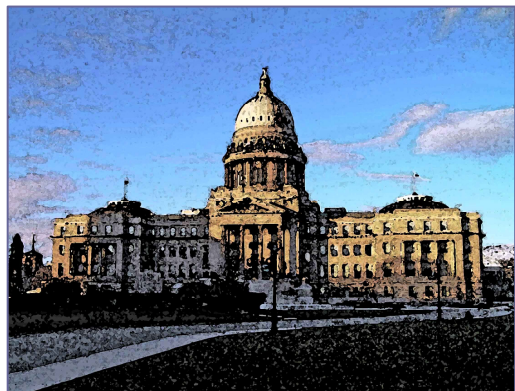
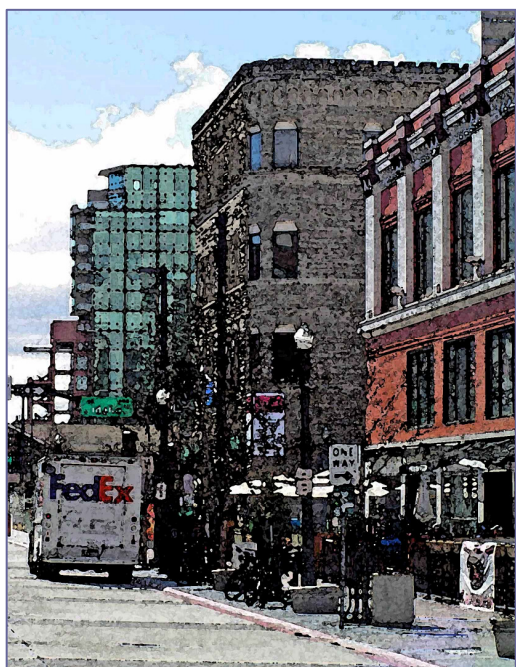


## CHANGING OUTCOMES



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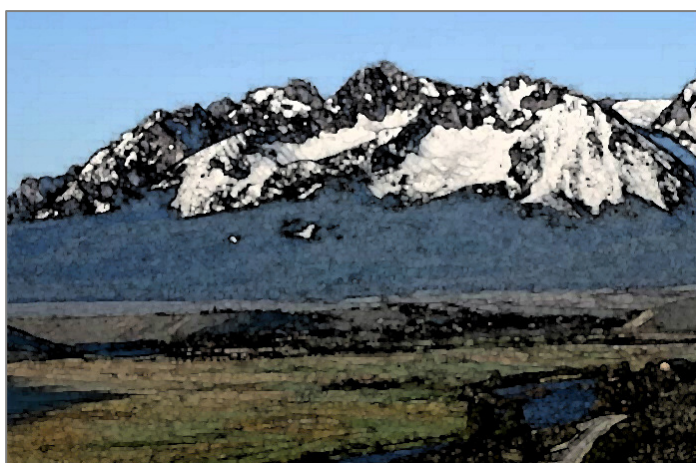


## IDAHO LAND USE ANALYSIS FOR IDAHO SMART GROWTH



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July 2010



## INTRODUCTION AND BACKGROUND

The Idaho Local Land Use Planning Act (LLUPA) was passed in 1975. In 2010, Idaho is the 12<sup>th</sup> 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 statutes, a survey was completed, and focus groups were 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?

### **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 1/2 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 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 home sites) 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 home sites) 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.

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.

### Summary

- 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.<sup>1</sup>

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

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<sup>1</sup> His website is <http://www.walkable.org/>

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.

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.

The official corridor study was considering a typical range of alternatives; doing nothing ("no build"), arterial improvements, modest investments in managing the existing road network and a bypass highway. Many pronouncements by state and local officials left no doubt that their preferred solution was building an outer-beltway bypass highway.

The LUTRAQ project was inspired by the recognition that land development patterns determine trip route, mode and length; if future land use patterns were changed by changing land use plans and regulations then the need for the bypass would be obviated.

Substantial amounts of money were raised from foundations to hire national experts carry out a very professional investigation of a land use alternative to the Western Bypass.

The LUTRAQ alternative included some elements of the non-bypass alternatives combined with changes to land development patterns generally (higher densities, more mixed uses) and especially around proposed new transit stations and increased emphasis on an inter-connected set of arterials.

Projections about the amount of driving, air pollution and congestion for all of the alternatives were generated by transportation computer models. The LUTRAQ alternative compared favorably to the standard highway, transit only and no-build alternatives with respect to total driving (Vehicle Miles Traveled) cost, congestion and air pollution. It resulted in higher rates of transit use, biking and walking. The LUTRAQ alternative performance was enhanced by including demand management in the package. (All eleven of the LUTRAQ reports describing the study and presenting the results can be found online through the 1000 Friends of Oregon website.<sup>2</sup>)

Ultimately, the LUTRAQ alternative, without the demand management elements, was adopted as the preferred alternative; changes to land use plans at the county and city level and new road connectivity standards at the regional level were adopted instead of the Western Bypass.

But over the longer-term, there is another story about the LUTRAQ project. The analysis of land use causes and land use solutions never became a standard part of corridor level analyses in Oregon or even in the Portland metropolitan region. One of the points of controversy over the proposed Columbia River Crossing (a \$3 to \$4 billion proposed widening of Interstate 5 between Portland and Vancouver) is that this \$100 million study never considered a land use alternative.

However, there have been benefits of the LUTRAQ project. Its concepts have been incorporated into many metropolitan land use scenario exercises<sup>3</sup> and less frequently in corridor level transportation studies. It has also been the basis for litigation over the adequacy of alternatives considered as part of the Environmental Impact Statement required under the National Environmental Policy Act.

- **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.*

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<sup>2</sup> [http://www.onethousandfriendsoforegon.org/resources/lut\\_reports.html](http://www.onethousandfriendsoforegon.org/resources/lut_reports.html)

<sup>3</sup> A PowerPoint summary of the LUTRAQ project and its influence on scenario exercises was prepared by Fregonese & Associates and can be found online at <http://www.oregon.gov/ODOT/TD/TP/docs/HB2186page/ScenariosRptMtg1.pdf?ga=t>

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 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.

But as the following paragraphs explain, both in concept and in practice there is a built-in bias toward selection of the alternative to build or expand highways.

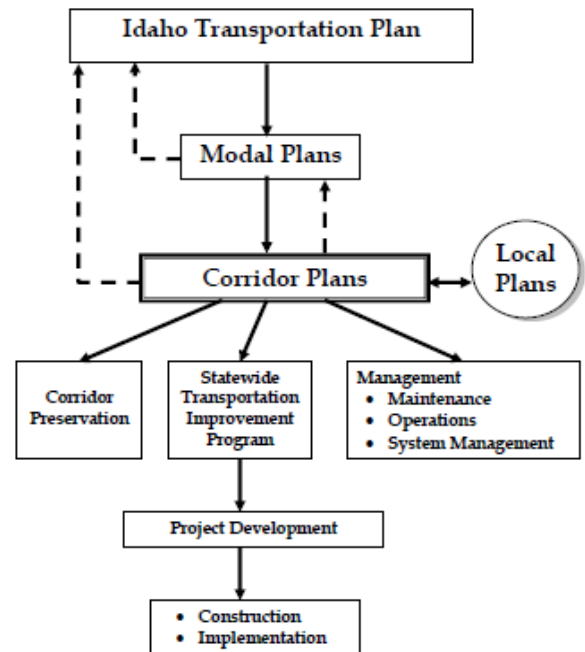


## How Corridor Planning Fits In

Corridor planning should fit within a larger transportation plan framework, a state transportation plan which translates policies and goals into a set of investment strategies and priorities.

That is what IDT's diagram of corridor planning suggests, which is consistent with the previously quoted "general guideline."

However, the Corridor Planning Guidebook treats the *Idaho Transportation Plan*, *Idaho's Long-Range Transportation Vision* (2003), as a source of background information and needs identification.<sup>4</sup> The guidebook neither incorporates nor describes any aspect of the Idaho Transportation Vision or explains how the Vision's policies, priorities and implementation strategies should influence corridor planning.



The second conceptual problem is evident in Step 1 "Develop a Corridor Work Plan." The first step, like the entire process, assumes the existence of a transportation corridor, that is, a linear route between destinations. That may be justified in rural connections between urban places, but within urban places it is just as likely that what exists is a network of alternative routes between multiple destinations, not one corridor connecting a subset of destinations.

Treating all movements in an area as one, undifferentiated, thing, "traffic," moving in a "corridor" ignores the reality that there are many different types of trips serving different purposes. Different and potentially conflicting solutions might work better for these different needs. This can result in a serious analytic error in some corridor studies.

In a typical corridor study, trip volumes along a proposed highway are shown at various cross-sections creating the impression of large volumes of traffic that will use the new facility over many miles. But a closer examination of trip destinations and origins may show that a large share of the traffic volumes are only using short segments of the proposed highway; in reality the highway is functioning as a short-length connector to other parts of the road network not as a long-distance travel conduit. By severing many of the arterial connections a limited access highway actually *generates* many of those trips rather than simply responding to some ambient travel demand.

By conceiving the problem as a problem of, or in, a transportation "corridor" the study tends to define problems and seek solutions that are road or highway oriented.

<sup>4</sup> *Corridor Planning Guidebook* (2006) pages 5, 35.

Step 2 is “researching existing conditions of the transportation system.” This step reinforces the idea that the transportation system is separate from land use patterns. It focuses the study at the start - even before the problem has been defined - on traffic volumes, choke points and congestion, the “bads” that must be remedied.

Step 3, an examination of environmental and land use conditions typically treats existing land use plans and land use development trends as fixed, as givens, not as things that can be reconsidered and changed as part of potential solutions.

The order between Steps 4 and 5 is revealing; travel demand and corridor performance (*i.e.* congestion levels) are forecasted before the study area is established and before the purpose, need and goals of the project are considered. In other words, the problem and the problem area is effectively determined before the reason for the study and therefore the proper geographic area for study has been articulated. Having presumed a corridor exists and having examined travel demand and congestion in that corridor (without looking at land use causes), it is hardly surprising the problem statement, purpose and goals of the project reflect the focus on road capacities. And in turn, the solutions will reflect those purpose, need and goals statements.

Steps 6, 7 and 8 are concerned with developing and testing alternatives for meeting the goals.

The first task in Step 6 is to develop screening criteria to evaluate the performance of the alternatives measured against the goals. As described above, the goals were developed *after* a determination of travel demand and performance in the corridor so, not surprisingly, they will focus on travel demand and performance, *i.e.* congestion.

Imagine what a difference it would make if the first step was a definition of the problem (purpose and need) and the geography. Imagine also that the problem definition and the designation of the geography for study incorporated local comprehensive plans’ goals and geographies. The problem statement would lead logically to the development of evaluation criteria. Alternatives would be developed in subsequent steps that would be most likely to perform well against the criteria. Data would be researched as needed to diagnose the problem and evaluate possible solutions.

Two corridor planning projects illustrate how corridor planning works in actual practice; the Canyon County Western Route Corridor project and the US 95 Coeur d’Alene Corridor Study.

The Canyon County Western Route project is a joint effort by Nampa, Caldwell and Canyon County. The January 14, 2009 notice of a public information meeting described the project’s objectives as follows:

*The [Technical Advisory Committee] has identified the following objectives for the Canyon County Western Route Corridor:*

- *Identify a route for R/W [Right of Way] and Corridor Preservation*

- *Provide an alternative route that complements and relieves existing east/west routes in central and northern Canyon County*
- *Accommodate future growth*
- *Accommodate future Land Use transitions*
- *Provide Treasure Valley connectivity and continuity*

*This corridor project is in the initial stages of development. The TAC encourages input from the public. As the project progresses, this input will prove invaluable to selecting a corridor alignment that meets the stated objectives.*

*The final outcome of this corridor project will be the identification of an alignment that connects State Highway 45 to State Highway 55 (Karcher Road). Then, as development occurs in the vicinity of the corridor, appropriate preservation can be accomplished.*

As the excerpt shows, the study treats as an objective – the construction of a new east-west highway - what should be regarded as one alternative to be studied. This study does not even satisfy the problematic analytical requirements of the IDT Corridor Planning Guidebook.

The US 95 Coeur d’Alene Corridor Study began, as recommended by the Corridor Planning Guidebook, with a study of current and future transportation demand and the adequacy of facilities. In other words, it began by focusing on congestion.

The “Land Use and Environmental Scan” part of the study (Guidebook step 3) included the following observations about current and future land uses in Coeur d’Alene:

*In general, commercial retail and service uses are concentrated along US 95, Government Way, and Appleway Avenue. The uses are auto-oriented and include major national retail chains, such as Albertson’s, Target, Office Depot, J.C. Penney, Safeway, and numerous fast-food chains. This concentration of retail and service uses along the highway and adjoining streets results in a high dependence on the automobile to meet daily shopping needs for community members. SH-53 runs east-west and connects US 95 and SH-41 in the northern portion of the study area. Other than the City of Rathdrum, a higher-density residential area, the rest of the corridor is mostly zoned rural-residential or rural-agricultural.*

*Based on the planned land use patterns that will concentrate future commercial growth along US 95, it is expected that area residents will continue to rely heavily on vehicle use within the corridor to meet shopping needs. Kootenai County’s population is projected to increase by more than 40 percent within the next 20 years. Continued residential development will result in greater reliance on shopping and services within the US 95 corridor between Coeur d’Alene and Prairie Avenue.<sup>5</sup>*

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<sup>5</sup> Idaho Transportation Department, *US 95 Coeur d’Alene Corridor Study: Land Use and Environmental Scan* (Chapter 4) page 4-4

A “full range of future options” including wider arterials, widening I-95, applying “land use and traffic management techniques” were studied. But the future options did not include demand management and changing land use patterns.

Not surprisingly, the study concluded that in order to

*meet the future growth in traffic, the region will need an access-controlled north-south highway capable of 55 mile per hour traffic conditions. Meanwhile, the preservation and acquisition of key rights-of-way will be needed, so as not to limit future improvement options. Also, careful management of access and signal spacing in the Coeur d’Alene/Hayden area will be crucial to mitigating congestion on US 95 and local cross streets until a long-term solution can be implemented.<sup>6</sup>*

Interestingly, discussion among the project advisory committee surfaced the underlying tensions that illustrate the problem of treating all travel movements as undifferentiated congestion that must be relieved:

*Throughout the Coeur d’Alene Corridor Study process, our advisory groups and the community have engaged in considerable discussion of issues facing the US 95 in the future. A dilemma has arisen concerning how to best direct project funding on US 95 over the next 20 years. At the heart of the community’s dilemma is the realization that US 95 serves many different types of “customers”, and that often the interests of these customers can be at odds.*

*For example, businesses in the corridor enjoy valuable benefits associated with their proximity to US 95, such as good visibility and accessibility to many thousands of daily travelers. To many business interests, perpetuation of the existing signals, the addition of new signals, additional direct highway access points and even reduced speed limits on US 95 may be appealing. In contrast, US 95 also serves many commuters, who would appreciate fewer signals and higher operating speeds as they use US 95 every day. Achieving consensus where extreme philosophical differences exist will take some time. Today, a healthy dialogue continues within the community concerning the best approach for dealing with US 95 as growth continues.<sup>7</sup>*

These two study projects illustrate the deficiencies with corridor planning as currently practiced in Idaho (and most states).

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:

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<sup>6</sup> Idaho Transportation Department, *US 95 Coeur d’Alene Corridor Study: Executive Summary* (Chapter 1) page 1-6,

<sup>7</sup> Idaho Transportation Department, *US 95 Coeur d’Alene Corridor Study: Executive Summary* (Chapter 1) page 1-5

- 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<sup>8</sup>*

The LLUPA also requires

*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.<sup>9</sup>*

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<sup>8</sup> Idaho Code 67-6508(h)

<sup>9</sup> Idaho Code 67-6508(i)



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.*<sup>10</sup>

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.*<sup>11</sup>

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.

The following summary of sources and spending is cursory. It is offered to show relative importance in sources and spending for transportation, drinking water supply and wastewater treatment.

#### *Funding for Transportation Investments*

The Idaho state gas tax of 25 cents per gallon generated \$321 million in 2004.<sup>12</sup>

The Idaho Transportation Department spends 57% of these funds. Thirty-eight percent is distributed to local highway departments and 5% goes to the State Police. (In January 2008 Governor Butch Otter proposed shifting the 5% for state police to road construction<sup>13</sup> but that proposal was not well received by legislative leadership.)

The Federal Highway Administration provided another \$244 million in highway funds in 2004, for use by the Idaho Department of Transportation. In total, the Idaho Department of Transportation spent a total of \$469 million of which \$418 million was spent on highway construction, maintenance and operations.

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<sup>10</sup> Idaho Code 67-6508(n)

<sup>11</sup> Boise State University: Stephanie Witt, Carole Nemnich, Melissa Borg *Idaho Statewide Land Use Analysis: Survey and Focus Groups* 2010 (draft) page 4.

<sup>12</sup> These and the following statistics are from pages 48-50 in Lochner, Tom Warne & Associates "A Forum on Transportation Investment: Report & Recommendations" January 2006

<http://itd.idaho.gov/info/ti.forum/FinalReport/FTI%20Report-Full%20EDITED.pdf>

<sup>13</sup> The Honorable C.L. "Butch" Otter, Governor of Idaho, *2008 State of the State/State Budget Message* January 7, 2008

In 2004 the 38% that is distributed to local governments amounted to \$110 million. Of that amount 70% was distributed to counties and 30% to cities. An additional \$110 million was raised from local funding sources plus \$26 million from direct Federal funding.

According to the 2006 final report of the Forum on Transportation Investment:

*There were 288 local highway jurisdictions – 191 cities, 33 counties, and 64 highway districts. The total mileage of local roads within these jurisdictions has increased by 14% (3,962 miles) from 1990 to 2003. The local jurisdictions also oversee 2,283 bridges and 1,275 railroad crossings. Additionally, 45% of all vehicle miles traveled are on the local road system.*

*Every year, the 288 jurisdictions receive an approximate total of \$246 million from all sources to fund their programs. Expenditures include:*

<i>Expenditures</i>	<i>2002</i>
<i>Administration (9.5%)</i>	<i>\$ 23,407,993</i>
<i>Maintenance (46.8%)</i>	<i>\$115,252,235</i>
<i>Construction &amp; Rehabilitation (42.9%)</i>	<i>\$105,663,450</i>
<i>All Expenditures (99.2%)</i>	<i>\$244,323,678</i>

#### *Drinking and Waste Water Infrastructure Finance*

Local governments finance drinking water and waste water construction. The U.S. Environmental Protection Agency provides 80% of the funding for drinking water and wastewater treatment planning grants and low interest construction loans. The state is allowed to revolve the loan repayments and interest earnings. These funds are administered by Idaho Department of Environmental Quality and the use of those funds is periodically reviewed by U.S.E.P.A.

In the 2007-2008 fiscal year, the combined state investment in drinking water infrastructure was about \$10 million from new grants (80% Federal 20 % Idaho) and \$5 million reinvested from repayments and interest earnings. Out of that total about \$13 million was spent on new loans, including roughly \$9 million spent on communities of less than 10,000 population.<sup>14</sup>

For 2008-2009 Idaho DEQ announced the availability of \$40 million for wastewater treatment facilities loans for planning, design and construction.<sup>15</sup>

<sup>14</sup> State of Idaho Department of Environmental Quality "Drinking Water State Revolving Fund Annual Report for State Fiscal Year 2008" September 2008 page 8.

<sup>15</sup> State of Idaho Department of Environmental Quality Water in Idaho: Idaho's Water Pollution Control State Revolving Loan Fund and Planning Grant Program undated brochure

To put the amount of state investment in infrastructure into context with local spending, consider the annual capital investment budget for Twin Falls for 2009-2010. Twin Falls has a population of about 40,000, 2.6% of the state total.

Twin Falls' 2009-2010 budget calls for about \$49 million in spending (a 2.8% reduction over the prior year) of which 32%, \$16 million, was capital spending. Of the \$16 million, \$5.5 million was proposed capital spending on streets (\$4 million for street construction), \$3 million on wastewater, \$1 million on water distribution (for drinking and irrigation), \$1 million on the airport (mostly repaving the parking lot), with the remaining roughly \$5 million spent on vehicles, buildings, parks, computers and other items.

This comparison shows that the state's role in infrastructure is dominant in transportation but is minor in other key categories.

#### *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,<sup>16</sup> ("IDIFA") which is found in Idaho Code § 67-8201 to 8216.

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;*

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<sup>16</sup> 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.

- (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.

This subsection summarizes the experience in Maryland, Vermont and the Minneapolis-St. Paul metropolitan region, which are broadly representative of such efforts around the nation.

▪ ***Maryland: Priority Funding Area Smart Growth Program***

Maryland's much celebrated Smart Growth planning program was initiated by Governor Glendenning in the 1990s, with the support of the state legislature. Maryland's approach relied heavily on the strategy of focusing growth to achieve more compact development patterns by targeting of state infrastructure funding and investments in priority funding areas, PFAs. The Priority Funding Areas were identified by local governments but were not made a part of comprehensive plans.

A decade after Governor Glendenning's Smart Growth planning efforts, the Maryland legislature, concerned by the continuing pattern of sprawl, passed legislation creating the Task Force on the Future of Growth and Development in Maryland. Governor Martin O'Malley, elected in 2006, was charged with overseeing this review of Maryland's anti-sprawl efforts.

The Task Force commissioned a comprehensive review of the Maryland Smart Growth program. That review was led by Dr. Gerritt Knaap, Director of the University of Maryland's National Center for Smart Growth Research and Education.

Knaap and his colleagues examined the geographic distribution of homes inside and outside the Priority Funding Areas (PFAs):

*Figures 5, 6, and 7 show trends in numbers of parcels developed for residential use, acres of land developed for residential use, and size of parcels developed for residential use. Figure 5 shows that the annual percentage of parcels developed outside PFAs rises from approximately 24% in 1990 to 26% in 2004. Figure 6 shows that the acres of land developed for residential use outside PFAs rose from approximately 75% in 1990 to 77% in 2004. Finally, as displayed in Figure 7, the average size of parcels outside PFAs fell from approximately 2.4 acres in 1990 to approximately 2.1 acres in 2004, and the average size of parcels inside PFAs rose from 0.25 acres in 1990 to 0.28 acres in 2004. If the intent of PFAs is to concentrate development and raise*

*densities inside PFAs, and to prevent development on large parcels outside PFAs, then all of these trends are going in the wrong direction.*<sup>17</sup>

***Similarly, new infrastructure investments, especially transportation spending, included significant investments in projects wholly or partly outside PFAs:***

- *Transportation investments – only an average 60% of transportation spending, the largest component of State infrastructure investment, has been invested in projects inside PFAs*<sup>18</sup>.

The study included a very useful diagnosis of the problems with Maryland's Priority Funding Areas approach:

*PFAs as currently used in Maryland have the following limitations that will require more extensive change.*

- *The statutory criteria for drawing PFAs are based on existing densities, infrastructure capacities, and municipal boundaries, not on careful plans that consider where future growth should occur.*
- *The process through which the existing PFAs were constructed was completed extremely quickly and without public participation.*
- *[Maryland Department of Planning] can do no more than comment on PFAs it deems too large.*
- *PFAs are not well integrated with local plans. PFAs are not required elements in local comprehensive plans, and in some existing comprehensive plans, PFAs are not even mentioned.*
- *The funds allocated for spending in PFAs may be too small to make a significant difference in development trends.*
- *There is no requirement that PFAs be reviewed periodically and updated as needed.*<sup>19</sup>

The Task Force on the Future of Growth and Development in Maryland offered its own assessment of the weaknesses in the state's infrastructure targeting program:

*There is broad support for the principles of Smart Growth at both the State and local levels and Smart Growth has had many successes, including the specific examples noted above. However,*

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<sup>17</sup> R. Lewis, G-J Knaap, J Sohn *Managing Growth With Priority Funding Areas; A Good Idea Whose Time Has Yet to Come*, Journal of the American Planning Association, September 1, 2009 page 467.

<sup>18</sup> *Id.* page 473

<sup>19</sup> *Id.* Knapp and Sohn added "Despite these limitations, PFAs have had some important, if ephemeral, benefits. Specifically, PFAs have provided a framework for discussion between the state and local governments. After 10 years, PFAs have become well understood elements of the Maryland landscape; despite differences in approaches to PFAs across the state, there is no confusion about what PFAs are intended to achieve or where they are located. As a corollary, measures of how much growth is occurring inside and outside PFAs, as reported here, are useful benchmarks of whether growth patterns are changing. For these reasons it makes little sense to do away with PFAs entirely."



*Smart Growth still faces significant challenges in stopping or slowing a trend toward sprawl development in the State. State incentives have proved to be insufficient to counteract tremendous pressures for growth and cost advantages for developers to build on undeveloped land. Lower-than-anticipated State funding for infrastructure and land preservation programs have hampered Smart Growth's effectiveness; consequently, many local governments have not strengthened local zoning ordinances to slow the development of land zoned for rural uses, believing that additional State funding must come before local action.*<sup>20</sup>

■ ***Vermont: Smart Growth goals for state capital spending***

Vermont's statewide growth management legislation has been enacted and amended over many decades. Today it includes elements of state-level review of certain classes of development permits (a centerpiece of Act 250), coordination of state agency actions with state planning policies, regional planning and policy goals for state agencies and regional and local land use planning, enacted in 1988 in Act 200.

Act 200 defined a set of Smart Growth goals that were to guide municipal and regional land use plans and state agencies. The first principle was that growth should "(m)aintain the historic settlement pattern of compact village and urban centers separated by rural countryside."<sup>21</sup>

Another goal was that: "Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both."<sup>22</sup> Another goal specified that "(p)ublic investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area."<sup>23</sup>

The Vermont Smart Growth Collaborative analyzed the location of a spectrum of state capital investments and tax incentives, including the location of new state offices, water and sewer lines, school construction, transportation spending and other capital investments and published their findings in January 2007.

In some cases state capital investments were primarily in Smart Growth locations, for example, state buildings and schools (even if the trends were in the wrong direction):

*State Buildings/Capital Construction*

*Between 2003 and 2006, 67% of the total funds spent on state facilities and building were used in smart growth locations, compared with 69% of the total spent between 1998 and 2002.*

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<sup>20</sup> Maryland Task Force on the Future for Growth and Development in Maryland *Where Do We Grow From Here? A Report of the Task Force on the Future for Growth and Development in Maryland* December 1, 2008 page 11.

<sup>21</sup> 24 Vermont Statutes Annotated § 4302(c)(1)

<sup>22</sup> 24 Vermont Statutes Annotated § 4302(c)(1)(B)

<sup>23</sup> 24 Vermont Statutes Annotated § 4302(c)(1)(C)

### School Construction

*As was the case from 1998 to 2002, the Department of Education school facility funding has supported the renovation of existing schools in smart growth locations. Since 2003, however, 10% of the total dollars spent has supported school construction in sprawl locations – up from 5.8% for the prior period.<sup>24</sup>*

But with respect to other investments (including tax incentives, a form of tax expenditure) by other agencies, the story was very different:

### Vermont Economic Progress Council (VEPC)

*Between 1998 and 2003, nearly 3 out of 4 dollars (74%) in economic development tax incentives authorized by VEPC supported sprawl. Since 2003, a majority of incentives (61%) still support sprawl, although this does mark an improvement over the prior study period.*

### Vermont Agency of Natural Resources (ANR): Wastewater Treatment Facilities

*Despite the adoption of a rule in 2002 that was designed to prevent state revolving fund dollars from supporting sprawl, the percentage of loans and grants for smart growth locations was reduced from 59% between 1998 and 2003 to only 22% between 2003 and 2006. With more than 77% of sewer funds supporting wastewater facilities serving sprawl locations, ANR has consistently ignored the wastewater funding rule, and have therefore become one of state government's most significant supporters of sprawl.<sup>25</sup>*

These mixed results underscore a simple point (mentioned previously); passing a strong law to reshape patterns of development means nothing unless it is properly implemented.

#### ▪ **Minneapolis St. Paul: Municipal Urban Service Area Line**

The Minneapolis-St. Paul metropolitan region has one of the strongest regional governments in the country, the Met Council. The Councilors represent districts (rather than cities) and are appointed by the Governor. The Met Council has special powers over infrastructure spending in a seven-county region under the Metropolitan Land Planning Act.<sup>26</sup> The Met Council established, and amends, the Metropolitan Urban Service Area, defined by the “MUSA line.”

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<sup>24</sup> Vermont Smart Growth Collaborative *State of Vermont Smart Growth 2007 Progress Report* January 2007 page 2.

<sup>25</sup> *Id.*

<sup>26</sup> The Metropolitan Planning Act is codified in Chapter 473 of Minnesota Statutes Sections 473.851 TO 473.871 The Met Council's power to force compliance with metropolitan level capital investment plans is expressed in Section 473.175 “Review of Comprehensive Plans” Subdivision 1. **For compatibility, conformity.** The council shall review the comprehensive plans of local governmental units, prepared and submitted pursuant to sections 473.851 to 473.871, to determine their compatibility with each other and conformity with metropolitan system plans. The council shall review and comment on the apparent consistency of the comprehensive plans with adopted plans of the council. The council may require a local governmental unit to modify any comprehensive plan or part thereof if, upon the adoption of findings and a resolution, the council concludes that the plan is more likely than not to have a substantial

The Met Council is careful to distinguish the MUSA line from an urban growth boundary:

*A planning concept developed in the 1970s, the MUSA was designed to achieve orderly, economic and contiguous growth by directing development, primarily, to areas where roads and sewers already exist. The objective was to get the most use out of existing infrastructure and create efficiencies that save taxpayer dollars.*

*The MUSA is not a growth boundary. Rather, the goal is to synchronize urban growth with the provision of infrastructure needed to accommodate growth.<sup>27</sup>*

In a 2006 report, the Brookings Institution found that the MUSA line, as administered by the Met Council, had done little to curb sprawl:

*One of the key tools of the Metropolitan Council in setting regional policy is tying infrastructure capacity to land use planning. It does this through the Metropolitan Urban Services Area (MUSA) line, a boundary for the orderly extension of public sewer and water that is supposed to accommodate 20 years' development at moderate density. The MUSA line is amended frequently to allow growth and the Metropolitan Council has been criticized for past tendencies to assume that almost all new development would occur on greenfields as opposed to through redevelopment and infill. But a recent regional planning document, Blueprint 2030, substantially increases the goals for accommodating new growth along transit corridors in developed areas.*

*Despite its metropolitan planning institutions, Minneapolis-St. Paul sprawled dramatically in the 1980s and 1990s, with a 54 percent increase in its urbanized land base between 1982 and 1997. Population grew only 25 percent during that period, meaning that density declined 19 percent, from 4.3 to 3.5 people per urban acre. Sprawl occurred despite population growth of about 15,000 residents each in Minneapolis and St. Paul.<sup>28</sup>*

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impact on or contain a substantial departure from metropolitan system plans... **Subdivision. 3. Enforcement to get conforming plan.** *If a local governmental unit fails to adopt a comprehensive plan in accordance with sections 473.851 to 473.871 or if the [Metropolitan] council after a public hearing by resolution finds that a plan substantially departs from metropolitan system plans and that the local governmental unit has not adopted a plan with modifications required pursuant to section 473.866 within nine months following a final decision, order, or judgment made pursuant to section 473.866, the council may commence civil proceedings to enforce the provisions of sections 473.851 to 473.871 by appropriate legal action in the district court where the local governmental unit is located. A "metropolitan system plan" is defined as the transportation portion of the Metropolitan Development Guide, and the policy plans, and capital budgets for metropolitan wastewater service, transportation, and regional recreation open space. Minnesota Statutes 473.852 Subdivision 8.*

<sup>27</sup> Metropolitan Council "Metropolitan Urban Service Line Facts" Pub. 14-06-051 August 2006

<sup>28</sup> Rolf Pendall, *From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 largest Metropolitan Areas: Minneapolis-St. Paul, MN-WI MSA* August 2006 page 2. In the summary section, the report also noted: "Regional containment has had limited success in the past because local policies failed to promote high enough density inside the MUSA line. Also, some counties and townships failed to restrict small-lot rural residential development on private infrastructure outside it." page 1.

The Brookings report refers to the new Blueprint 2030 program as setting new goals for growth in developed areas, but those goals are still not very ambitious: The target distribution is 27% of the new housing to be built between 2000 and 2030, with 59% of the new housing proposed for greenfield suburban sites and 14% in rural areas outside the MUSA line (goals which the region has, more or less, been meeting in recent years.)<sup>29</sup>

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.

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<sup>29</sup> (Twin Cities) Metropolitan Council, "Regional Benchmarks: Measuring Our Progress; 2009 Update" page 3.

#### **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.

##### **a. Rural Land Use Regulation: Oregon Statewide Farm and Forest Zoning**

Oregon's planning statutes contain what amounts to state level zoning ordinances for farm and forest zones. (Ranching is considered a farm use.) These statutes contain standards for land divisions and the construction of homes. These standards vary by agricultural and forest region.

Counties must adopt zoning that is consistent with these detailed requirements and apply it to the lands defined as farmland or forestland under statewide planning goals adopted by the Oregon Land Conservation and Development Commission (LCDC). Counties administer these statutes and plans, subject to (weak) oversight by LCDC.

Oregon's planning framework authorized rural residential zoning for pre-existing rural developments that were so developed or parcelized as to be unusable for farming and forestry. There are about 1,100 square miles (700,000 acres) of rural residentially zoned lands in the state.

- Exclusive Farm Use Zoning

About 15.5 million acres of private land in Oregon are in Exclusive Farm Use (EFU) zones. This is about 24,000 square miles, equivalent to 30% of the land area of Idaho.

The primary uses allowed in EFU zones are farming and ranching; this includes homes needed for farming or ranching. The justification for a farm dwelling is based on the level of farming activity; the statutes do not automatically entitle the landowner to a home based on the amount of land they own. Urban uses - shopping malls, office parks, residential subdivisions or urban freeways - are not permitted.<sup>30</sup> Certain types of housing not needed for farming or ranching or on unproductive lands are allowed.

The Willamette Valley contains the largest share of the state's most productive farmlands and which is experiencing the most rapid population growth. Under the state's EFU zoning statutes, an applicant for a "farm dwelling" in the Willamette Valley must establish their bona fides as a commercial farmer by providing evidence of gross annual sales from farming (about \$100,000 year) over three years. Non-farm dwellings are allowed on parcels made up primarily of unproductive soils provided they do not interfere with nearby farming or destabilize the land use pattern of the area.

Land divisions in EFU zones are subject to state minimum parcel sizes of 40 to 320 acres, depending on the region. However, nonfarm dwelling parcels have a different and much smaller minimum size.

Numerous nonfarm uses are permitted, everything from cemeteries to aggregate mining but combined, these nonresidential nonfarm uses occupy very little farmland.

- Forest Zoning

About 8.2 million acres (about 13,000 square miles) of private land in Oregon are in forest zoning, which has similar restrictions on development to EFU zoning. Unlike EFU zoned lands, houses are allowed by right on lots of the minimum size, which are 160 to 320 acres by region.

Another 2.3 million acres are in mixed farm-forest zones, which combine the requirements of the EFU and forest zones.

- Additional Homes Permitted by Property Rights Reform Initiative, Measure 49

Additional dwellings are authorized in farm and forest (and other rural) zones under the provisions of Measure 49, which passed in 2007. Measure 49 replaced the extreme property rights measures approved by Oregon voters in 2000 and 2004 with a much more narrow, and time-limited authorization of a limited number of homes provided they or their immediate family owned the

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<sup>30</sup> There are allowances for destination resorts if they meet certain standards but only a few of them have been approved statewide. There is also an "exceptions" process to allow urban uses in EFU zones but the legal standards are onerous and typically such efforts result in litigation.

property from before the adoption of the Oregon planning program. The law requires land-owners to exercise their rights on these properties within the next several years.

- Evaluation of Oregon Rural Zoning Program

The farm and forest zoning framework is considered extremely rigorous and was frequently referenced by property rights advocates during recent property-rights initiative campaigns. But in the eleven years from 1997 to 2007 (inclusive) local governments approved 6,485 new homes in Exclusive Farm Use zones (roughly equal to one new home for every four square miles) and 5,016 new dwellings in forest zones, (the equivalent of a new home on every 2.7 square miles.)

The distribution across the landscape varied greatly depending on market demand and the rigor of the enforcement of EFU zoning; there are examples of good and bad performance in both high growth and low growth areas.

During the same period (1997 to 2007), Oregon's population grew by 431,239 people. That population increase required about 172,500 new homes (assuming 2.5 residents per home.). Of the estimated 172,500 new homes that were built, 6.6% were built in farm and forest zones.

Between 1997 and 2007 44,563 acres were added to various urban growth boundaries around the state to accommodate the vast majority<sup>31</sup> of the 431,239 new residents of Oregon. Out of the total acreage added to UGBs, 14,480 acres (33%) were added from exclusive farm use zones and 3,390 acres (9%) from forest zones.

Despite the constant trickle of new dwelling approved by counties in farm and forest zones, independent research has shown that the statewide land use conservation goals and law had a big impact on rural land conservation.

A team of researchers led by Dr. Gary Lettman at Oregon State University used aerial photography and zoning maps to examine changes in farmland in western Oregon.<sup>32</sup> Western Oregon occupies about one-third of the state's land area and is where most intensive agriculture, and population growth occurs.

Aerial photography was use to identify dominant uses in western Oregon at photo points at key dates in the history of Oregon's planning program; 1973 just before it was initiated, 1982 about the time most county land use plans regulating farm, range and forest lands had been approved, in 1994

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<sup>31</sup> As noted in the prior section, 96% of the new homes in the Portland metropolitan area in a slightly different 10.75 year period were for locations inside urban growth boundaries. That kind of data is not available for the entire state. The calculation of the share of total dwellings in farm and forest zones statewide shows that areas outside the Portland metropolitan area had more of their growth outside UGBs. But overall it is safe to say that the vast majority of growth was inside UGBs.

<sup>32</sup> Lettman, G. (ed.). *Land-use Change on Non-federal Land in Western Oregon, 1973-2000*. Salem, OR: Oregon Department of Forestry 2002.

shortly after statutory reforms were made to the standards governing dwellings and land divisions in farm, range and forest zones and when population growth accelerated and 2000.

The photos were compared to zoning maps for the same points to determine whether the land use changes reflected the comprehensive plan and regulations, in order to distinguish between farmland in urban and rural residential zones intended for urbanization or rural residential uses and farmland in exclusive farm use zones.

Lettman found that between 1973 and 2000, 19,000 acres of agricultural land were developed in western Oregon, only 1,000 of those acres were lost in areas zoned for exclusive farm use; the rest of the losses occurred inside urban growth boundaries and in rural residential areas. In addition, the authors found that of all the land that classified as “intensive agriculture” as of 1973, only 7% had been placed in development zones through the planning process.<sup>33</sup>

Lettman also examined all changes in agricultural land in western Oregon, regardless of its comprehensive plan designation. The research showed a significantly slowing of the rate of conversion of agricultural land over the 27 year period and after 1994 a dramatic drop in the amount of conversion caused by low-density sprawl.<sup>34</sup> Other research on land use changes in Western Oregon, including forest lands, show similar results.<sup>35</sup>

Overall, Oregon’s statewide farm and forest zoning has, by and large, stopped urban development outside urban growth boundaries. It has greatly reduced, but not stopped, exurban development.

#### **b. Montana Citizen Initiated Conservation Zoning and Conservation Easements**

The Montana Smart Growth Coalition reported on the use of agricultural zoning adopted by landowners in a few Montana counties. Jefferson County has a citizen-initiated agricultural district of 82,000 acres (about 130 square miles) which established a minimum lot size of 640 acres. In Park County about 66,000 acres were protected with agricultural zoning that set a minimum parcel size of 320 acres. The northern half of Powell County now has a 160 acre minimum lot size.<sup>36</sup>

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<sup>33</sup> *Id.* at 35. More farmland was lost in Eastern Oregon, which had much lower absolute population growth, spread out over more land. Lettman, G. (ed.). *Land-use change on non-federal land in eastern Oregon, 1975-2001*. Salem, OR: Oregon Department of Forestry. 2004.

<sup>34</sup> These tables are taken from the Oregon State University Institute of Natural Resource’s Draft Final assessment of the performance of the Oregon land use planning program, referenced in the section on urban containment in Oregon.

<sup>35</sup> Azuma, D., et al., U.S. Dep’t of Agric., *Land Use Change on Non-Federal Land in Western Oregon, 1973–2000* (2002); Zheng D., Alig, R. U.S. Dep’t of Agric., Research Paper PNW-RP-518, *Changes in the Non-Federal Land Base Involving Forestry in Western Oregon, 1961–94*, at 8–9 1999.

<sup>36</sup> Source: Tim Davis Montana Smart Growth Coalition survey response 2009



In addition, as of about 2005 1.8 million acres (about 2,800 square miles) had been protected by private conservation easements.<sup>37</sup> This is impressive, but must be put in the context of the total size of Montana, of about 147,000 square miles.

**c. Fauquier County, Virginia: Rural land regulation combined with purchased conservation:**

Fauquier County in northern Virginia is 649.70 square miles (415,808 acres) and had an estimated 2007 population of 66,328, up 20% from its 2000 population of 55,139.

The county is conservative: In 2008, 56% of its voters voted for John McCain for President.

Fauquier County's approach to growth combines elements of targeting infrastructure, rural zoning and incentives for conservation easements.

*Fauquier County has a Comprehensive Plan which encourages new or expanded public facilities and services within the nine designated service districts. Here future growth is anticipated, with a more compact development pattern which allows basic public facilities and services to be programmed more efficiently and cost effectively.<sup>38</sup>*

The County establishes a sliding scale for residential lots outside the service districts, with the lot size increasing with the size of the parent parcel, up to 50 acre lots for parcels 1,000 acres in size or larger. The County also encourages the use of conservation easements within voluntary Agricultural and Forestal (sic) Districts.<sup>39</sup>

Fauquier County has reported on the performance of its rural land conservation efforts in an update to its comprehensive plan:

*A major contribution to the preservation of open space has been the voluntary participation of individual rural property owners in Agricultural and Forestal Districts and in the creation of open space easements (refer to Table 8-2). There are now 13 Agricultural and Forestal Districts which cumulatively total 90,780+ acres, and restrict any subdivision to family divisions or large lot subdivisions of 50 acres or more in size. Many property owners have created easements with the Virginia Outdoors Foundation (VOF) which now holds more than thirty thousand acres in open space easements. The result is that over 30% of the county has more restrictive residential subdivision limitations placed on its land resources by individual property owners than the governing zoning requirements.<sup>40</sup>*

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<sup>37</sup> Carlstrom, M *Striking a Balance Between Land Protection and Development in Montana* (undated, circa 2009) page 4, citing in turn, Montana Department of Administration, October 2008.

<sup>38</sup> Fauquier County Comprehensive Plan Chapter 6 page 2.

<sup>39</sup> Fauquier County Comprehensive Plan Chapter 8 Rural Plan page 2.

<sup>40</sup> Fauquier County Comprehensive Plan Chapter 8 Rural Plan pages 2-3

#### **d. Conservation through transferable development rights: New Jersey Pinelands:**

The New Jersey Pinelands Commission was formed in 1979, following enactment of the Pinelands National Reserve by Congress in 1978. The purpose of the legislation is to preserve, protect, and enhance the natural and cultural resources of the Pinelands National Reserve, and to encourage compatible economic and other human activities consistent with that purpose.

According to the website for the Pinelands Commission, this “internationally important ecological region is 1.1 million acres in size and occupies 22% of New Jersey's land area. It is the largest body of open space on the Mid-Atlantic seaboard between Richmond and Boston and is underlain by aquifers containing 17 trillion gallons of some of the purest water in the land.”<sup>41</sup>

The Pinelands National Reserve covers all or parts of 56 municipalities spread across seven counties.

Development in the Pinelands is guided by the Comprehensive Management Plan (CMP), which established nine management areas differentiated by amount of development and level of resource protection. Since these management areas do not always follow political boundaries, municipalities, counties and watershed associations must work together and plan at a regional scale.

The Pinelands Commission also coordinates with the Department of Environmental Protection, Department of Transportation, Office of Smart Growth and other agencies on an array of projects that extend beyond local boundaries.

In 1981, the Pinelands Commission created a transfer of development rights (TDR) program to shift patterns of development in the area.

A transferable development rights system uses market systems to conserve lands. It is based on the allocation of development rights and creating a system for the transfer of the right to develop for use in other locations and by other people or companies.

The owners of lands to be conserved (the “take off zones”) are prohibited from developing their land and are given development rights in exchange. These rights can be purchased by owners of land in the “landing zones” or by third parties (such as developers) in order to authorize additional development in the “land zones.” The landing zones could be either urban or rural. The takeoff and landing zones could be close to each other or at opposite ends of the state.

In the New Jersey Pinelands the preservation sending area had about 24,400 TDRs available for sale, and the receiving area allowed 43,300 more homes to be built than would be allowed under normal zoning.

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<sup>41</sup> New Jersey Pinelands Commission <http://www.nj.gov/pinelands/reserve/>

The TDR market did not take off until the mid-1980s, when the state created the Pinelands Development Credit Bank. The Credit Bank purchases TDRs from a seller if no other buyer can be found, and can then sell the right to a developer at a future date.

As of April 2008, nearly 56,000 acres of land in Transferable Development Right sending areas in the Pinelands were conserved through the TDR program. Development is very strictly controlled by the Pinelands Commission, which assures that most of the land is rural and protected. In receiving areas, the plan requires base densities of one to three and a half housing units per acre of developable land, and then allows for bonus density when using development rights.

The program is often cited as one of the most successful TDR programs in the nation.

**e. Colorado Tax Credit Program: Strong tax incentives for conservation easements**

In 1999 the Colorado Legislature enacted a tax credit against state income taxes equal to 50% of the value of a conservation easement donated to a qualifying conservation organization.

The 2006 Colorado legislature increased the maximum annual credit to \$375,000 and allowed the tax credit to be transferred. In other words, landowners without enough taxable income to take advantage of the credit could sell their credit to third parties, typically discounted to 80% to 90% of the credit amount. Tax credits can be used over twenty years.

These provisions (total amount, transferability long period during which credit can be used) make the program the most generous such program in the US<sup>42</sup> (although Virginia's program is comparable in many respects.)

The Colorado conservation easement tax credit program may be the most successful program of its type in the nation, as measured by the amount of land conserved. In a single year, 2005, all land conservation efforts - public, nonprofit and private - conserved 179,000 acres in Colorado.<sup>43</sup>

**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.

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<sup>42</sup> Pentz 2007 pages 32-34.

<sup>43</sup> Colorado Conservation Trust 2006 page 4.

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 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).<sup>44</sup>*

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 home sites.

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 home sites 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.

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<sup>44</sup> Idaho Land Use Handbook page 48.

Ten-acre home sites 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 program 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 home sites. 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.