

## Area of City Impact Discussion Paper

*This paper was prepared to be a basic background and introduction to some of the issues surrounding areas of city impact in Idaho. It is not a comprehensive analysis or research paper. The intent is for it to be used to launch discussions on ways to improve areas of city impact and how they work in Idaho.*

### Background of Land Use Analysis

In 2010, Idaho Smart Growth, the Idaho District Council of the Urban Land Institute, the Idaho Chapter of the American Planning Association, Boise State University, and the University of Idaho completed a study on land use planning in Idaho. Through surveys, focus groups, comprehensive plan analysis, and lessons learned from other states, a series of recommendations for action were developed.

One of the recommendations was to explore the concept of “urban policy areas”. Currently, there is not enough legislative support in Idaho for passage of a statewide growth management program. However, there is an opportunity to explore opportunities for regional and local efforts within the framework of existing laws, achieve more effective urban planning in Idaho and to develop urban infrastructure in a more fiscally responsible manner.

### Why is this important?

As Idaho continues to grow, it is critical that it grows in a way that makes sense and keeps our communities great places to live. Building infrastructure to serve new development on the fringe can cost the city up to three times more per acre than development in existing communities. <sup>1</sup> For example, analysis of multiple planning scenarios in Sacramento, CA revealed that compact development would save the city \$7.5 billion in infrastructure costs, or 23% of what it currently spends.<sup>2</sup> In studies of growth scenarios in 14 regions, analysts found that more compact development almost universally resulted in infrastructure cost savings.<sup>3</sup> In some cases, these strategies would cut costs in half.<sup>4</sup>

New growth requires investments in a variety of infrastructure, including sewer, water, roads, telecommunications, police, fire, ambulance, parks, and schools. Costs include not only capital costs to build infrastructure, but ongoing operating and maintenance costs as well. As few tools to help cover these costs are available to Idaho communities, it is a priority for cities and counties to minimize infrastructure costs related to growth as much as possible.

As an example of how challenging funding is, some communities have considered whether or not they can even afford to continue to maintain some of their roads and others have considered promoting the use of private roads over public roads.

Idaho law says that cities should be able to expand “in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly

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<sup>1</sup> Smart Growth America, <http://www.rpcgb.org/events/2012/01/17/the-rise-of-walkable-urbanism/index.php>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.” (Idaho Code, 50-222-1). Essentially, cities should be able to grow in a way that is cost-effective for their residents.

Cost of community services in Idaho show that property taxes from commercial and agricultural land use essentially subsidize services on residential land uses. <sup>5</sup>

Additionally, the preservation of agricultural land is a strong community value and key to Idaho’s economic success, as Idaho is the sixteenth largest agricultural producer in the nation, and third in dairy products. <sup>6</sup>

Cities make decisions on annexations and counties make decisions on area of impact boundaries. Because Areas of City Impact and areas of annexation are so closely related, it is critical that cities and counties are able to work together to ensure that future growth makes sense for their residents.

### Phase 1

A small group was convened to do some initial scoping of issues related to Areas of City Impact. This group included members of Idaho Smart Growth, the Idaho District Council of the Urban Land Institute, the Idaho Chapter of the American Planning Association, Boise State University, COMPASS, Valley Regional Transit, and Boise City.

Working from the state law requirement that we should “encourage urban and urban-type development to occur within incorporated cities” (LLUPA 67-6502 (f)), the group identified the following policy outcomes it wanted to see as a result of any actions and recommendations:

- Providing predictability for landowners within AOI related to future growth timing and location
- Urban growth should occur in cities where services are provided
- Cost of services (to citizens) should be kept reasonable
- Dis-incent development in unincorporated areas
- Better alignment of land use and transportation planning
- Greater consistency and accountability amongst regional county and city plans
- Protect important natural resources, agricultural resources, and critical lands
- Responsibilities for planning and decision making in AOIs is clear
- Preservation of agricultural land

In order to better understand how Areas of City Impact affect these policy outcomes, and the challenges associated with AOIs, the group conducted a series of surveys sent to stakeholders, including cities, counties, service providers, and planning professionals. These surveys were used to gather general comments and feedback- they were not scientific surveys representing the general population.

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<sup>5</sup> *Costs of Community Services*, Martha Leighton and Neil Meyer, University of Idaho, 2000

<sup>6</sup> *Sustaining Agriculture*, Urban Land Institute Idaho, 2012



## Summary of current law

Idaho Code § 67-6526 mandates “the governing board of each county and each city therein” shall adopt a map with area of city impact and ordinances. “The boundaries of the area of impact are negotiated between the affected city and county.” (*Idaho Land Use Handbook*, Givens Pursley) Under Idaho Code § 67-6526(a), the city and county are required to adopt ordinances specifying which comprehensive plan and land use ordinances will apply within the area of impact<sup>7</sup> and they are free to select either the city’s, the county’s, or some combination or variation. (*Idaho Land Use Handbook*, Givens Pursley) In rare instances, an area of city impact may cross a county boundary.<sup>8</sup> Idaho Code § 67-6526(a).

The “Idaho Land Use Handbook” also provides this following information:

“Whatever plans and ordinances are made applicable within the area of city impact, they will be enforced by the county. This is true even if the city’s ordinances are declared applicable.<sup>9</sup> This is necessary because article XII, section 2 of the Idaho Constitution prevents a city from exercising jurisdiction outside its boundaries. *Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115, 120, 90 P.3d 340, 345 (2004) (awarding attorney fees against a city and county for adopting ordinances which purported to authorize the city to exercise jurisdiction within its area of city impact: “This Court recognized as far back as 1949 that a city’s exercise of jurisdiction in an impact area lying beyond a city’s limits is inconsistent with the constitutional limitations placed on a city’s powers by Article XII, § 2 of the Idaho Constitution.”).<sup>10</sup>

## Summary of themes from survey

- Agreement that urban development belongs in cities
- AOIs should be based on the ability to provide services within a realistic timeframe
- Important to include affected landowners in AOI decisions
- Majority felt annexations should not occur outside AOIs
- Majority feel state law is not adequate in its intent and direction to cities and counties regarding AOIs
- The current process is filled with conflict for many jurisdictions
- Wide range of how AOI expansions are planned
- Many issues/tension around AOI and annexation

## A Few Idaho Examples

### *1. Annexations outside AOIs*

- Over the last few years, City A has annexed property in the established (County approved) Area of Impact for City B. Under previous administrations, both cities had agreed on the

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<sup>7</sup> Idaho Attorney General’s Opinion, OAG 95-1 (opining that both the city and county must adopt an ordinance for an annexation to be effective).

<sup>8</sup> “Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.” Idaho Code § 67-6526(a).

<sup>9</sup> *Cf.*, *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003), in which the Court noted in passing (and without apparent concern) that the Area of Impact Agreement between Teton County and the City of Driggs called for both governing bodies to review and approve plats and zone changes.

<sup>10</sup> The reference to 1949 presumably refers to *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949), which is mentioned in *Blaha v. Eagle City Council (“Blaha I”)*, 134 Idaho 768, 769, 9 P.3d 1234, 1235 (2000) and *Blaha v. Bd. of Ada County Comm’rs (“Blaha II”)*, 134 Idaho 770, 777, 9 P.3d 1236, 1243 (2000). *Clyde Hess*, was not a land use case. It dealt with the division of authority among the city, county, and state to regulate the sale of beer. *Blaha I* was the first case to address the division of authority between city and county with respect to areas of city impact.



boundary between the two communities. However, recent leadership had other ideas, and decided to disregard the "gentlemen's" agreement for future city limits, thereby causing plans to be re-done and property owners to be left with uncertainty as to where/when services would be provided them. City B has spent thousands of dollars modeling and sizing infrastructure to provide services throughout its AOI. It is very frustrating that State Code does not have any provisions/penalties for jurisdictions that disregard established planning boundaries. Because there are no "rules" that can be enforced, planning boundaries mean nothing and cause additional costs and unnecessary angst between agencies.

2. *Determining whether a city has the ability to provide services*

- County X is finding it difficult when redrawing the lines of the area of city impact when the county is trying to be realistic and City Y wants to maintain areas that probably will not be annex within City Y within the next 50 years. I think City Y feels that they don't want to give up any territory even if they have not put in capital improvements for growth for the next 10 years let alone the next 50 years. I believe that the city does not look at the realistic picture when it comes to annexation of county property into the city and be able to provide services to the citizens they annex into the city.

3. *AOI Land use compatibility with neighboring city/future plan*

- Our major challenges for City D have come because County E has approved subdivisions within the AOI that do not conform to City D's standards or land uses. We have one residential subdivision that was approved in the county in an area designated for future land use by the city as industrial. This creates significant problems in attracting industrial development because of the fear of complaint and because it is in the center of an area that would be best served as large acreage industrial, near rail and freeway access. This subdivision has not been completely developed out yet, but has already been annexed into the city because of their need for city services. Furthermore, the subdivision is on the very periphery of the community and only contiguous at one small point. The impact is sprawl and higher costs for providing services to outlying areas. These subdivisions are often built without sidewalks and with substandard roadways and then become enclaved or annexed, not providing cohesive connectivity to the growth that surrounds them.
- County M has City Q with the surrounding area of City Impact. County M is primarily Agricultural. Challenge is to allow residential growth with in the AOCI that does not conflict with Agriculture. We have addressed this by having Memorandum of Understanding Regarding AOCI County M and City Q. With a good working relationship and the MOU we have had success.

## Phase 2

Working with a broad group of interested stakeholders, we propose to explore possible next steps in order to improve issues related to areas of impact and annexation.

- Define criteria in code regarding establishment of AOIs, add criteria if necessary. For example, "have the ability to provide services", "reasonably expected to be annexed"- what do these mean? This could be done by amending the code, getting an Attorney General's opinion, or establishing unofficial "interpretative" guidance. This will help provide more guidance to jurisdictions when establishing or expanding AOIs as well as provide more consistency. We would look at examples from other states.
- We could build a training curriculum regarding establishment and expansion of AOIs, building on other existing trainings, in order to meet needs identified in the survey.



- Set up a web page to gather and share best practices regarding AOIs- existing agreements (Gem Co., Kootenai Co.) and processes that work (Ada County Urban Public Service Levels, etc), national and local examples
- Review annexation laws for any potential changes/clarifications needed and examine what goes into the annexation planning process for cities
- Compile Idaho examples/database of AOI agreements (work begun by Idaho Smart Growth)
- Compile existing cost of community services data and identify gaps where more data is needed
- Other options?

