

MODERNIZING RURAL DEVELOPMENT CODES: “QUICK FIXES” FOR HIGHEST PRIORITY CHALLENGES



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**DRAFT—FOR DISCUSSION ONLY
SUBJECT TO REVISION**

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- **EXPERT PANEL MEMBERS**

INTRODUCTION

Development in small towns and rural areas poses a host of unique challenges. While some of the suggested smart growth tools and responses in the companion “urban quick-fix” document may be useful (e.g., steps to rein in the use of planned unit developments), others are not applicable and most will play out differently in rural areas. Moreover, many small towns and rural areas have fewer financial, technical, and staff resources to draw on in responding to development proposals and growth pressures. These facts dictate differing approaches in many instances.

Facing these issues head-on, an increasing number of rural jurisdictions are adopting progressive smart growth strategies that address some of the most important development challenges, thereby laying a foundation for the rural smart growth best practices addressed here.

Like the “urban quick fix” report, this report recommends 10 “quick fixes” to local development codes and policies that can go a long way towards ensuring small town and rural development is fiscally sound, environmentally responsible, and socially equitable.

SMART GROWTH IN RURAL AREAS

Just what is smart growth in small towns and rural areas? Its basic principles are similar to smart growth in urban and suburban areas—for example, a hallmark is compact development that helps conserve open space at the edges of small cities and towns and support vital town commercial districts. However, there are notable differences—for example, high-density, mixed-use projects that help achieve compact development in urban areas are usually infeasible or inappropriate in small towns and rural areas by definition.



To set the stage for the priority rural quick-fixes, the expert group¹ assembled by the U.S. EPA’s Smart Growth Office first agreed upon what it concluded was the preferred general smart growth development pattern for small towns and rural areas. That preferred pattern has two notable characteristics:

1. **City/Town Influence Areas:** Most residential and commercial/industrial growth in rural areas is focused primarily within rural municipalities or in their immediate environs (what the group called town influence areas). This development will normally be on centralized water/sewer or community septic systems and take advantage of the proximity of other existing infrastructure such as roads and streets. Town development has a “hard” edge rather than a soft sprawling transition marked by large residential lots (2-5+ acres) often seen in rural areas.

¹ A list of the expert group members is included in Appendix A.

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2. **True Rural:** The areas outside the towns/town influence areas are characterized by large, contiguous blocks of open space, agricultural lands, and natural resource areas. There is a distinct absence of scattered commercial, institutional (e.g., hospitals, schools) and smaller lot residential development and no free-standing subdivisions. “Urban” services normally provided by cities and towns are limited (e.g., snow plowing, fire/EMS). Commercial development requiring a rural location (e.g., ski resort, fishing lodge) is allowed, but carefully controlled. Large free-standing master-planned communities and planned unit developments are not allowed, except in unusual, prescribed circumstances.

While the group considered this development pattern—common in Europe and some states with advanced growth-management systems like Oregon—to be highly preferable for a variety of reasons (open space preservation, efficient and cost-effective provision of infrastructure and government services), it also recognized that it would be very difficult to achieve in many instances due to existing development patterns and political realities. Consequently, the group suggested an alternative smart growth development pattern that would be acceptable. It has three character areas:



1. **City/Town Influence Areas:** Same as above, except that development on the edge of towns and in adjacent unincorporated areas will have a transitional area as discussed below that would accommodate some larger-lot development in the context of clustered/conservation subdivisions.
2. **Transitional Town Influence Areas:**² Larger (1/2 to 5 acre) residential lots will be allowed in the transitional area, but normally only as part of a cluster/conservation subdivision that would preserve large contiguous blocks of open space. The development part of the cluster will be adjacent to the town or existing development, and the open space will provide a transition and buffer to true rural/agricultural lands further out. Future urbanizing standards (e.g., easements for future centralized water/sewer pipes) will be applied to any new edge residential development to accommodate potential future densification and annexation.
3. **Rural:** The areas outside the towns/town influence areas are characterized by large, contiguous blocks of open space, agricultural lands, and natural resource areas. Urban services are limited, and scattered small-lot (less than 1 unit/40-80+ acres) residential development is not allowed. Commercial development requiring a rural location (e.g., ski resort, fishing lodge) is allowed, but carefully controlled. Some commercial/small-scale residential development is permitted in small hamlets that provide services to surrounding rural residents and agricultural operations (e.g., a welding shop, convenience store). These hamlets are either preexisting villages or new ones carefully designated in local comprehensive

² The term “town influence area” is used throughout this document to mean land roughly up to three miles outside town limits. Town influence areas will vary depending on a variety of factors such as natural features, proximity of other incorporated areas, and existing development patterns.

plans to avoid creating large development centers. Large master-planned new towns that provide a full range of services, employment, and housing choices may be allowed in certain carefully monitored instances where there is significant demand and such growth cannot be accommodated in existing towns because of geographic, infrastructure unavailability, or other reasons.

PRIORITY QUICK FIXES

The list that follows sets forth ten priority actions that small town and rural local jurisdictions can take to revamp their plans and development codes to address some of the most challenging growth issues they are likely to face and implement smart growth policies. These “quick fixes” can bridge the gap until local governments can undertake comprehensive revisions to their plans and development codes and help them realize the smart growth development patterns discussed above.

There is some overlap among the tools recommended in each priority area, and often successful implementation will require several actions to be undertaken at the same time. For example, a number of the implementations steps for designating town growth areas dovetail with those relating to regulating rural commercial development.

Each priority action area is divided into six sections:

- Introduction—discussion of the issue and growth management challenges
- Response to the problem—an overview of how local governments might respond
- Expected benefits—how local governments and communities will benefit from addressing the issue
- Steps to implementation—divided into minor adjustments, major modifications, and wholesale changes that local governments can make to their land use plans and codes to address the issue
- Practice pointers—common-sense considerations in assessing alternative implementation approaches
- Examples and reference—a list of the best general references on the topic as well as specific local government plan and development code examples

1. Avoid the “Devil’s Density”

Introduction

This term describes development on the periphery of small cities and towns in rural areas that is not dense enough to support cost-efficient provision of town-level services and infrastructure. At the same time, it is too dense to maintain truly rural development patterns and results in fragmentation of agricultural lands and natural resource areas like wildlife habitat.

In terms of housing, we use the term “Devil’s Density” to mean development that is approximately 2-4 units per acre at the more town end of the spectrum and one unit per 20-40 acres at the rural end. In essence, it results in lots that are too big to mow easily and too small to farm in most instances.

This low density development pattern has been one of the fastest growing sectors of the rural housing market, fueled by a variety of factors, including a move to rural communities for quality of life, an expanding market for lower cost second and vacation homes in rural areas, a desire by rural communities to grow and generate jobs, and the development community being able to receive entitlements quickly through a less complicated or demanding county or small town’s development review process (i.e., “the path of least resistance”).



The desire of these communities to remain “rural” or “maintain their small town character” is a common theme. Indeed, many rural small city/town and county zoning codes and subdivision ordinances allow only developments around existing settlements that fall within the “Devil’s Density.” These lower densities are often encouraged in the belief that they translate to a rural character. Often, however, these densities translate into low density standard subdivisions using plain vanilla suburban land use regulations relating to streets, landscaping, setbacks, and lot sizes. The most difficult densities are those in the one-half to five acre lot size. They pose a host of problems in terms of smart growth:

- Costly and inefficient provision of infrastructure and services,
- Demand for urban level services such as road maintenance and recreational facilities without a adequate supporting tax base,
- Fragmentation of productive agricultural lands and sensitive natural areas,
- Introduction of urban “nuisances” into agricultural areas and wildlife habitat like domestic animals and trash,
- Blockage of the possibility of future town-level development (e.g., no easements for central water/sewer lines or drainage, limited road rights-of-way), and
- Lack of pedestrian connectivity and increased use of automobiles with consequences for health and greenhouse gas emissions.

The “devil” in these densities is that they are neither rural nor town-like in their character or results. They often fail to achieve community goals regarding small town and rural character, and once developed are nearly impossible to reconfigure over time.

This is also an interjurisdictional, municipal-county issue.³ Much of this development pattern is occurring within counties on unincorporated land near town boundaries. Rural counties often have minimal regulations and limited resources to plan for or review these types of development applications or actually adopt regulations that promote such development patterns (e.g., by permitting lots as small as 2 acres in so-called agricultural zone districts). Elected officials in these rural counties are also often reticent to limit ranchers and farmers from “cashing-in” on growth by subdividing or carving off large lots for sale.



Response to the Problem

As discussed above, the problem of the “Devil’s Density” is that it creates a development pattern that is not sustainable on any level – fiscally, environmentally, socially, and from a health perspective. When communities look at the potential impacts and decipher where they can make improvements through increased densities as well as a host of zoning changes, a sound smart growth community can form.

An important first step to deal with the “Devil’s Density” challenge is for local comprehensive plans to very specifically limit this development pattern to areas that lend themselves to forming a natural edge to the community, one that will not be “leap-frogged” by more low-density development in the future. An example may be a major road or a river that provides a man-made or natural barrier to expansion and clearly defines an edge to the community. Another strategy is to expand the town’s street pattern (often a loose grid) in a manner to allow some expansion that utilizes the remaining infrastructure capacity and then ends at an agricultural zone on the community’s edge.

These remedies only address the properties at a community’s urban edge. Equally challenging are subdivisions and large free-standing residential and commercial developments scattered about in more remote rural areas. These developments are usually under county purview, so that dealing with them effectively requires cooperation between municipalities and counties.

Expected Benefits

- Lower costs for local government infrastructure and service providers.
- Preservation of large contiguous blocks of open space, agricultural lands, and natural resource areas such as wetlands and wildlife habitat.
- Less nuisance interference with viable agricultural operations and wildlife.

³ Throughout this report, the term “county” is used to include non-incorporated units of local government such as townships and parishes.

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- Increased support for town business districts, activity centers, and traditional neighborhood developments, with greater connectivity to the immediately adjacent town.
 - Improved town/rural health by enhancing connectivity and opportunities to walk and bike thereby reducing reliance on automobiles.
 - Reduction in vehicle miles traveled and a concomitant reduction in greenhouse gas emissions.
 - Minimization of areas that are hamstrung by limited redevelopment potential due to ownership patterns inability to provide urban services.
 - Increased predictability for landowners and developers since growth areas are clearly indicated on local plans and implemented through zoning.

Steps to Implementation

1. Minor Adjustments

- Adopt town and county comprehensive plans that recommend against “Devil’s Density” and in town influence areas.
- Amend zoning ordinances to repeal zone districts that allow “Devil’s Density” at edge of town or within town influence areas (1-3 miles from town boundary).
- Adopt agricultural zone districts with a minimum lot size of at least 1 unit/80 acres outside town influence areas.
- If “Devils Density” zones are allowed, then develop design regulations, which call for connectivity as well as integration with the adjacent neighborhoods and create specific transitions to adjacent agricultural or undeveloped areas.
- Allow cluster/conservation subdivisions at the edge of town to provide open space transition to true rural areas.
- Designate locations for small rural hamlets in rural areas to serve as local service centers.



2. Major Modifications

- Establish urban service areas/urban growth boundaries in comprehensive plans that limit urban service provision to towns and town influence areas.

- Adopt true agricultural zone districts (1 unit/80+ acres). This may vary somewhat depending on sites, soils and the type of agricultural business within an area.
- Require minimum densities in areas targeted for growth in a community.
- Require cluster/conservation subdivisions at the urban/town edge to provide rational transition to rural areas. Do not allow in active agricultural areas or in sensitive natural areas outside town influence areas.
- Require fiscal impact analysis/mitigation for all major developments—for example, require comprehensive fiscal impact analysis for proposed rural developments and mitigation measures so that rural developments pay their own way or are not approved.



3. Wholesale Changes/Replacement

- Create agriculture-only zone districts with large minimum lot sizes (e.g., 1 unit/160+ acres) and apply to large areas in rural jurisdictions.
- Revamp annexation policy to require mandatory annexation as a condition of development approvals in town influence areas (consider a “no objection” clause when annexation is feasible under state law and desired by the town).
- Undertake joint town/county planning to develop consistent growth management policies that designate preferred growth areas and limit the use and location of large-scale PUDs and rural new towns in unincorporated areas outside town influence areas.
- Designate potential “new town” location in rural areas of county in cooperation with towns. Allow where warranted by community need. Create special review process to assure new towns are balanced communities providing a full range of services, housing, and employment, not isolated subdivisions.

Practice Pointers

- The appropriate lot size in agricultural zone districts will vary depending on the state, land patterns and types of agriculture.
- Consider how zoning and subdivision provisions allowing small lot splits/family subdivisions without subdivision review open the door for inappropriate densities in rural areas and fragmentation of agricultural lands. Family subdivisions are sometimes used in fast-growing areas to skirt minimum lot size regulations and other subdivision requirements..
- In the past communities have used Devil’s Density developments as a de facto economic development strategy. Often smaller towns and rural counties see low-density development fees and increased property values along with construction jobs and retail

sales as economic development. Unfortunately, the cost of maintaining the public infrastructure often exceeds any short-term boost to the local economy.

- Do not allow cluster/conservation subdivisions in areas where true rural development patterns are preferred (These subdivisions patterns have been shown to disrupt agricultural operations over time.).
- In special circumstances, local governments have provided support for land trusts that have been able to purchase or accept donation of conservation easements from farmers and ranchers, thereby limiting dense development while allowing landowners to realize some value while maintaining agricultural operations.
- Transfer of development rights programs can be a useful adjunct to regulatory land protection programs, but these programs can be complex and may be feasible in a limited number of instances where there is sufficient market demand.
- Land preservation efforts based on land use regulations tend to be more successful when accompanied by a well-funded land acquisition program targeted at the most sensitive natural areas or where public access is desirable.
- Allow wetland mitigation banking, open space natural parks, and similar uses in agricultural zone districts.

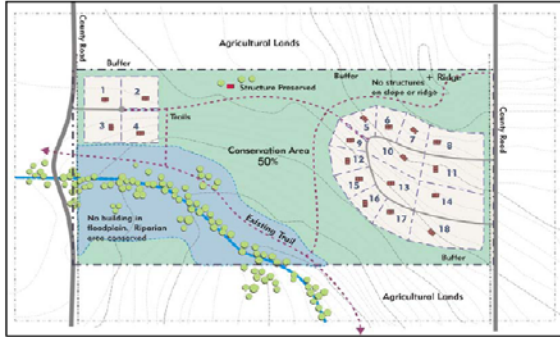
Examples and References

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 - Richard Pruetz, Beyond Givings and Takings, Arje Press (2003) Good summary of TDR programs. <http://www.beyondtakingsandgivings.com/tdr.htm>
 - “Achieving Sensible Agricultural Zoning to Protect PDR Investment” by Deborah Bowers (2001)
http://www.farmlandinfo.org/documents/29520/Achieving_Sensible_Agricultural_Zoning_full_presentation.pdf
 - Marin County-Wide Agricultural Element – Exec. Summary;
<http://www.co.marin.ca.us/depts/cd/main/comdev/advance/cwp/ag.cfm>;
<http://www.co.marin.ca.us/depts/CD/main/fm/TOC.cfm>
 - King County, WA, Rural Legacy/rural smart growth program elements.
<http://www.metrokc.gov/smartgrowth/rural.htm>

2. Limit Cluster/Conservation Subdivisions to Appropriate Locations

Cluster/conservation subdivisions—where residential units are clustered on reduced-sized lots on a small portion of a development site to promote preservation of larger tracts of open space—have become a popular tool used by rural local governments to preserve open space and agricultural land. This approach allows landowners and developers to maintain the allowed density on a site while preserving additional open space by reducing minimum lot size and concentrating lots in a limited area on the site. Cluster/conservation subdivisions are sometimes touted as the silver bullet that will allow landowners to profit from development while preserving open space and rural character. However, experience in an increasing number of rural jurisdictions reveals that while this tool can be very effective and valuable, it must be used judiciously and in some cases avoided.



The track record of cluster/conservation subdivisions is that they work best in transition areas between towns and true rural areas where active agricultural operations are maintained and large contiguous blocks of natural areas preserved. In these transition areas, the developed clusters can be located adjacent to existing development in a town or village with the open space portions acting as a compatible transition to and buffer for rural areas. If located in function agricultural areas or in the middle of sensitive natural areas, the track record is that cluster/conservation subdivisions actually lead to the demise of the agricultural operations as they introduce homeowners with urban expectation into the area. Complaints about noise, dust, and odors, harassment of livestock by domestic pets, and similar ills soon often abound. Similarly, clusters in sensitive wildlife habitat fragment that habitat, promote edge species to the detriment of others, and introduce humans and domestic pets into the area.

Learning from this experience, local governments are beginning to target the use of cluster/conservation subdivisions to areas on the periphery of existing towns and villages or are limiting their size in rural areas (e.g., no more than 10 residential lots) to control the impact they have on rural character, agricultural operations, and wildlife habitat.

Response to the Problem

As a first step, small towns and rural jurisdictions should adopt zoning and subdivision provisions allowing the creation of clustered/conservation subdivisions. Too often rural local governments resist the creation of smaller lots (e.g., less than 2 acres) in rural areas under the mistaken assumption that this will erode rural character.

However, it is critical that the cluster/conservation subdivision tool be used in the appropriate locations. More and more jurisdictions are recognizing that this approach is best utilized in transition areas between cities/towns and true rural areas with viable agriculture or large contiguous blocks of sensitive natural areas. In these areas, cluster/conservation subdivisions can provide a smooth transition between denser town-level development and open lands. The clusters can be located adjacent to already developed areas or areas with readily available infrastructure

while the open space portion of the cluster provides a buffer between the built-up area and rural lands.

Expected Benefits

- Well-designed and located cluster/conservation subdivisions can provide appropriate transitions between town and rural areas.
- If used properly, cluster/conservation subdivisions can permit ranchers, farmers, and other landowners to realize some development value from their property while at the same time protecting large contiguous blocks of open space. That open space can be used for agricultural operations or to protect sensitive natural areas.
- If cluster/conservation subdivisions are prohibited or strictly limited in true rural areas outside town influence areas, local governments can avoid unnecessary fragmentation of functioning agricultural lands and wildlife habitat.
- Well-designed cluster/conservation subdivisions can be built and serviced more cost-effectively in many instances because they do not require extensive roads and water/sewer service facilities to scattered lots.

Steps to Implementation

1. Minor Adjustments

- Adopt comprehensive cluster/conservation subdivision regulations to allow this tool to be used as an alternative to standard subdivisions in all zone districts on edges of towns. Allow automatic reduction in lot size to at least ½ that of lot size specified in underlying zone districts.
- Provide modest density bonuses to encourage use of cluster/conservation subdivisions in town influence areas (e.g., 1 additional unit for every 10 permitted under current zoning).
- Allow use of community septic systems in town influence areas to facilitate creation of clusters on small lots where central sewer not available.
- Designate appropriate locations for cluster/conservation subdivisions in comprehensive plans.

2. Major Modifications

- Require use of cluster/conservation subdivisions on periphery of town and within town influence areas or provide disincentive by lowering allowable density in zone districts.
- Adopt future urbanizing standards so that clusters in town influence areas can be densified and provided with urban infrastructure in future (e.g., provide easements for water/sewer lines, drainage; excess rights-of-way to accommodate wider streets).

3. Wholesale Changes/Replacement

- Prohibit the use of cluster/conservation subdivisions outside of town influence areas within viable agricultural and sensitive natural areas. Designate appropriate locations on land use plan and zoning map.
- Require open space maintenance and management plans for all cluster/conservation subdivisions.

Practice Pointers

- In drafting conservation subdivision provisions, specify preferred locations for open space (e.g., to protect sensitive areas vs. land no one wants). Require high degree of contiguity.
- Allow non-contiguous open space in specified instances (e.g., where there are multiple natural areas on a site such as streams and steep slopes).
- During the planning phases, lot and home layout may take extra work to ensure that while homes are located closer together, they still take advantage of the open space goals of the design, preserve views, and limit impacts on natural areas.

Examples and References

- See various publications on conservation subdivisions by Randall Arendt including Conservation Design For Subdivisions and Rural By Design.
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<http://www.amazon.com/Rural-Design-Maintaining-Small-Character/dp/0918286867>
- For illustrative conservation designs, see
<http://www.uwex.edu/ces/cty/winnebago/cnred/documents/clustering.pdf>.
- For a good, plain-English primer on conservation subdivisions, see
<http://urbanext.illinois.edu/lcr/LGIEN2000-0010.html>; and for the basic elements of a conservation subdivision ordinance, see <http://urpl.wisc.edu/people/ohm/consub.pdf> ;
http://www.mapc.org/regional_planning/Booklet%20for%20Developing%20a%20Local%20Bylaw%20-%20Aug%202000.pdf
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- Summary ordinance requirements for conservation subdivisions in selected Wisconsin communities.
http://www.sewrpc.org/ca/conservationsubdivisions/pdfs/summary_of_conservation_subdivision_regulations.pdf.

3. Rein In Rural Planned Unit Developments (PUDs)

The inflexibility of Euclidean single-use zone districts, inappropriate development and dimensional standards, and Byzantine approval processes have given rise to the widespread use of negotiated developments in many communities, including small towns and rural counties. These negotiated developments are permitted and encouraged under local zoning codes and usually take the form of planned unit developments (PUDs)—often called master planned communities (MPCs). The use of PUDs has enabled communities to overcome some of the strictures of Euclidean zoning and to provide a vehicle for local government officials to negotiate community benefits such as additional open space, recreational facilities, better design, and contributions to infrastructure.

Although originally intended primarily as a tool for major developments in cities and suburbs, the use of PUDs has spread rapidly to rural areas because it is attractive to many developers, offering a simpler and quicker way to secure approval than seeking multiple amendments and variances to an outdated existing zoning code or one that does not allow large residential developments in rural districts. Use of PUDs by rural jurisdictions has also allowed them to negotiate substantial public benefits like large dedicated tracts of open space in some instances.



However, the PUD approach has now proliferated to the point that most projects of any size or significance are approved that way--some observers estimate that upwards of 40% of all residential units in the United States each year are approved through a PUD process, not traditional zoning. In many fast-growing rural towns and counties, PUDs have become the development tool of choice and have given rise to a whole host of challenges and problems. Few of these rural jurisdictions have the necessary expertise or staff to negotiate sophisticated development agreements for complex projects. Rural development codes typically have bare-bone standards and processes governing PUDs that provide little guidance to local officials and few controls to ensure the PUDs are properly located, well-designed, and provide adequate infrastructure and community benefits.

Increasingly, however, rural communities are recognizing the downside of relying heavily on PUDs/negotiated developments:

- Large rural PUDs and MPCs often have adverse impacts on agricultural operations and natural resource areas and strain local government services and budgets.
- Overreliance on PUDs can create significant uncertainty for developers and neighbors of the proposed PUDs. There is uncertainty for developers because there are no standards to guide the development approval process and for neighbors who find they cannot rely on existing zoning or land use plans to protect their rural lifestyle.
- Environmental and design standards are often overridden and ignored in the process.



- The creation of an administrative headaches for staff who over time have to deal with multiple mini-zoning codes created for each PUD—that invariably differ from other PUDs in terms of development standards and other requirements.

Response to the Problem

These problems have resulted in a growing number of rural towns and counties acting to limit the use of PUDs and MPCs by restricting their location, forbidding waiver of environmental and design standards, and specifying minimum levels of community benefits such as open space.

Expected benefits

- Increased certainty and predictability in the development review process.
- Quicker, more efficient review process and less staff time to administer the development over time.
- Adherence to community growth visions and goals as established in comprehensive plans including preservation of rural character and prevention of fragmentation of productive agricultural areas and sensitive natural resource areas.
- Maintenance of important design and environmental standards that are not waived or weakened in the process.



Rural PUD Near Santa Fe, New Mexico

Steps to Implementation

1. Minor Adjustments

- Designate major growth areas in comprehensive plans appropriate for PUDs and master planned communities.
- Require full public input with broad public notice early in PUD review process before project details set in stone.
- Require applicant to pay for additional staff or consultants to assist in evaluation of PUD.
- Limit the zoning and subdivision standards (especially environmental and design standards) that can be waived or modified through the PUD process.
- Establish a minimum list of public benefits that must be demonstrated prior to PUD approval (e.g., a minimum percent of the site set aside as open space).
- Create flexible by-right mixed-use zone districts adjacent to towns and in town influence areas to accommodate large-scale developments that are in accord with town/county comprehensive plans. Use in place of PUDs.

2. Major Modifications

- Require all PUDs and MPCs to be in accord with comprehensive plan requirements, particularly locations specified as preferred major growth areas. Target growth areas to town influence areas or within towns.
- Establish maximum size (in terms of area and number of lots) for PUDs outside of town influence areas to limit their potential disruptive impact in rural districts and sensitive natural areas.
- Add a fiscal impact analysis requirement to PUD process and require that the PUD demonstrate a positive long-term fiscal benefit to the community or provide mitigation.

3. Wholesale Changes/Replacement

- Prohibit the use of PUDs in all rural and agricultural zone districts outside of town influence areas unless in an approved new town location (See discussion of new towns in No. 4, *Designated Town Growth Areas* that follows.).
- Require the use of PUDs in town influence areas to secure significant public benefits and ensure that development fully pays own way and mitigates impacts. Do not allow waiver of key environmental and design standards.

Practice Pointers

- Consider establishing a detailed list of compensating community benefits that the community expects in return for flexibility in terms of uses, density, etc. Compensating community benefits might include a specified amount of open space, reclamation of degraded sensitive areas, off-site road and other infrastructure improvements, etc. Provides reassurance to community and some certainty for developers regarding negotiated benefits.
- Give priority to PUD/MPC applications that are adjacent to towns or in town influence areas
- To the maximum extent possible, utilize existing development standards from zoning and subdivisions ordinances to avoid creating “mini-zoning districts” that are difficult to administer. In the alternative, adopt uniform development standards for multiple PUDs where possible.

Examples/References

- For a good short description of PUDs with a pro/con scorecard, see Center for Land Use Education, “Planned Unit Development” (2005).
<ftp://ftp.wi.gov/DOA/public/comprehensiveplans/ImplementationToolkit/Documents/PUD.pdf>.
- For a general description PUDs and several ordinance examples, see http://www.in.gov/indot/div/projects/i69planningtoolbox/_pdf/Planned%20Unit%20Developments.pdf, and <http://www.plannersweb.com/wfiles/w490.html>

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- State of New York Rural Resource Commission, “A Guide to Planned Unit Developments” (2005). <http://www.dos.state.ny.us/lgss/pdfs/PUD1.pdf>
 - For a good local PUD site planning handbook, see Mt. Vernon, WA. <http://www.ci.mount-vernon.wa.us/imageuploads/Media-1064.pdf>
 - Sample PUD provisions for rural Vermont communities> <http://www.transportation-landuse.org/pages/tools/pud.htm>
 - Corvallis, OR, “Planned Unit Development in Corvallis’ Urban Fringe.
 - Teton County, ID; Martin County, FL; McHenry County, IL (minimum PUD size)
 - St. Lucie County, FL; Routt County, CO (mandatory open space set aside)
 - North Las Vegas PUD community benefit matrix and planned infill district (proposed)
 - Blaine County (Sun Valley, ID); Larimer County, CO (PUDs allowed only in specified locations/districts)

4. Designate Town Growth Areas And Identify Sites Off-Limits To Development

Introduction

Like their urban and suburban cousins, most rural towns and counties have for many decades handled land development and growth reactively. Zoning changes have been initiated primarily by land owners and developers. Developers have often selected development locations that did not follow town or county comprehensive plans. Subdivision and property assembly have been undertaken by land owners and developers with specific development projects in mind or because of the availability of cheap land in outlying locations.

Rural towns and counties are beginning to recognize that for a variety of reasons they need to take a more active role in selecting areas where growth makes the most sense:

- The cost-efficient provisions of government services and infrastructure.
- The preservation of open space, agricultural lands, and natural resource areas that are critical to rural character and rural economies.
- The creation of sustainable communities that rely less on automobiles, are more energy efficient, and provide a settlement pattern that is conducive to healthy lifestyles.



To accomplish these goals, local governments realize that they must revise their development codes, land use plans, and capital improvement plans to reinforce community choices as to the best development locations. They must also take steps to make these areas more attractive to the development community than other areas where the town or county has less desire to see development activity. This more focused role can be controversial, but can be done in a manner that benefits both the land owner and the community at large.

Response to the Problem

A successful process to designate preferred growth areas in rural towns and counties will include comprehensive planning with stakeholder and citizen engagement process and be supported by studies and data supporting the designation of growth areas (such as fiscal impact analysis, cost of infrastructure studies, delineation of natural resource areas and prime agricultural lands).

Coordination between local land use plans and capital improvement plans will be critical as well as town/county/regional cooperation in designation preferred growth areas.

Expected benefits

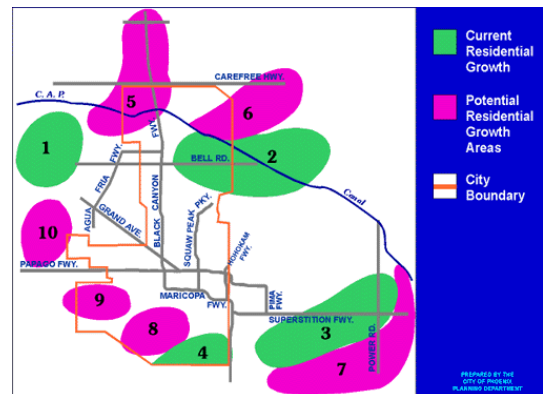
- Greater predictability for development proposals within towns and town influence areas that meet community growth goals.

- More efficient development review processes. When development proposals are in synch with community growth goals and meet local development regulations, they can usually be approved more quickly and with less public controversy.
- Cost-effective infrastructure provision. Focusing on development sites that can be served by existing infrastructure or minor extensions makes more efficient use of existing infrastructure capacity.
- Preservation of open space and natural resources when development within towns or town influence areas is supported. Focusing on development in these areas minimizes pressure to develop in more remote rural locations that can have an adverse impact on sensitive habitat, agricultural lands, and other open space resources.
- A more sustainable community that uses less energy, reduces VMT and greenhouse gas emissions, and is healthier due to development patterns that are conducive to walking and other alternative methods of transportation.

Steps to Implementation

1. Minor Adjustments

- Identify and map preferred growth areas in comprehensive plans as well as sensitive natural areas and prime agricultural lands where development should be avoided.
- Establish capital improvements plans that support preferred growth areas in comprehensive plans.
- Designate agriculture interim/holding zones with large minimum lot sizes (e.g., 1 unit/40+ acres) in lieu of low-density residential zoning in areas in which the town/county would rather not see imminent development.
- Adopt location specific impact fees that vary the fees for development based on location within or adjacent to towns--sites that traditionally have less infrastructure costs than outlying rural development.
- Adopt annexation policies that are coordinate with comprehensive plan designated growth areas (See Priority Fix No. 5, *Development Annexation Policy*).
- Produce small-area plans for designated growth areas to smooth way for future development.



2. Major Modifications

- Adopt adequate public facility ordinance that sets criteria for utility expansion and service of outlying developments. Phases growth concurrently with availability of adequate infrastructure and services.

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- Establish an annexation policy that sets detailed criteria for annexation including utility and infrastructure provision and financing as well as setting minimum development thresholds and development of a plan for the coordinated development of the area, prior to annexation. (See Priority Fix No. ____).
 - Establish urban service areas and urban services boundaries that are coordinated with capital improvement plans. Phase development with the timing of infrastructure. Zone areas outside urban service areas for agricultural and other low-density rural uses.
 - Zone designated growth to allow for preferred development, higher densities, and a range of residential, commercial, institutional, and industrial uses as appropriate.
 - Adopt an adequate public facilities ordinance that requires that adequate public facilities such as roads, water/sewer service, schools, etc. be in place concurrently when new development comes on line.
 - Purchase natural resource areas such as wildlife habitat and wetlands (or development rights) to protect from future development.
 - Adopt a transfer of development rights (TDR) program to protect designated sensitive natural areas that should be off-limits to development and transfer density to designated growth areas.

3. Wholesale Changes/Replacement

- Purchase key development sites and hold (land bank) for future development at appropriate times.
- Adopt true agricultural and rural zoning districts (minimum lot size of 80 acres and larger) in areas that are not designated for town-level growth.
- Designate areas for free-standing, complete new towns in comprehensive plans. Require full range of housing types, services, and employment opportunities. Create special development review procedure to process.

Practice Pointers

- Coordinate local government capital investment plans to support development in designated growth areas and discourage in other areas.
- Adopt comprehensive plan land use map that depicts preferred development areas and describes clearly the range of mix of uses desired as well as the community design principles as well as the key features desired for each area.
- Coordinate regionally with other local governments to adopt supportive plans and designated growth areas.
- Strategic managed phasing of growth areas is critical. Towns and counties need to find the appropriate strategy for holding growth areas in check until they are prepared for the types of development that the community envisions for that area.

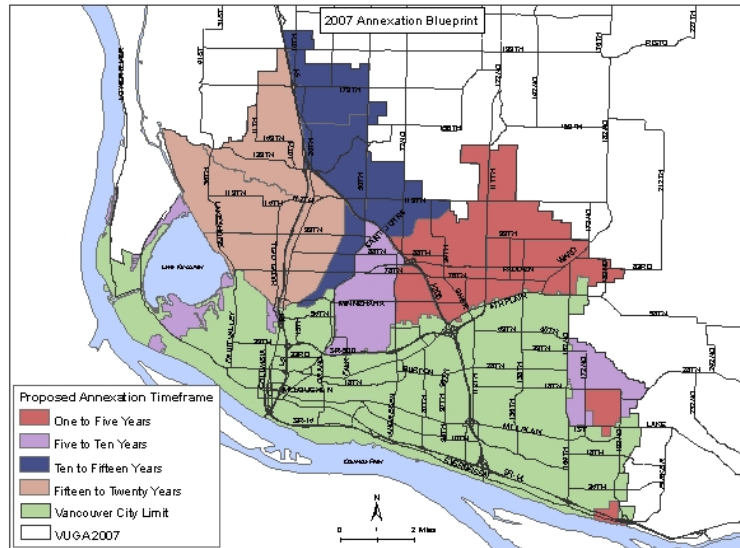
Examples and References

- Doug Porter, Managing Growth In America's Communities, Island Press (2007) Chapters 3 and 4--Where To Grow and Where Not To Grow.
http://www.islandpress.com/bookstore/details.php?prod_id=1086
- John Nolan, Well-Grounded: Using Local Government Authority To Achieve Smart Growth, Environmental Law Institute (2001) at p. 25+.
<http://www.islandpress.org/bookstore/details.php?isbn=9781585760244>
- Duerksen and Van Hemert, True West: Authentic Development Patterns for Small Towns and Rural Areas, American Planning Assn. (2003).
<http://myapa.planning.org/apastore/Search/Default.aspx?p=1911>;
<http://law.du.edu/documents/rmlui/directors-true-west-sublette.pdf>
- Denver Region Council of Governments Regional Growth Allocation System (Mile High Compact). <http://www.drcog.org/index.cfm?page=RegionalPlanning>
- Lancaster County, PA, comprehensive plan designed growth areas:
http://www.co.lancaster.pa.us/planning/lib/planning/long_range/growth_management/rural_area_concept_summary.pdf
- St. Lucie County, FL, "Towns, Villages, and Countryside" plan and land development code establish land use policies and regulations to accommodate rural residential and commercial development in new towns and villages.
<http://www.spikowski.com/Form-BasedCodes.htm>
- Austin, TX, Smart Growth Zones.
http://www.epa.gov/dced/scorecards/austin_matrix.pdf;
<http://www.ci.austin.tx.us/smartgrowth/>
- State of Maryland Smart Growth Priority Funding Areas Act,.
<http://www.mdp.state.md.us/fundingact.htm>
- City of Petaluma, CA, Urban Growth Boundaries.
<http://www1.pressdemocrat.com/article/20070925/NEWS/709250311/1033/NEWS01>
- Oregon Urban Growth Boundaries. <http://www.metro-region.org/index.cfm/go/by.web/id/277>
- City of Boulder Co. Land Purchase for Open Space History.
http://www.bouldercolorado.gov/index.php?option=com_content&task=view&id=1167&Itemid=71
- Jean Melious, *Land Banking Revisited* (1986), *Lincoln Land Institute*, <http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=21>

5. Develop Annexation Policy to Support Growth Management Goals

Communities often have the most control (or influence) over development on their edges at the time when land is annexed into a municipality. It is then that the greatest opportunity exists from a legal and policy perspective to 1) determine how those lands will help the community advance its overall planning goals, and 2) ensure that the public costs associated with development of the annexed area (the costs of infrastructure and services) are balanced with potential future tax and other revenues from the annexed lands (including any exactions or other requirements).

Many rural communities have no systems, standards, or techniques in place for evaluating proposed annexations and have not adopted annexation policies that are coordinated with their comprehensive plans and growth strategies. To exacerbate matters, these rural towns rarely have reached agreements with adjacent counties and townships regarding town-level residential and commercial development proposed in unincorporated areas. These agreements typically require that such proposed development explore annexation with the town prior to any processing in the county/township or agree that the development will not object to annexation in the future if the town so requests. The result is often sprawling or scattershot rural developments that drain local government coffers, strain government service and infrastructure providers (e.g., emergency services, road maintenance), and contradict local comprehensive plans and growth management strategies.



In most states, municipalities face enormous pressure to annex lands. One of the most important forces driving annexation is the desire of cities and towns to increase their tax base, thereby increasing revenues into municipal coffers. Further, in most growth areas, municipalities must deal with the potential that if they do not annex aggressively, their neighbors may, leaving them “hemmed in” by the annexations of others and limited in their ability to grow horizontally. Finally, in many growth areas, municipalities may believe the only way to ensure that growth in the surrounding region occurs responsibly and according to a plan is to proactively annex areas to gain control over planning, development and design decision-making before development occurs.

Ad hoc annexation is a major cause and enabler of premature rural development and sprawl. Ironically, in many cases the actual tax burden associated with annexed areas may exceed increased tax revenues – especially over the long term.

Response to the Problem

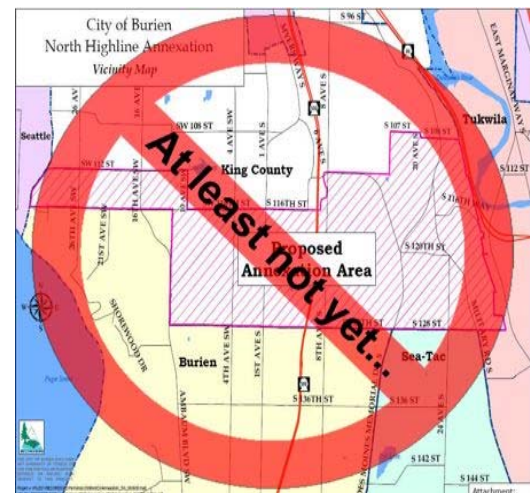
The principal policy directions taken by smart growth communities related to annexations include:

- Revising local codes to require that annexations be anticipated in the comprehensive planning process and that annexations be consistent with adopted comprehensive plans;
- Developing intergovernmental processes and agreements – between counties and municipalities, and between neighboring municipalities – to guide and govern planning for physical expansion and annexation; and,
- Establishing criteria for the review process leading up to potential annexations, including criteria for fiscal impact analyses.

Because many of the forces driving ad hoc annexation are based on local competition for tax base, smart growth communities and regions may also need to work together to rationalize their local taxation systems, including consideration of revenue sharing among jurisdictions.

Expected Benefits

- Annexations that reflect and support community growth management and development policies and goals.
- Help local governments secure community benefits through annexation (e.g., open space and infrastructure contributions).
- Fiscal impact analyses required as part of a community annexation policy will give local governments a more accurate picture of the true costs and benefits of a proposed development in terms of potential government revenues and costs of services/facilities.
- Avoid intergovernmental competition for territorial expansion leading to over-extension of town boundaries and the resulting scattered, leap-frog development pattern.
- Preserve rural areas with their resources – agriculture, open space, storm water infiltration, etc. – and maintain a distinction between “town” and “country.”
- Avoid ad hoc formation of small incorporated municipalities, intended primarily to prevent tax increases associated with annexation that can hinder the natural and logical expansion of existing towns.
- Provide for orderly, planned community expansion to accommodate population growth and provide tax base required to meet the community’s adopted objectives.



Steps to Implementation

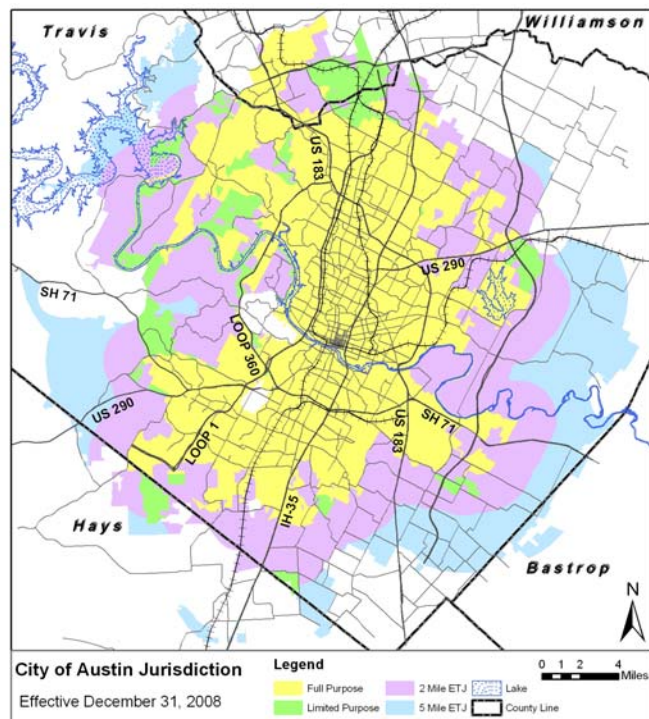
1. Minor Adjustments

- Establish a code requirement that future annexations be consistent with the community comprehensive plan (or local equivalent) along with a requirement that the comprehensive plan specifically map and describe future potential areas of annexation. These could be developed using a sphere of influence/urban transition area approach like that used in California's LAFCO system, or a set of tiered planning areas like that used by Boulder and Boulder County, Colorado.
- Require that future potential annexation areas mapped in the comprehensive plan include a preliminary identification of anticipated zoning as well as a preliminary description of how municipal services and infrastructure (water, sanitary sewer, storm water, transportation, police and fire, etc.) would be funded in annexed areas. This should be based on community service standards and an assessment of existing conditions and capacities in the mapped areas.
- Require that the mapping of potential future annexation areas in the comprehensive plan specifically identify and evaluate any prime agricultural lands, important wildlife habitat areas, areas of special ecological value or concern, and any lands contaminated by past agricultural or industrial activities.
- Establish a code requirement that the transportation element of the community comprehensive plan (or local equivalent) prescriptively identify a future collector and arterial street network (or local equivalent) for any potential future annexation areas mapped in the plan. Require that extensions of the existing town street network be mapped to meet minimum internal connectivity within any annexed areas as well as minimum external connectivity with existing and future neighborhoods and developed areas.
- Require that any annexation proposal be accompanied by a site plan with enough specificity to allow the local government to undertake a fiscal impact analysis. Require that the developer fund a fiscal impact analysis to be conducted by a consultant to the local government.

2. Major Modifications

- Adopt detailed fiscal impact analysis requirements for proposed annexations including criteria for comparing revenues to costs. Include provisions for additional fees and funding to rectify imbalances. Include carefully-worded provisions for special cases where annexation of lands can be justified based on other community objectives (e.g. open space, recreational lands, water supply, etc.).
- Establish a minimum contiguity requirement for any proposed annexation area depending on the physical character of the site. (Example: at least 25% of the circumference of any proposed annexation must be coterminous with the existing incorporated area, subject to exceptions for bodies of water, public parks, etc.) An adjunct provision, or variation of this, would be to specifically prohibit "flagpole" annexations.

- Develop and adopt joint infrastructure standards for use by a municipality and a county, or by multiple municipalities and/or counties (for water, sanitary sewer, storm water, streets, etc.) to be applied to proposed development within areas that the parties have agreed may eventually be annexed into a municipality. This ensures that any development within future annexation areas is designed to be consistent with standards of the municipalities. This also discourages “shopping” of one government against another to obtain the “best deal” for a land owner or developer.
- Require that any annexed parcel be zoned in accord with the adopted comprehensive plan.
- Develop an intergovernmental agreement between one or more municipalities and one or more counties to guide the annexation process within specific potential annexation/growth areas mapped in the agreement. Include provisions addressing infrastructure standards and funding of extension of infrastructure and services, and provisions governing the approval processes of the affected jurisdictions.
- Develop an intergovernmental agreement between town and county that county will not consider town-level development unless developer first seeks annexation to town or agrees to be annexed at some point in the future when all state statutory annexation requirements are met.



3. Wholesale Changes/Replacement

- Develop an intergovernmental agreement between one or more municipalities and one or more counties providing for development and adoption of a multi-jurisdiction comprehensive plan. Include provisions for identifying areas of potential future annexation, and provisions for zoning, infrastructure, lands of special concern and street extensions similar to the four measures described above under Adjustments.
- Develop a regional compact or intergovernmental agreement for revenue sharing to reduce or eliminate the pressures to annex land for municipal budget growth purposes.

Practice Pointers

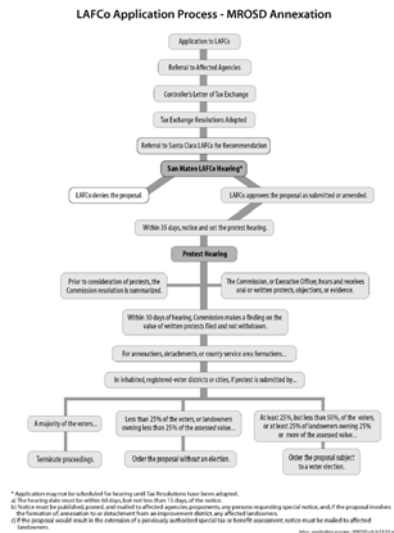
- Annexation law and policy are among the most controversial aspects of growth management. Several states are currently actively legislating on the subject of annexation, changing the laws governing authority of municipalities to annex land,

establishing or revising criteria for annexations, requiring additional review and approval by adjacent counties and municipalities, and providing for oversight by third parties or agencies. The first step for any municipality is to make sure that local ordinances are updated to be consistent with state law.

- Issues related to estimating costs of extending infrastructure and municipal services into potential annexation areas are difficult to resolve if there are no agreed-upon standards for the timing, placement, and design of urban facilities and services. An important step in addressing annexation policy issues is to work on design and service standards that will be used to estimate the cost of provision of facilities and services-- hopefully in cooperation with other area governments.
- One of the potential beneficial outcomes of good annexation policy, especially with multiple jurisdictions involved, is to avoid leapfrogging of town residential and commercial development into rural areas. However, this potential will not be realized if the county continues to permit development that is not rural in character. Thus changes to county zoning and land development codes are an essential component in overall rational annexation process.

Examples and References

- Annexation as a growth management tool, see generally <http://cpi.nmdfa.state.nm.us/cms/kunde/rtscpinmdfastatnmdus/docs/202764649-06-29-2006-15-42-56.pdf>, <http://innovationplanning.googlepages.com/MarylandSmartGrowth.pdf>
- See local area formation committee (LAFCO) system used in California <http://www.calafco.org/>
- Also see specifically Monterey County, California LAFCO “Sphere of Influence Policies and Criteria” - <http://000sweb.co.monterey.ca.us/laico/policy.htm>.
- State of Washington Growth Management Act changes to annexation policy and law. <http://www.futurewise.org/resources/publications/Annexation.pdf>
- Mary Edwards, *Understanding The Complexities of Annexation*, University of Illinois (2008). <http://jpl.sagepub.com/cgi/content/abstract/23/2/119>
- Denver Regional Council of Governments Growth Allocation Policy – “Mile High Compact.” <http://www.drcog.org/index.cfm?page=MileHighCompact>
- City of Knoxville, TN, annexation policy. <http://www.cityofknoxville.org/policy/annexation.asp>
- Austin, TX, Smart Growth Initiative <http://www.ci.austin.tx.us/smartgrowth/> and Smart Growth Criteria Matrix http://www.epa.gov/dced/scorecards/austin_matrix.pdf



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- Boulder Valley Comprehensive Plan (Boulder County, Colorado) “Super IGA” and other agreements, plans and provisions. <http://www.bouldercounty.org/lu/igas/index.htm>
 - Larimer County, Colorado “Rural Land Use Center.” <http://www.co.larimer.co.us/rluc/>
 - Larimer County, Colorado “Larimer County Urban Area Street Standards.” <http://www.co.larimer.co.us/engineering/GMARdStdS/GMARdStdS.htm>
 - Twin Cities Revenue Sharing (“Fiscal Disparities) Program as described in a report for the Minnesota legislature. <http://www.house.leg.state.mn.us/hrd/pubs/fiscaldis.pdf>

6. Incorporate Fiscal Impact Analysis In Development Reviews

Many rural towns and counties approve developments without a true picture of the long-term costs and benefits to the local government and community at large. Too often they rely on rough estimates of property and other tax revenues and conclude that the proposed project will benefit the community without taking a hard look at the other side of the equation—infrastructure and maintenance costs and service demands associated with roads, emergency services, schools, and other facilities and needs generated by employees of new development (e.g., affordable housing for resort workers). When the bills start to roll in, it is often too late for the local governments to take corrective action and they (and their citizens through taxes and erosion in services) end up paying the price.

In response, an increasing number of rural local governments are calling for major developments to produce fiscal impact analyses that methodically examine the costs and benefits associated with a project. A simple fiscal impact analysis usually has four basic steps:

1. Estimate the population generated by the development (i.e., number of new residents, school-age children, employees).
2. Translate this population into consequent public service costs (e.g., roads, schools, emergency services).
3. Project the tax and other local revenues generated by the growth.
4. Compare the development induces costs to revenues and, if a gap exists, - determine how to address the shortfall.

Once the costs are fully understood, local governments then can require specific measures to offset the costs or call on the developer to propose mitigation measures to make sure the development “pays its own way” or offers compensating benefits to offset government and community costs.

These costs can be offset through mechanisms such as contributions to infrastructure (e.g., building a fire station, building an off-site road, or donating land for a school) or creating special financing tools to provide a stream of revenue for the local government to pay for services demanded by the development (e.g., impact fees, a real estate transfer tax or assessment).

Response to the Problem

An increasing number of rural towns and counties are taking an initial step of requiring at least a basic fiscal impact analysis for all major developments. Others are going a step further by requiring that the developer pay for a consultant that can assist the town or county in undertaking an unbiased review of the fiscal impact analysis and that any deficit be addressed with funding or other mitigation measures (e.g., by donating land for a school or paying for off-site road improvements necessitated by the development).



Expected Benefits

- Local governments will understand the true costs and benefits associated with a proposed development and can take steps to ensure that any potential deficits are mitigated by the applicant as part of the approval process.
- Developments that have a demonstrated, rational positive cost impact on a community are more likely to attract citizen and political support.
- Unproductive competition among jurisdictions for development will likely be dampened if communities realize the true costs and benefits.

Steps to Implementation

1. Minor Adjustments

- Adopt simple requirement for a full fiscal impact analysis for all major projects. Maintain adequate information on costs of current government services so that basic information for fiscal impact statements will be readily available.
- Require that applicants fund adequate staff time or consulting support to analyze a fiscal impact assessment.
- Keep capital improvement plans current and include a variety of development scenarios in them.

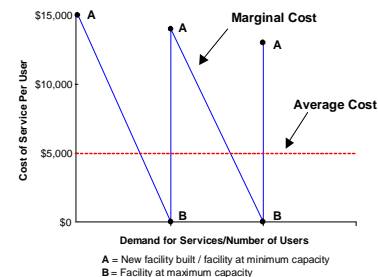
2. Major Modifications

- Adopt detailed fiscal impact analysis requirements for proposed annexations including criteria for the forecasting of revenues and costs. Include provisions for additional revenues or funding mechanisms (impact fees, exactions, special assessment districts, etc.) to address potential imbalances. Include carefully worded provisions for special cases where annexation of lands can be justified based on other community objectives (e.g. open space, recreational lands, water supply, etc.).
- Identify thresholds by which to measure the acceptability of a development based on fiscal impacts (e.g., maximum level of tax increases, maximum level of increase in bonded indebtedness, amount of remaining water/sewer capacity community is willing to allocate to one development).

Georgia Tech
Economic Development Institute



Average vs. Marginal Cost



3. Wholesale Changes/Replacement

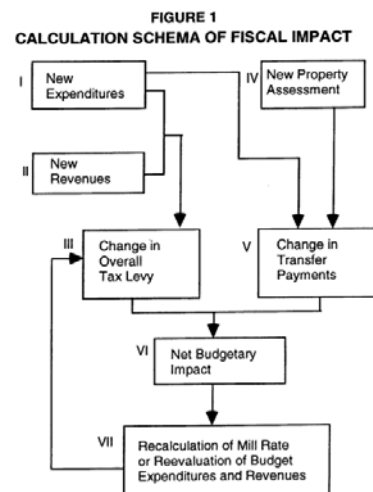
- Adopt sophisticated fiscal impact analysis that looks beyond immediate impact on services to the development and infrastructure demand to the needs and demands that will be created by the construction and permanent workforces associated with a development (e.g., social services for lower-income workers, affordable housing, etc.).
- Require fiscal impact analysis of impacts on other service providers (e.g., fire districts, school districts) and surrounding jurisdictions to help ensure that neighboring communities are not beggared by development in another. If adverse impacts on other jurisdictions are identified, adopt measures to ensure mitigation (e.g., developer contributions, revenue sharing, etc.)

Practice Pointers

- Fiscal impact analysis is an art, not a science. It requires many different assumptions about how a community will grow over time, the pace of absorption of new units/space in a development, changes in property tax values, and so forth.
- Development may result in new or different demand for services by new residents and workers that are different than those of the existing population and workforce.
- Fiscal impact vary with the type of development, its location, level of community services desired, and the existing capacity of services/infrastructure. The results of a fiscal impact analysis in a community with excess capacity to provide services and infrastructure will be very different than one that must build new capacity (e.g., water/sewer treatment) or extend existing ones long distances.
- Development impacts are cumulative. One development may have minor impacts, but multiple developments over time may have significant impacts.
- A development may have a positive fiscal impact, but carry with it other environmental quality and social impacts that need to be evaluated independently.

Examples and References

- For a good primer on fiscal impact analysis, see Mary Edwards, Community Guide To Development Impact Analysis.
http://www.lic.wisc.edu/shapingdane/facilitation/all_resources/impacts/analysis_fiscal.htm
- “Development and Dollars: An Introduction To Fiscal Impact Analysis in Land Use Planning,” Natural Resources Defense Council.
<http://www.nrdc.org/cities/smartGrowth/dd/acknow.asp>
- Three leading local fiscal impact models are the Fiscal Impact Estimates of Land Development (FIELD)



developed by Hillsborough County's City-County Planning Commission, the Federal Reserve Bank's Fiscal Impact Tool (FedFIT), and Georgia Institute of Technology's WebLOCI™ Local Fiscal Impact Analysis. FedFIT (www.federalreserve.gov) is designed to help community and economic development professionals and decision-makers, primarily in small and mid-size communities, learn about the likely general costs and benefits of proposed development projects and to assess the support a community or region might be able to afford when looking at different development possibilities. WebLOC™ (innovate.gatech.edu) is a web-based version of the local fiscal impact tool LOCI™. It is designed to provide decision-makers with insight into the fiscal and economic impacts of new or expanding businesses. Uses include helping a community understand how far it can go in granting incentives. For a summary, see <http://www.cuesfau.org/toolbox/subchapter.asp?SubchapterID=95&ChapterID>.

7. Apply Municipal Development Standards In Extraterritorial Town Influence Areas

A recurring challenge for small rural towns is that over time they become hemmed in by low-density, sprawling development in unincorporated areas outside their borders. This development is typically on large lots (2 acres and more per unit), uses wells and septic rather than centralized services, and has substandard rural roads and other utilities. These low-density developments often have the effect of stopping rational expansion of rural towns and villages with town-level residential and commercial development. Local governments find that they cannot annex and develop in these areas because there are no easements to run water and sewer lines, rights-of-way are inadequate to build standard town streets, and that the scattered large lotting pattern makes higher density single- and multi-family developments nearly impossible. As a result, pressure mounts for leap-frog development beyond the sprawl, for planned unit developments on unincorporated greenfield sites, and for strip commercial development along state and county highways.

To address this challenge, rural cities and towns are reaching agreements with adjacent counties to require that town zoning and subdivision standards be applied to new developments in potential town growth areas outside their borders. This might result, for example, in rural roads being built in a county development, with wider rights-of-

way being reserved or dedicated to accommodate more dense future development when an area is annexed into an adjacent town. In other areas, towns and counties have also reached agreements that require developers in unincorporated areas outside towns to agree that when the town desires to annex a development in the future, the residents agree not to object—thus facilitating incorporation into the town.



Response to the Problem

Intergovernmental agreements and joint planning are essential to addressing this problem effectively. In some areas, towns and counties are signing intergovernmental agreements to apply town standards in town influence areas. In others, state law gives municipalities the authority to impose their subdivision standards on county subdivisions around their borders. Some local governments are going further by drafting joint land use plans for areas around towns and then adopting joint land use regulations to ensure that new development meets town standards.

Expected Benefits

- Subdivisions and commercial development in town influence areas will be built to standards that make the properties easier to densify or annex into the town at some future date.

- Uniform town/county standards in town influence areas help prevent “forum shopping” by developers for the weakest regulations they can find.
- Uniform standards based on joint planning in town environs will help to produce rational settlement patterns that preserve the ability of the town to expand in a logical fashion, thereby helping prevent inefficient leap-frog development patterns.

Steps to Implementation

1. Minor Adjustments

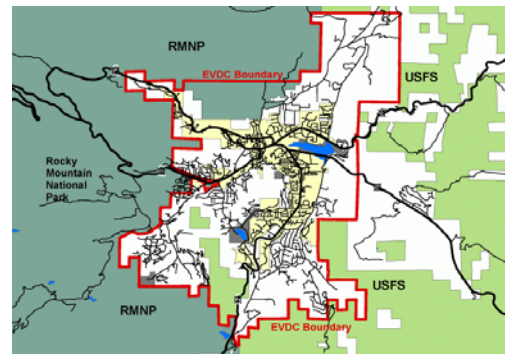
- County agrees to require that new development in town influence areas meet town’s subdivision improvement and other development standards (e.g., road standards) or be capable of upgrade to meet such standards upon annexation.
- Town and county undertake joint land use planning in town influence area and adopt similar plans designating growth areas and establish similar development quality and improvement policies.

2. Major Modifications

- Town and county build on joint plans for town influence area and adopt by intergovernmental agreement uniform zoning and subdivision standards.

3. Wholesale Changes/Replacement

- Where allowed by state law, town and county form joint planning commission to undertake all development reviews and apply uniform standards in town influence areas.



**Estes Valley, CO, Joint Planning
Commission Boundary**

Practice Pointers

- Joint planning efforts typically require ambitious public involvement efforts to ensure that citizens of both town and county (especially those in the town influence area) have a chance to participate and be heard.

Examples and References

- **Planning for Growth: Intergovernmental Agreements in Colorado**, Colorado Department Of Local Affairs Office of Smart Growth. See section on annexation and three-mile plans and future urbanizing standards in Gunnison, Colorado.
<https://dola.colorado.gov/dlg/osg/docs/IGAhandbook.pdf>
- For an award-winning example of joint town/county planning and a joint planning commission, see the Estes Valley (CO) Planning Commission.
<http://www.estesnet.com/ComDev/EVPC.aspx>

-
- Intergovernmental planning agreements as sprawl control tools.
<http://www.sprawlaction.org/toolkit/8intergov.html#4>.
 - Maricopa County, AZ (Phoenix area) intergovernmental planning best practices paper (2002). <http://www.mag.maricopa.gov/pdf/cms.resource/Intergovernmental-Planning.pdf>
 - Town of Berthoud, CO/Larimer County Joint Growth Management and Cooperative Planning Areas Intergovernmental Agreement.
http://www.co.larimer.co.us/planning/planning/berthoud_iga.pdf

8. Protect Sensitive Natural Areas

Sensitive natural areas such as wetlands, wildlife habitat, and steep slopes are not only important from an environmental perspective but do much to create the special character of rural areas. They also are often important contributors to the local rural tourist economy.

Rural areas throughout the United States have an astounding variety of wildlife and wild place—from the coastal forests of the West Coast to the desert ecosystems of the Southwest to the rich marshes of Florida and all those wetlands, prairies, and woodlands in between. However, there are ominous signs that the country is truly at a crossroads when it comes to preserving these invaluable assets. Open space and sensitive natural areas in rural America are disappearing at an alarming rate and with them many native wildlife species. Twenty seven of the major ecosystems in the United States have declined by 98 percent or more since the European settlement of the country. Prairies, sagebrush steppe, and oak savannas are just a few that have almost been completely wiped out. No part of the nation has been immune. The result: According to the Nature Conservancy, fully one-third of native species of wildlife and plants in the nation are at risk. Similarly, the National Audubon Society has documented the serious decline in almost 30 percent of North American bird species. Almost all of this is attributable to loss of habitat—mainly in rural areas.

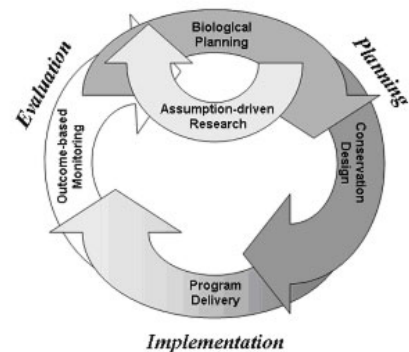


The challenge is that while there are is array of effective local land use tools to reverse this trend, some rural jurisdictions at ground zero of this habitat destruction lack the technical expertise, financial resources, or (sometimes) political will to tackle the issue of protection of sensitive natural areas in an effective manner.

Response to the Problem

Increasingly, rural local governments are recognizing the critical importance sensitive natural areas and open space to their local economies. Not only do many rely on tourists who come to enjoy these areas and the wildlife they sustain, but they see that these assets give them a leg up in a 21st Century economy in which growing economic sectors place a high value on high quality of life. Moreover, rural residents intuitively recognize that these sensitive natural areas and wild places are at the heart of the rural character that makes their communities unique.

Increasingly, therefore, rural local governments are adopting a variety of land use planning policies and strategies to protect sensitive natural areas and wildlife habitat. These range from land acquisition programs to protective regulations.



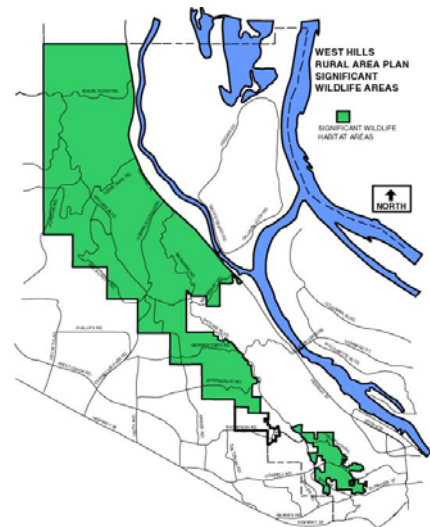
Expected Benefits

- Preservation of unique natural resources that often make a very significant contribution to local economies in the form of tourism, hunting, and fishing.
- Protection of lands that contribute significantly to the rural character of a place.
- Costs savings in terms of local services and infrastructure that often result from protection of open space and curbing rural sprawl. These areas tend to require less in the way of government services and cost local governments less than they produce in taxes.
- Green infrastructure value in terms of protecting drinking water sources, wetlands, erodible soils, absorbing pollutants, etc.

Steps to Implementation

1. Minor Adjustments

- Identify sensitive natural areas and wildlife habitat in local comprehensive plans, drawing on available information from state and state natural resource/wildlife agencies and natural heritage programs. Adopt policies aimed at protecting such resources, including limiting capital improvements that might lead to development or degradation (such as road improvements). Include opportunities to preserve sensitive natural areas (“green fingers”) in rural towns that connect to larger sensitive areas and open space in the countryside.
- Seek assistance from state resource agencies in development reviews and assessment of impacts on sensitive natural areas. On larger projects, require developer to provide funding that will allow local government to retain a consulting planner or resource biologist or charge sufficient application fees to pay for such reviews.
- Limit county services (e.g., road plowing, fire protection) in remote areas with high resource and habitat values.
- Enact land dedication and set-aside standards for rural subdivisions. Allow cluster/conservation subdivisions in town influence areas.
- Provide financial assistance to local land trusts to help secure conservation easements.
- Enact simple protective regulations (e.g., 100-foot development setbacks from riparian areas and wetlands, restrictions on steep slope development).



4. Major Modifications

- Hire staff with resource biology background to help assess plans and development proposals.
- Adopt large-lot zone district requirements that do not allow significant residential development in sensitive natural areas identified in comprehensive plans (e.g., 1 unit/80 acres and larger lot sizes).
- Enact strong wildlife habitat and sensitive area protection regulations. Assess each major project and require avoidance of critical habitat, fragmentation of sensitive areas, etc. Require mitigation on a 2:1 or better basis for any sensitive natural areas that are developed.
- Require the use of cluster/conservation subdivisions for development in town influence areas.
- Adopt a parks/open space/wildlife habitat impact fee.

5. Wholesale Changes/Replacement

- Create a permanent or significant source of funding for sensitive area/open space acquisition (e.g., sales tax earmark, bond issue).
- Require restoration of degraded habitat on development sites. Use open space funds to restore degraded habitats (e.g., stream banks damaged by cattle).
- Create a development rights purchase/transfer program to protect sensitive natural areas.
- Create ecologically based zone districts that gear density and other elements to preserving intact, functioning ecosystems.
- Enact additional regulations (e.g., storm water management) to protect critical habitats (e.g., thermal controls on storm water runoff to protect trout streams; groundwater monitoring to protect groundwater flows into streams and wetlands).

Practice Pointers

- In drafting conservation subdivision provisions, specify preferred locations for open space (e.g., to protect sensitive areas vs. land no one wants). Require high degree of contiguity.
- Work closely with agricultural community in establishing habitat protection programs. Use incentives where possible such as TDR programs and habitat restoration cost-sharing grants.

Examples and References

- Duerksen and Snyder, *Nature-Friendly Communities*, Island Press (2005)—See case studies of Baltimore County, MD, and Dane County (Madison), WI, for effective growth management in rural areas. <http://www.naturefriendlytools.org/book.html>
- See various publications on conservation subdivisions by Randall Arendt including *Conservation Design For Subdivisions* and *Rural By Design*.
<http://myapa.planning.org/apastore/Search/Default.aspx?k=%22Randall%20Arendt%22;>
<http://www.amazon.com/Rural-Design-Maintaining-Small-Character/dp/0918286867>
- Environmental Law Institute, *Conservation Thresholds for Land-Use Planners* (2003), provides a review and synthesis of the basic conservation standards for land use planners to rely on in reviewing development proposals.
http://www.elistore.org/reports_detail.asp?ID=10839&topic=Conservation
- John Nolon, *Open Ground: Effective Local Strategies for Protecting Natural Resources*, Island Press (2003). Provides a comprehensive look at local land preservation strategies and tools. <http://www.islandpress.org/bookstore/details.php?isbn=9781585760558>
- Duerksen, et al, *Habitat Protection Planning: Where The Wild Things Are*. PAS Report 470/471. American Planning Assn. (1997).
<http://www.clarionassociates.com/pubs.cfm?ID=4>
- *Florida Wildlife-Friendly Toolbox* is an on-line resource containing sample plans and ordinances relating to conservation of wildlife habitat.
<http://www.floridahabitat.org/wiki/large-property-parcel-planning>
- Barnes and Adams, *A Guide to Urban Habitat Conservation Planning*, offers a good summary of issues to consider for urban wildlife habitat plans and ordinances.
<http://www.ca.uky.edu/agc/pubs/for/for74/for74.htm>
- Skoloda, *Wildlife Habitat In A Comprehensive Plan*, provides a good summary of how to integrate wildlife habitat considerations in a local comprehensive plan.
<http://www.uwsp.edu/CNR/landcenter/tracker/fall2002/wildlife.html>
- Mark Bobrowski and Andrew Teitz, *Model Land Use Ordinance to Protect Natural Resources*, <http://www.dem.ri.gov/programs/bpoladm/suswshed/pubs.htm>
- For a summary of studies and methodologies regarding local government costs savings by preserving open space, see [http://conserveland.org/lpr/library?parent_id=15363;](http://conserveland.org/lpr/library?parent_id=15363)
[http://greenvalues.cnt.org/;](http://greenvalues.cnt.org/)
[https://secure2.convio.net/aft/site/Ecommerce?VIEW_PRODUCT=true&product_id=1021&store_id=1081;](https://secure2.convio.net/aft/site/Ecommerce?VIEW_PRODUCT=true&product_id=1021&store_id=1081) <http://greenvalues.cnt.org/>

9. Carefully Plan And Regulate Rural Commercial Development

While much of the focus on rural smart growth is rightly on residential development, local governments are increasingly coming to the realization that they must also carefully plan for and regulate rural commercial development.

A basic smart growth principle is to focus commercial development in existing activity centers like incorporated towns and villages. This helps reduce pressures for accompanying outlying residential growth as well as the likelihood that scattershot commercial nodes will be established in rural areas creating pressure for further non-residential development and land fragmentation. Moreover, focusing commercial development in existing towns helps to strengthen their downtowns and solidify their tax bases so they have adequate revenues to support community services such as schools, roads, emergency services, and the like.



Unfortunately, the answer is not that easy. While a guiding principle for towns and counties should be to focus commercial development in existing centers, there are sometimes legitimate reasons to allow commercial development in rural areas outside municipalities. Some of this is may be driven by the specific needs of a business to locate in an outlying location away from built-up areas—for example a ski resort, fishing lodge, or rafting service. In other instances, there is a legitimate demand in rural areas for agricultural services such as a welding shop, gas station, or feed/supply store to reduce the need to travel long distances to the nearest town.

Thus, only through careful planning and close cooperation by towns and counties can the issue of commercial development in rural areas be addressed in a way that satisfies smart growth principles.

Response to the Problem

Rural local governments are responding to the issue of commercial development in a variety of ways. Policies in some local plans call for most commercial to be located in incorporated municipalities, with a few exceptions. Others sign formal intergovernmental agreements that implement such policies through zoning district regulations that do not allow commercial growth in rural areas. Still others that allow some commercial development outside towns have adopted rural commercial design standards to help ensure new development respects rural character.

Expected Benefits

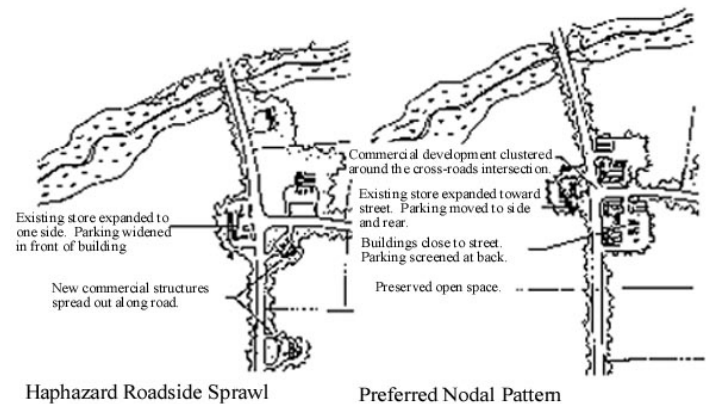
- Targeting commercial growth to towns helps reduce pressure for scattershot development in unincorporated rural areas.

- Strong commercial centers and downtowns in rural towns that create a strong sense of community and gathering places. Less abandonment of existing buildings.
- Increased town tax base to support municipal services.
- Reduced VMT for most residents who can walk or bike to retail--and an accompanying reduction in greenhouse gas emissions.
- Avoidance of strip commercial development outside towns that detracts from rural character and scenic views.

Steps to Implementation

1. Minor Adjustments

- Adopt policy in county comprehensive plans to locate most commercial development in incorporated towns unless dependent on rural location.
- If commercial development is allowed in rural areas, allow only by special use permit with showing of need in area. Adopt site and building design standards to ensure that any commercial development is in keeping with rural character.
- Allow commercial development only in town influence areas or established unincorporated hamlets and crossroads villages with good access, not in more remote locations
- Limit the size of commercial businesses outside of towns to ensure that they serve only limited local market.



2. Major Modifications

- Prohibit rural commercial in most county zone districts. Allow only in service areas and locations designated in comprehensive plan.
- Allow rural commercial only if establish need for rural location or as part of PUD/master planned community. Limit size of commercial establishments (e.g., less than 20,000 square feet).

3. Wholesale Changes/Replacement

- Sign intergovernmental agreement to share tax revenues from rural commercial with towns.

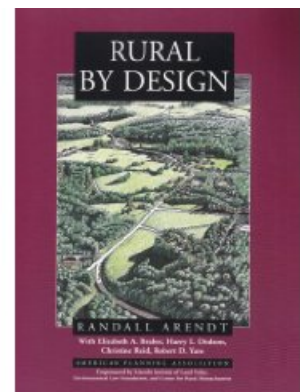
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- Assess road, safety, and other impact fees on rural commercial to make reflect full cost of development in terms of services and facilities.

Practice Pointers

- Joint cooperative town/county planning for commercial development in rural areas is usually essential to a successful implementation program.

Examples and References

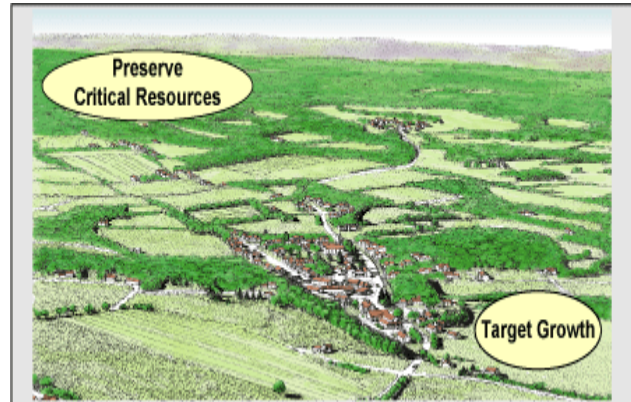
- For a sample of rural commercial design standards, see:
<http://www.newberlin.org/display/displayFile.asp?docid=201&filename=/Public/Planning/RuralCommercialDesignGuide.pdf>
- Randall Arendt, *Rural By Design* (1994), contains case studies of rural commercial development.
<http://myapa.planning.org/APAStore/Search/Default.aspx?p=1886>
- For an example of zoning regulations addressing small-scale commercial uses in rural areas, see
<http://www.clallam.net/RealEstate/assets/applets/PAPRIamird2-GrannysCafe.pdf>
- For an excellent discussion of land use options for rural economic development, see Washington State Community, Trade and Economic Development Department, *Keeping the Rural Vision: Protecting Rural Character & Planning for Rural Development* (1999):
<http://www.cted.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&alias=CTED&lang=en&ItemID=974&Mid=944&wversion=Staging>
- A good discussion of efforts by several communities in Washington State to utilize rural activity centers and other “smart growth” approaches to rural commercial development can be found in Kosterlitz, *Avoiding Sprawl In Rural Areas* (1997).
<http://www.mrsc.org/Subjects/Planning/rural/kosterlitz.aspx>
- Iredell County, NC, rural commercial plan policy.
http://www.co.iredell.nc.us/Departments/Planning/2030_Horizon_Plan.asp
- St. Lucie County, FL, “Towns, Villages, and Countryside” plan and land development code establish land use policies and regulations to accommodate rural residential and commercial development in new towns and villages. <http://www.spikowski.com/Form-BasedCodes.htm>.



10. Establish a Development Rights Purchase or Transfer Program

Some rural jurisdictions have demonstrated the political will to place strong restrictions on development in areas with high natural resource, scenic, and agricultural values. For example, some have imposed very large lot zoning (e.g., allowing only one dwelling unit on a minimum of 160 acres) or enacted tough critical area protection standards (e.g., 100-foot development setbacks from rivers and wetlands). While effective, these strict development controls can lead to significant opposition from landowners and often raise the so-called “taking” issue (whether the regulations amount to an unconstitutional deprivation of property without just compensation).

In response, local governments throughout the nation have turned to tools and techniques to take the sting out of the regulations by providing options for the landowners to recoup some of their land values that have been potentially diminished by the regulations. Two of the more promising are purchase of development rights (PDR) and transferable development rights (TDR) programs. In concept, both PDR and TDR programs are simple. Consider these hypotheticals.



Farmer Brown’s property (the sending area), on which are located high-value natural resource areas, is zoned for 1-acre lot residential development. To protect these resources under a PDR program, the local government appraises the development rights on Farmer Brown’s land and then purchases a conservation easement that either prohibits residential and commercial development or allows it only at a very low density. Public access may or may not be part of the deal. Funding for the PDR program might come from general tax revenues, a special open space bond issue, or from a dedicated funding source (such as a earmarked sales tax). Farmer Brown can continue his agricultural operations.

Under a TDR program, the local government would enact significant development restrictions on Farmer Brown’s property (e.g., agricultural zoning, sensitive lands protection regulations) putting much of the land off-limits to development. To reduce the financial impact on Farmer Brown, the local government adopts a TDR program to allow him to sell his previously existing development rights to Developer Jones who desires to build at a higher density than allowed in under the current zoning in an area near town designated for growth (the receiving area). Developer Jones pays Farmer Brown for his development rights and then has the right to build his higher density project. Brown continues farming his land.

If TDR programs are designed correctly with a clear understanding of how large the sending and receiving areas should be in relationship to one another to create a viable market for development rights, such programs can be an effective tool to protect large tracts of open space while reducing potential opposition and legal questions. Attention must also be paid to the mechanics of the process (e.g., how to determine how many development rights are assigned to a particular property and the documentation of the transfer). Successful TDR programs like those in the New Jersey Pinelands and in Montgomery County, Maryland, can be an effective melding of

regulations and incentives that may be more palatable than regulations alone, especially in conservative jurisdictions with strong property rights leanings.

Response to the Problem

The actual or speculative loss in value that occurs when a local government enacts strong protective land use regulations can cause significant political controversy and may spawn legal action. PDR and TDR programs can help reduce opposition to land protection strategies in rural areas by offering some degree or form of compensation to affected landowners to offset this loss in value.

Expected Benefits

- Reduced opposition to agricultural and sensitive lands protection programs.
- Significant amounts of open space preservation, and under TDR programs development is focused in designated growth (receiving) areas. Less fragmentation of sensitive natural areas.
- Less demand for costly town level services in rural areas as land remains undeveloped.



Steps to Implementation

1. Minor Adjustments

- Adopt voluntary TDR program covering designated sensitive areas. As an incentive, grant bonus development credits to be sold by landowners who participate.
- Fund PDR program annually out of general fund revenues. Work with special districts (water supply, drainage) to use utility and other targeted fees/taxes for targeted acquisitions (e.g., riparian habitat around a lake to protect water quality). Tie purchases to sensitive natural areas identified in comprehensive plan.

2. Major Modifications

- Adopt PDR program with significant or dedicated funding source (e.g., large bond issue, earmarked sales tax).
- Enact mandatory TDR program after sufficient analysis of demand for credits and careful balancing of sending and receiving areas. Downzone (reduce density) in sending areas and offset impact with grant of development credits to landowners. Allow new development only in receiving areas with purchase of development credits.

3. Wholesale Changes/Replacement

- Take PDR program to next level by fee purchase of sensitive lands and resell with conservation restrictions. Track record of such programs is that they need more up-front

funding and have longer carrying periods, but may be more effective in long-run because land can be resold to recoup most of sales price and will still be protected.

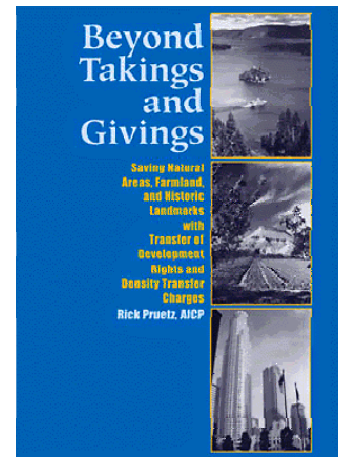
- Adopt multi-jurisdiction TDR program with transfers between county sensitive (sensitive) areas and town development (receiving) areas.
- Explore other basis for TDR purchases in addition to granting more density in receiving areas such as additional house size or water supply (e.g., Pitkin County, CO, allows house sizes in excess of 5,750 square feet only if homeowner purchases development credit from rural landowners).

Practice Pointers

- Tie PDR/TDR programs to local comprehensive and open space plan that identify high-value agricultural lands and sensitive areas.
- Carefully balance the credits available from the sending areas (sensitive lands) to the capability of the receiving area to absorb. Many TDR programs have failed because the sending areas are too large and too many development credit sellers are chasing too few buyers, which significantly reduces the value of development credits.
- Interjurisdictional TDR programs can be very challenging to successfully create and implement, especially if the sending areas (the land that is protected) is a significant distance from the receiving area and the benefit to residents in the receiving area and its environs are not clear.

Examples and References

- Rick Pruetz, *Beyond Takings and Givings* (2003), is the leading publication on transferable development rights strategies and programs.
<http://www.beyondtakingsandgivings.com/beyond.htm>
- For excellent overviews of PDR programs, see *Purchase of Development Rights: Conservin Western Lands, Preserving Western Livelihoods*, Western Governors' Assn.
http://www.westgov.org/wga/publicat/pdr_report.pdf ; John Wright and Rhonda Skaggs, *Purchase of Development Rights and Conservation Easements: Frequently Asked Questions*, Technical Report 34, College of Agriculture and Home Economics, New Mexico State University,
<http://aces.nmsu.edu/pubs/research/economics/TR34.pdf> ; and Gayle Miller and Douglas Krieger, *Purchase of Development Rights: Preserving Farmland and Open Space* (2004), <http://www.plannersweb.com/wfiles/w140.html>
- For a good summary of PDR programs with references to several local programs, see http://planningwiki.cyburbia.org/Purchase_of_Development_Rights.
- Suffolk County, NY, adopted one of the nation's first PDR programs in 1975. For a description, see



http://en.wikipedia.org/wiki/Farmland_development_rights_in_Suffolk_County,_New_York

- *Field Guide to Transfer of Development Rights (TDRs)*, National Assn. of Realtors (2007). <http://www.realtor.org/library/library/fg804>
- For a good listing of TDR articles and program references, see <http://www.smartcommunities.ncat.org/landuse/transfer.shtml>.

APPENDIX A: EXPERT PANEL MEMBER BIOGRAPHIES

TO BE ADDED