structured around authorizing planned unit developments (PUD) in areas where high demand exists, but making them entirely contingent on the acquisition of TDRs. State or local infrastructure investments could be linked to approved PUDs. This program may require the development of a particularly scenic area in order to succeed.

**Adjusting State and/or Local Rural System Development Charges, Permit Fees and Property Taxes for Operations**

System development charges, permit fees and property taxes should be reformed to support the program:

- Current use property tax assessment for conserved lands (that is, not taxed on a hypothetical highest and best use not permitted under the program)

- Capital improvement plans must be amended to prohibit urban services and infrastructure in the conservation areas and should give priority and preference to providing services and facilities in TDR landing zones.

**What's Next?**

Changing the pattern of development and conservation in Idaho is important for the quality of life and the economy of its residents. Because of Idaho's great beauty and natural resources, it is also important for the nation.

There are many new laws, plans, regulations, capital improvement plans, data and research reports that would change land use outcomes in Idaho. However, none of them are easy to adopt, precisely for the reason that they will change outcomes. There is a large and complex web of public and private laws, programs, investments, beliefs and customs dedicated to achieving the current outcomes.

In other states and localities, the adoption of major land use reforms has occurred when there is the right combination of leadership and public opinion. But in recent years any changes have been accompanied by harder fought battles over their passage.

Even when such reforms are adopted as a matter of law or policy, implementation of reforms has been as controversial as their adoption. Failure in implementation, for political and technical reasons, is quite common. Again, that has been the experience in other states and local governments and it will be the experience in Idaho.

Significant reforms at the state and local level require a well thought-out strategy and a spectrum of people and organizations committed to securing their passage and their implementation followed by continual monitoring to ensure compliance and to make improvements. This is the work of many years and many people.

We hope you will join us in this work. If you are interested in working together, or have comments or questions, please contact Idaho Smart Growth at (208) 333-8066.

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