

Valley County Planning and Zoning
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STAFF REPORT: Amendment to the Valley County Code – Title 10 Subdivision Regulations: Ordinance 2022-02 Removal of or Insertion of 160 Acres to Exception in Subdivision Definition

HEARING DATE: February 22, 2022

TO: Valley County Board of County Commissioners

STAFF: Cynda Herrick, AICP, CFM

REQUEST: Revisions to Valley County Code - Title 10 Subdivision Regulations

On September 7, 2021, the Valley County Board of Commissioners adopted Ordinance No. 2021-09 Emergency Ordinance to provide for amendment to Valley County Code Title 10 (attached) in order to modify the exceptions to the requirements for subdivision of land from a 20 acre parcel to a 160 acre parcel. The ordinance also amended the definition of an original parcel. The ordinance was adopted to protect the public health, safety, and welfare of the citizens of Valley County.

On October 14, 2021, the Valley County Planning and Zoning Commission held a public hearing and recommended changes to Title 10 of the Valley County Code. This proposed ordinance would remove 10-1-3.C Exceptions 5. All parcels and or lots would be created through the subdivision process unless it was an original parcel. The definition of original parcel was also recommended for changes.

The Board of County Commissioners held public hearings on the recommendation on December 6, 2021, December 13, 2021, and January 18, 2022.

During the January 18, 2022, the Board decided they wanted an additional public hearing on February 22, 2022, to gather the public's input on two options as shown below:

10-1-3: SCOPE:

- A. The regulations of this title shall apply to the subdivision of all land within the unincorporated territory of Valley County, except for land within impact areas for which different ordinances have been adopted, as defined by the definition of a "subdivision".
- B. It shall be unlawful hereafter to make a subdivision of land, unless it is qualified as an exception in the scope, until plans and a subdivision plat thereof are submitted to and approved by the administrator or the county planning and zoning commission, and by the board of county commissioners.

C. Exceptions: The following division of land shall not be deemed a subdivision for land use purposes, but must comply with Title 11 of the Valley County Code - Flood Control:

1. A readjustment of lot lines as shown on a recorded plat or the assessor's plat which does not result in a violation of the setbacks or dimensional standards of the Valley County land use and development ordinance or any covenant pertaining to said plat, and does not increase the number of building sites.
2. An easement providing rights for ingress and egress, utilities, or drainage for one building site across any portion of a parcel of land, which does not transfer title to any portion of the parcel.
3. A division of land for financing or mortgage purposes only where the entire parcel remains in one ownership.
4. Allocation of land in the settlement of an estate of a decedent as provided in a will or a court decree for the distribution of property in the settlement of an estate of a decedent.
5. ~~A division of land into parcels (containing) twenty (20) acres or more.~~
[Exception #5 would be removed]

OR

~~A division of land into parcels (containing) one-hundred-sixty (160) acres or more.~~
[Exception #5 would be changed.]

6. Allocation of land for a pathway that can be used by the public.
7. Any acquisition or division of land by a public agency. (Ord. 10-07, 8-26-2010)
8. Separation of lots to their original configuration from a previously platted subdivision shall be allowed so long as it does not create a violation of setbacks. This includes lots that were combined by the assessor for taxing purposes only. (Ord. 13-5, 9-16-2013; amd. Ord. 21-08, 6-28-2021)

10-1-6: DEFINITIONS:

ORIGINAL PARCEL: A lot in a platted subdivision or a tract of land of record at the time of the adoption of the subdivision regulations on April 29, 1970, as evidenced by a parcel number having been assigned by the Valley County assessor, ~~or each one-fourth (1/4) of a section held in one ownership.~~ *[The last portion would be removed.]*

The Planning and Zoning Commission recommended approval on October 14, 2021.

(Proposed Ordinance 2022- 12 Attached)

MAPS:

Kara Utter, Valley County GIS, created three maps that were requested by the Planning and Zoning Commission. These show privately-owned parcels that are 40+, 80+, and 160+-acres in size (not managed by a government agency). These maps are attached.

FINDINGS:

1. On September 7, 2021, the Valley County Board of Commissioners adopted an Emergency Ordinance (2021-09) which changed minimum size of a split without a subdivision plat to 160 acres. The ordinance is effective for 182 days. Attached is the ordinance and minutes from the Board meeting.
2. The Planning and Zoning Commission held a legally noticed public hearing on October 14, 2021. The Commissioners approved a recommendation to the Board.
3. The Board of County Commissioners held a legally noticed public hearing on December 6, 2021. The Commissioners tabled the public hearing to December 13, 2021.
4. The Board of County Commissioners continued the public hearing on December 13, 2021. The Commissioners decided to hold a new public hearing with additional notice for another public hearing on January 18, 2022.
5. The Board of County Commissioners held a legally noticed public hearing on January 18, 2022. The Commissioners decided to hold a new public hearing with a modified notice for another public hearing on February 22, 2022.
6. Legal notice was posted in the *Star News* on January 27, 2022, and February 3, 2022. Potentially affected agencies were notified on January 20, 2022. The notice sheet was also sent to people who previously responded or testified, the Mountain Central Realtors contact, local real estate offices, other known interested parties, and surveyors who frequently record record-of-surveys in Valley County. The notice sheet was posted on bulletin boards at post offices and libraries in Cascade, Donnelly, McCall, and Yellow Pine. The notice was posted online at www.co.valley.id.us on January 22, 2022.
7. Responses received since January 18, 2022:

Mike Reno, Central District Health Program Manager, states CDH has no objections to either option. (Jan. 24, 2022)

Kevin and Jean Revaul, Donnelly, support option 2 which requires review of splits of parcels less than 160 acres. Subdivisions should go in the cities and use as little land as possible with consideration for taller buildings. Livestock and other users that actually need the land should be prioritized in other areas. People moved here for the open feeling. An annual 15% tax should be collected for vacation rentals and used for road maintenance. (Jan. 18, 2022, and Feb. 4, 2022))

Lynn Lewinski, McCall, supports review of all property development proposals. The emergency mandate on permitting should be continued until complete comprehensive zoning is put in place. Inform the public of steps being taken and allow participation for zoning issues. (Jan. 19, 2022)

Dwight Jividen, Cascade, is opposed. This ordinance forces the creation of smaller parcels, generally making land more expensive. Why would you do this? There is a demand in the marketplace for land that does not support a septic system, without year-round access, and without electricity. He has development projects that were based on the ability to create 20-

acre parcels. A change in requirements will result in more smaller parcels to justify the project costs. This draconian ordinance is unnecessary and a bad idea. (Feb. 1, 2022).

Joey Pietri, McCall, supports the review of land divisions for all subdivision as recommended by the PZ Commission. (Feb. 3, 2022)

David Gallipoli, McCall, supports the review of land divisions for all subdivision as recommended by the PZ Commission. (Feb. 3, 2022)

Jocelyn Pulver, McCall, supports subdivision review for all land divisions as recommended by the PZ Commission. (Feb. 3, 2022)

Christopher L. Church, Donnelly, supports subdivision review for all lands as recommended by the PZ Commission, especially with the amount of growth occurring. (Feb. 3, 2022)

Bethany Thomas supports subdivision review for all lands as recommended by the PZ Commission. A failure to support this recommendation would mean no oversight which would add to all the issues people in our community are experiencing and would be a catastrophic mistake for our County, people, the land, wildlife, and watersheds. (Feb. 9, 2022)

(See prior Staff Reports for prior comments.)

8. Idaho State Statute 67-6511 and 67-6512 as it pertains to implementation of the Comprehensive Plan through ordinances and amendments of such. It addresses noticing and recommendations from the Planning and Zoning Commission. 67-6512 provides for Subdivision Regulations (Ordinance) to mitigate impacts so as not to negatively impact agencies and current residents.

Valley County has one zone – Multiple Use Zone.

67-6511. ZONING ORDINANCE. (1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

(a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute a regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in

section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

67-6513. SUBDIVISION ORDINANCE. Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

9. Comprehensive Plan Analysis:

Valley County Comprehensive Plan Analysis of Portions Related to:

**Proposed Ordinance 2022-12 Removal of Exception to Subdivision Ordinance
December 6, 2021 by Cynda Herrick, AICP, CFM, Planning and Zoning Director**

(See prior Staff Report)

10. Idaho Regulatory Takings Act Guidelines: Attached from the Office of the Attorney General are the Idaho Takings Act Guidelines, March 2020. It addresses the Idaho Constitution Provisions and the Idaho Statutory Provisions. Within the document is an Attorney General's Checklist Criteria, which poses the following (5) criteria:

(1) Does the Regulation or Action Result in a Permanent or Temporary Physical Occupation of Private Property?

- (2) Does the Regulation or Action Condition the Receipt of a Government Benefit on a Property Owner Dedicating a Portion of Property, Granting an Easement, or Expending Funds for Items Unrelated to the Impacts of the Proposed Action?
- (3) Does the Regulation Deprive the Owner of All Economically Viable Uses of the Property?
- (4) Does the Regulation Have a Significant Impact on the Landowner's Economic Interest?
- (5) Does the Regulation Deny a Fundamental Attribute of Ownership?

ATTACHMENTS:

- Proposed Ordinance 2022-02
 - a. Removal of Exception 5
 - b. Change to 160 Acres in Exception 5
- Ordinance No. 2021-09 (approved September 7, 2021)
- Valley County Maps showing 40+, 80+, and 160+-acre private parcels
- BOCC Meeting Minutes – September 7, 2021
- PZ Commission Meeting Minutes – October 14, 2021
- BOCC Meeting Minutes – December 6, 2021
- BOCC Meeting Minutes – December 13, 2021
- BOCC Meeting Minutes – January 18, 2022
- New Responses since January 18, 2022
- Prior Responses
- Idaho Regulatory Takings Act Guidelines, March 2020

END OF STAFF REPORT

VALLEY COUNTY
ORDINANCE NO: 2022-02
Modify Exception to Subdivision Ordinance

AN ORDINANCE TO PROVIDE FOR AMENDMENT TO VALLEY COUNTY CODE TITLE 10 PROVIDING FOR A CHANGE TO MODIFY EXCEPTION 10-1-3 SCOPE: C. EXCEPTIONS (5) TO THE REQUIREMENTS FOR THE SUBDIVISION OF LAND REQUIRING ALL DIVISIONS OF LAND LESS THAN 160 ACRES TO BE REVIEWED AND APPROVED; PROVIDING FOR A CHANGE IN DEFINITION; AND, PROVIDING THE EFFECTIVE DATE THEREFORE.

WHEREAS: The Board of County Commissioners hereby finds that imminent peril to the public health, safety, or welfare exists due to the increasing trend of subdividing larger parcels of land into twenty (20) acre parcels without plan and subdivision plat review by Valley County;

WHEREAS: The Board of County Commissioners ADOPTED Ordinance No. 2021-09 an Emergency Ordinance on the 7th day of September of 2021;

WHEREAS: Ordinance 2022-02 Modify Exception to Subdivision Ordinance will replace Ordinance 2021-09 Emergency Ordinance upon publication which is the effective date.

WHEREAS: Ordinance 2021-09 will be fully repealed upon publication of Ordinance 2022-02.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF VALLEY COUNTY, IDAHO:

10-1-3: SCOPE:

A. The regulations of this title shall apply to the subdivision of all land within the unincorporated territory of Valley County, except for land within impact areas for which different ordinances have been adopted, as defined by the definition of a "subdivision".

B. It shall be unlawful hereafter to make a subdivision of land, unless it is qualified as an exception in the scope, until plans and a subdivision plat thereof are submitted to and approved by the administrator or the county planning and zoning commission, and by the board of county commissioners.

C. Exceptions: The following division of land shall not be deemed a subdivision for land use purposes, but must comply with Title 11 of the Valley County Code - Flood Control:

5. A division of land into parcels (containing) one-hundred sixty (160) acres or more.

10-1-6: DEFINITIONS:

ORIGINAL PARCEL: A lot in a platted subdivision or a tract of land of record at the time of the adoption of the subdivision regulations on April 29, 1970, as evidenced by a parcel number

having been assigned by the Valley County assessor, ~~or each one-fourth (1/4) of a section held in one ownership.~~

NOW, THEREFORE, BE IT ORDAINED AND APPROVED by the Valley County Board of Commissioners, Idaho this ____ day of _____ 2022, with an effective date being the DATE OF PUBLICATION.

Elting Hasbrouck, Chairman

Dave Bingaman, Commissioner

Sherry Maupin, Commissioner

Attest:

Douglas A. Miller
Valley County Clerk

VALLEY COUNTY
ORDINANCE NO: 2022-02
Removal of Exception to Subdivision Ordinance

AN ORDINANCE TO PROVIDE FOR AMENDMENT TO VALLEY COUNTY CODE TITLE 10 PROVIDING FOR A CHANGE TO REMOVE EXCEPTION 10-1-3 SCOPE: C. EXCEPTIONS (5) TO THE REQUIREMENTS FOR THE SUBDIVISION OF LAND REQUIRING ALL DIVISIONS OF LAND TO BE REVIEWED AND APPROVED; AMENDMENT TO THE DEFINITION OF ORIGINAL PARCEL; AND, PROVIDING THE EFFECTIVE DATE THEREFORE.

WHEREAS: The Board of County Commissioners hereby finds that imminent peril to the public health, safety, or welfare exists due to the increasing trend of subdividing larger parcels of land into twenty (20) acre parcels without plan and subdivision plat review by Valley County;

WHEREAS: The Board of County Commissioners ADOPTED Ordinance No. 2021-09 an Emergency Ordinance on the 7th day of September of 2021;

WHEREAS: Ordinance 2022-02 Removal of Exception to Subdivision Ordinance will replace Ordinance 2021-09 Emergency Ordinance upon publication which is the effective date.

WHEREAS: Ordinance 2021-09 will be fully repealed upon publication of Ordinance 2022-02.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF VALLEY COUNTY, IDAHO:

10-1-3: SCOPE:

A. The regulations of this title shall apply to the subdivision of all land within the unincorporated territory of Valley County, except for land within impact areas for which different ordinances have been adopted, as defined by the definition of a "subdivision".

B. It shall be unlawful hereafter to make a subdivision of land, unless it is qualified as an exception in the scope, until plans and a subdivision plat thereof are submitted to and approved by the administrator or the county planning and zoning commission, and by the board of county commissioners.

C. Exceptions: The following division of land shall not be deemed a subdivision for land use purposes, but must comply with Title 11 of the Valley County Code - Flood Control:

5. ~~A division of land into parcels (containing) twenty (20) acres or more.~~

10-1-6: DEFINITIONS:

ORIGINAL PARCEL: A lot in a platted subdivision or a tract of land of record at the time of the adoption of the subdivision regulations on April 29, 1970, as evidenced by a parcel number

having been assigned by the Valley County assessor, ~~or each one fourth ($\frac{1}{4}$) of a section held in one ownership.~~

NOW, THEREFORE, BE IT ORDAINED AND APPROVED by the Valley County Board of Commissioners, Idaho this ____ day of _____ 2022, with an effective date being the DATE OF PUBLICATION.

Elting Hasbrouck, Chairman

Dave Bingaman, Commissioner

Sherry Maupin, Commissioner

Attest:

Douglas A. Miller
Valley County Clerk

Instrument # 443984

VALLEY COUNTY, CASCADE, IDAHO

9-8-2021 09:03:31 AM No. of Pages: 1

Recorded for : P & Z

DOUGLAS A. MILLER

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: ORDINANCES

**VALLEY COUNTY
ORDINANCE NO: 2021-09
Emergency Ordinance**

AN EMERGENCY ORDINANCE TO PROVIDE FOR AMENDMENT TO VALLEY COUNTY CODE TITLE 10 PROVIDING FOR A CHANGE TO MODIFY EXCEPTIONS TO THE REQUIREMENTS FOR THE SUBDIVISION OF LAND FROM A 20 ACRE PARCEL TO A 40 ACRE PARCEL; PROVIDING THAT THE ORDINANCE IS ENACTED ON AN EMERGENCY BASIS; AND, PROVIDING THE EFFECTIVE AND SUNSET DATES THEREFORE.

WHEREAS, the Board of County Commissioners is empowered, pursuant to Idaho Code § 31-714, to pass all ordinances and rules and make regulations, not repugnant to law, necessary for the carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein; and

WHEREAS, the Board of County Commissioners is empowered, pursuant to Idaho Code § 67-6523, to enact an emergency ordinance if it finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances under the Local Land Use Planning Act; and

WHEREAS, the current Valley County Subdivision Ordinance, Valley County Code 10-1-1 *et seq.*, makes it unlawful to make a subdivision of land without the prior approval of plans and a subdivision plat by the Administrator or the county planning and zoning commission, and by the board of county commissioners; and

WHEREAS, one of the enumerated exceptions to the plan and subdivision plat approval is for the division of land into parcels of twenty (20) acres or more; and

WHEREAS, the plan and subdivision plat review required by the Valley County Subdivision Ordinance, determines, among other things, that the parcel[s] subject to the proposed subdivision has sufficient depth to groundwater to support septic systems, power is available to provide service to future dwellings, road rights of way exist and roads are constructed to sufficient standards to provide emergency vehicle access to subdivided parcels; and

WHEREAS, subdivisions of land into twenty (20) acre parcels without plan and subdivision plat review is increasing in Valley County; and

WHEREAS, twenty (20) acre parcels that do not have sufficient depth to groundwater to safely construct a septic system, power is not available to support future dwellings, or no road right of way exists or existing roads will not accommodate emergency vehicle access are not eligible for a building permit; and

WHEREAS, unbuildable parcels are more likely to contain illegally installed septic systems or other methods for disposal of human waste and black water and these unbuildable parcels are also more likely to accumulate construction debris, abandoned or non-running vehicles or other forms of solid waste posing an increased threat to the environment and a blight on surrounding properties; and

WHEREAS, it has been determined that the splitting of large parcels of land into twenty (20) acre parcels without adequate analysis concerning road circulation and roads that are not built to a standard that can be accessed by emergency vehicles such as fire and ambulance service presents and increased risk of safety to citizens of Valley County and its first responders; and

WHEREAS, it has been determined that there is an increased risk to public health due to the degradation of groundwater quality as a result of splitting large parcels of land into twenty (20) acre parcels without adequate ground water analyses or sanitary restrictions for the safe removal of human waste, black water and solid waste on parcels that are 20 acres; and

WHEREAS, the accumulation of construction debris, abandoned or non-running vehicles or other forms of solid waste has a negative effect on the welfare of Valley County citizens negatively impacting the aesthetic and economic value of neighboring properties; and

WHEREAS, the Board finds that these measures must be enacted on an emergency basis due to the imminent peril to the public health, safety and welfare of the citizens of Valley County.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF VALLEY COUNTY, IDAHO:

10-1-3: SCOPE:

A. The regulations of this title shall apply to the subdivision of all land within the unincorporated territory of Valley County, except for land within impact areas for which different ordinances have been adopted, as defined by the definition of a "subdivision".

B. It shall be unlawful hereafter to make a subdivision of land, unless it is qualified as an exception in the scope, until plans and a subdivision plat thereof are submitted to and approved by the administrator or the county planning and zoning commission, and by the board of county commissioners.

C. Exceptions: The following division of land shall not be deemed a subdivision for land use purposes, but must comply with Title 11 of the Valley County Code - Flood Control:

5. A division of land into parcels (containing) ~~twenty (20)~~ one-hundred sixty (160) acres or more.

10-1-6: DEFINITIONS:

ORIGINAL PARCEL: A lot in a platted subdivision or a tract of land of record at the time of the adoption of the subdivision regulations on April 29, 1970, as evidenced by a parcel number

having been assigned by the Valley County assessor, or each one-fourth (1/4) of a section held in one ownership.

The Board of County Commissioners hereby finds that imminent peril to the public health, safety, or welfare exists due to the increasing trend of subdividing larger parcels of land into twenty (20) acre parcels without plan and subdivision plat review by Valley County, resulting in an emergency necessitating the immediate implementation of this Ordinance upon its passage. This Ordinance shall remain in effect for one hundred and eighty-two (182) days or until it is repealed by the Board of County Commissioners.

NOW, THEREFORE, BE IT ORDAINED AND APPROVED by the Valley County Board of Commissioners, Idaho this 7th day of September, 2021, with an effective date being the 7th day of September, 2021, at 10:30 am.

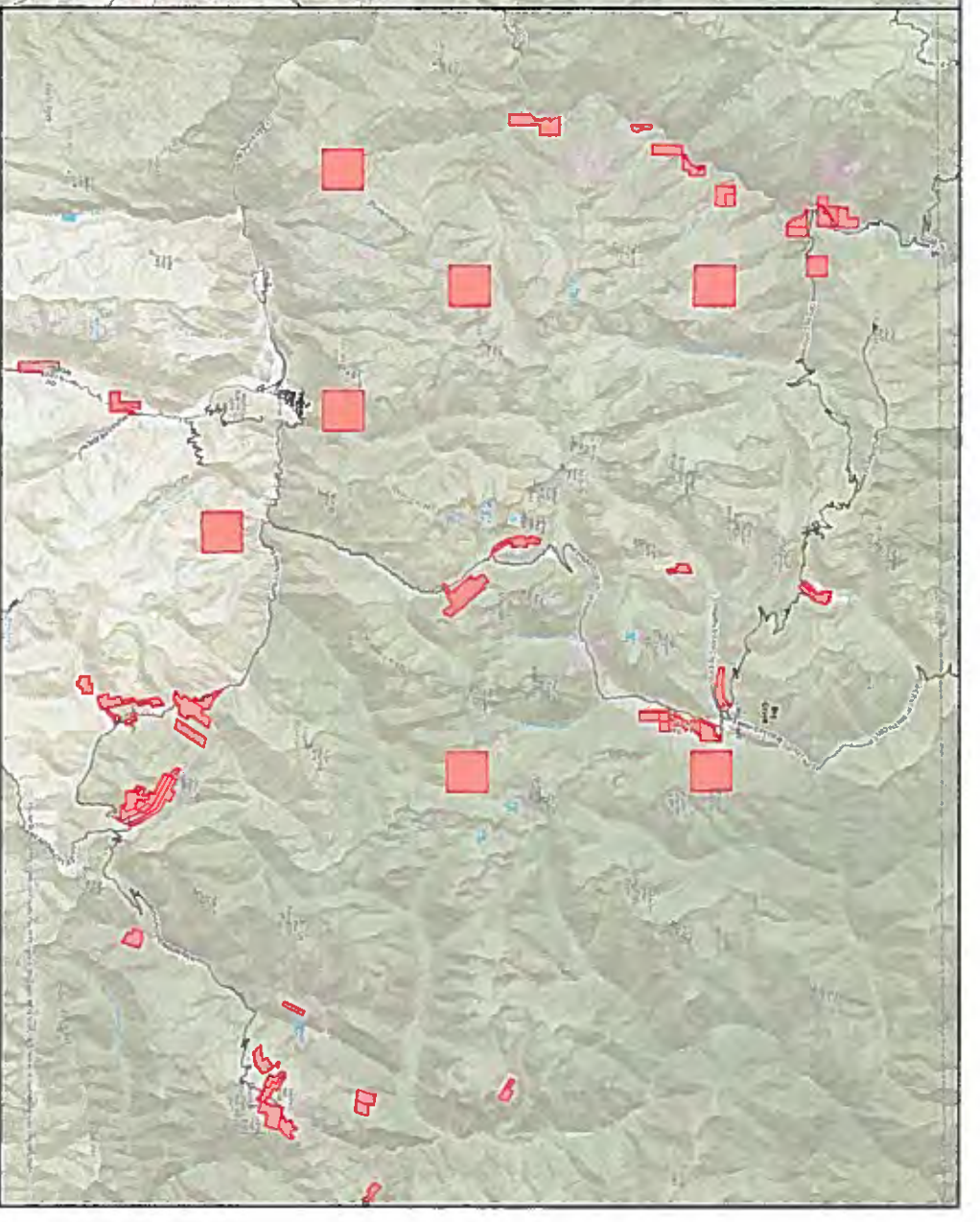
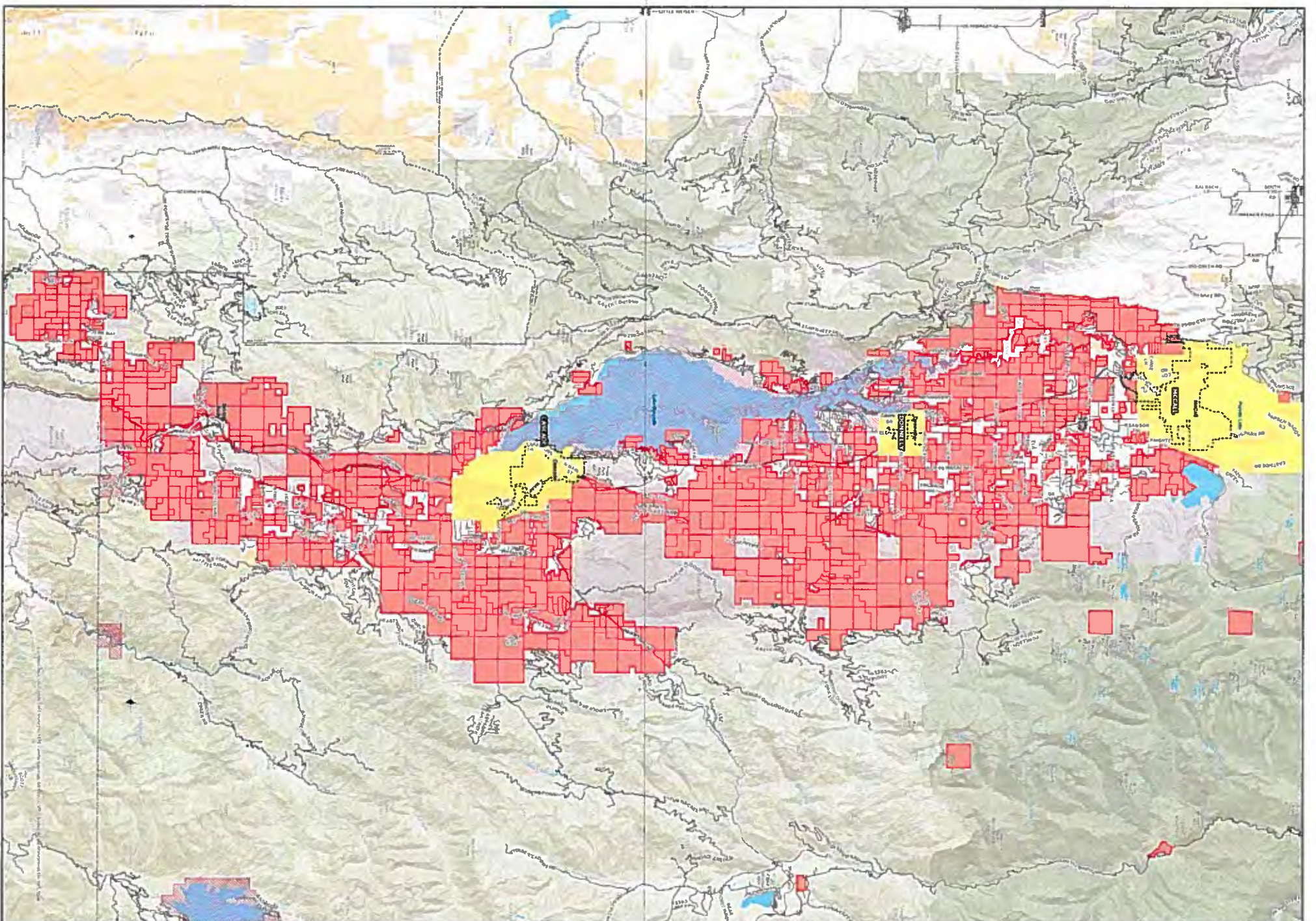

Elting Hasbrouck, Chairman


Dave Bingaman, Commissioner


Sherry Maupin, Commissioner

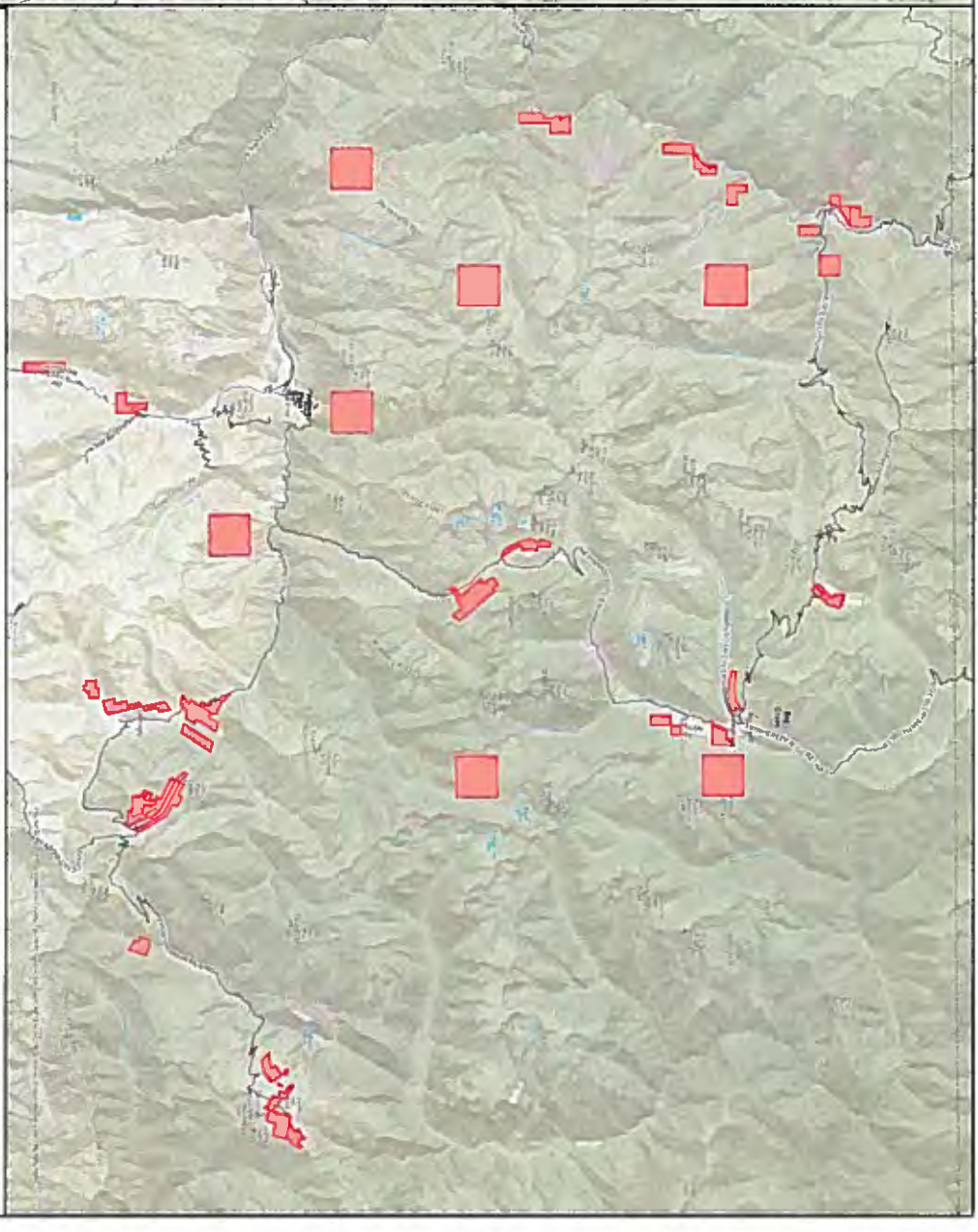
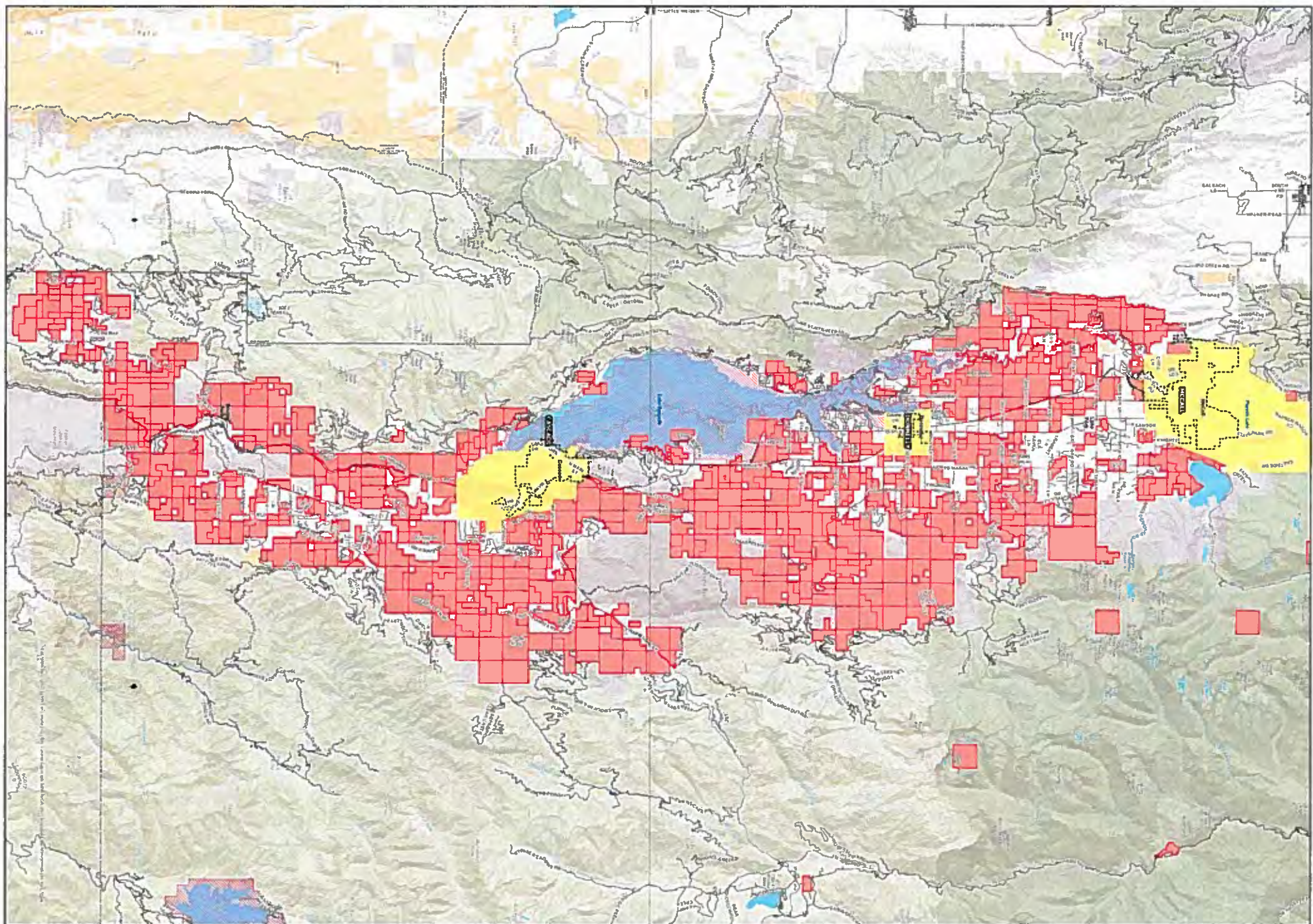
Attest:


Douglas A. Miller
Valley County Clerk



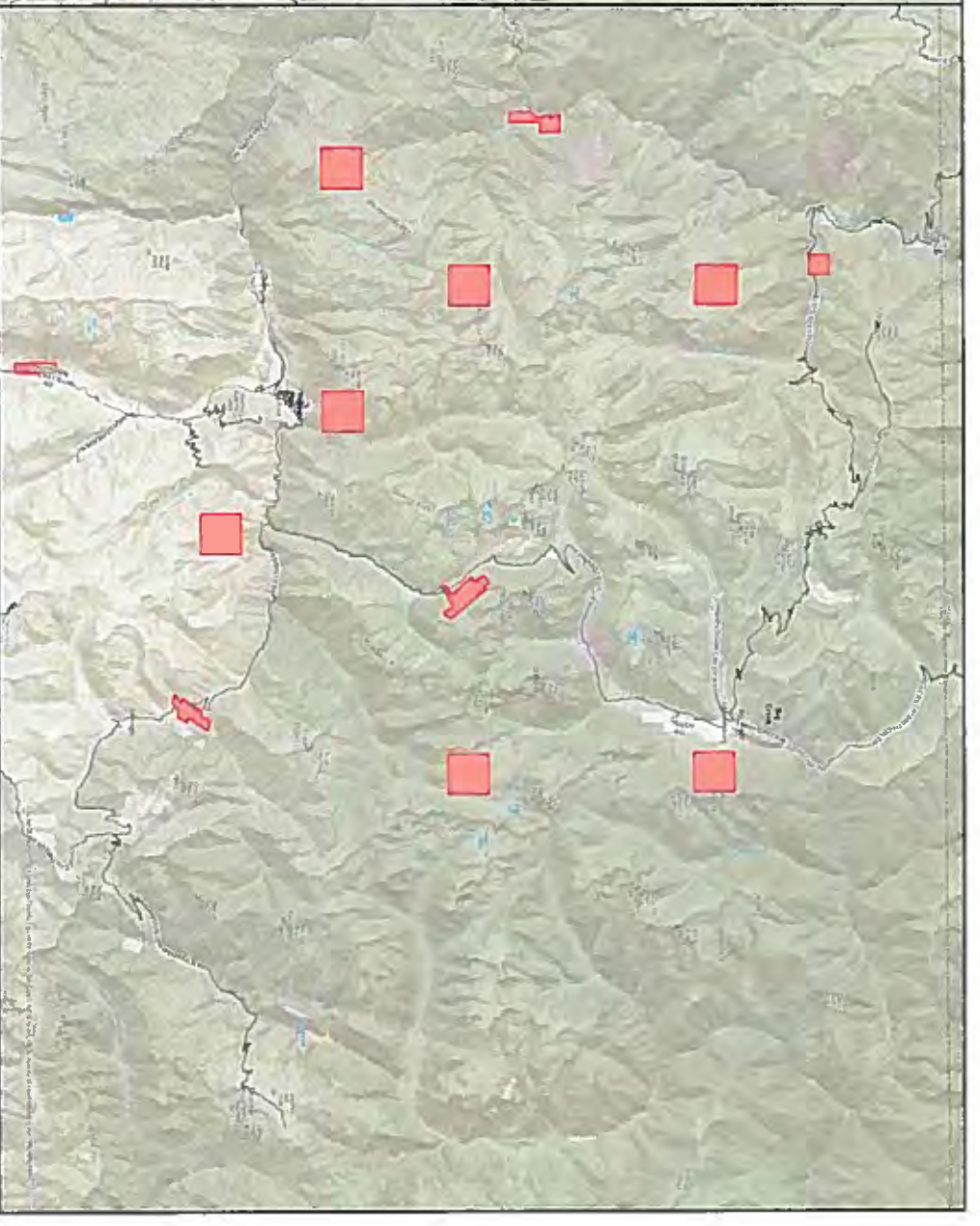
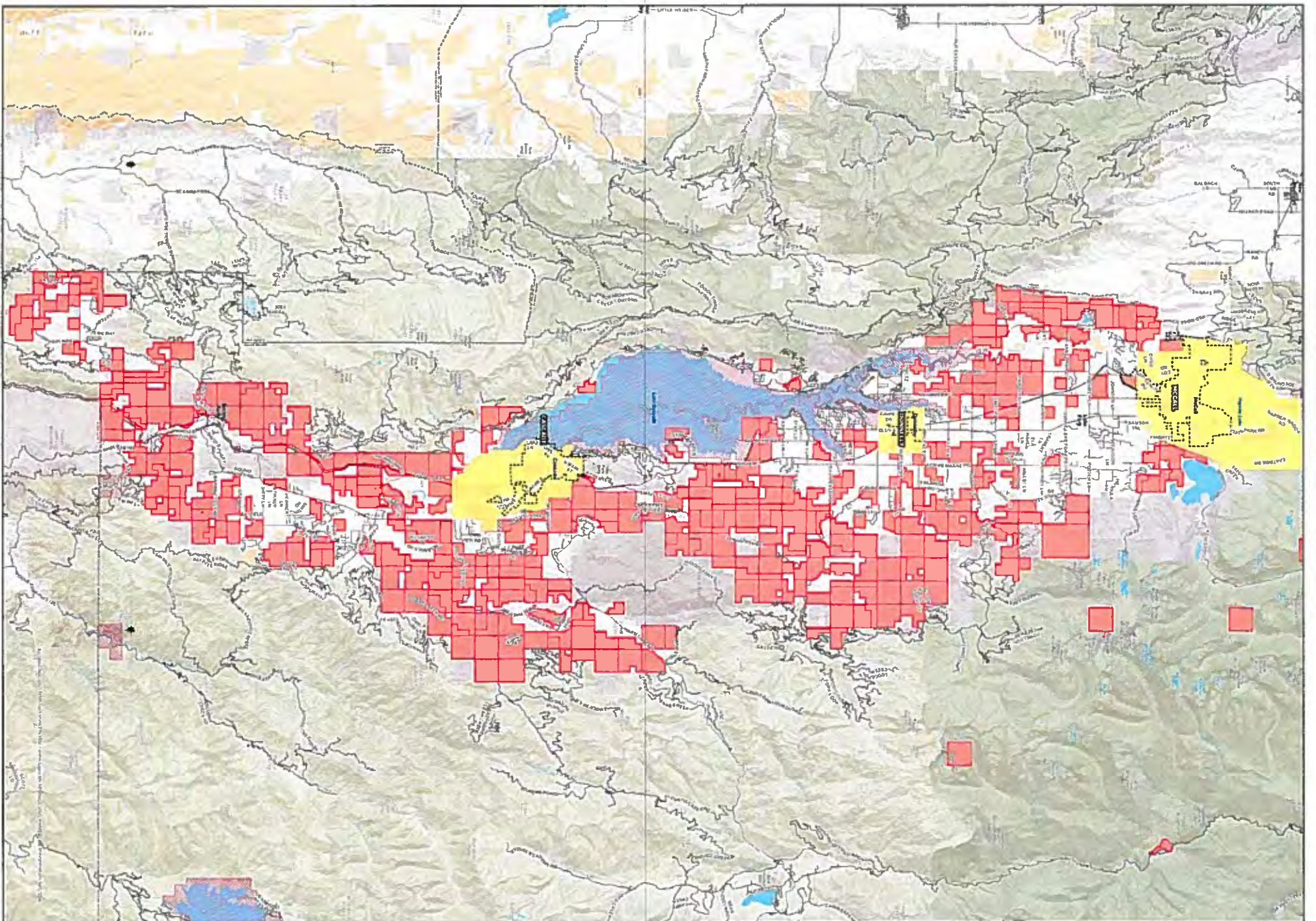
Valley County PZ Commission
Private Properties with 40+ Acres

- Parcels
- Municipal Boundaries
- Impact Zones
- State Highways
- County Boundaries
- Bureau Of Reclamation
- Payette National Forest
- Boise National Forest
- BLM
- PVT
- STATE



Valley County PZ Commission
Private Properties with 80+ Acres

- Parcels
- Municipal Boundaries
- Impact Zones
- State Highways
- County Boundaries
- Bureau Of Reclamation
- Payette National Forest
- Boise National Forest
- BLM
- PVT
- STATE



Valley County PZ Commission Private Properties with 160+ Acres

- Parcels
- Municipal Boundaries
- Impact Zones
- State Highways
- County Boundaries
- Bureau Of Reclamation
- Payette National Forest
- Boise National Forest
- BLM
- PVT
- STATE

Valley County Board of County Commissioners

PO Box 1350 • 219 N Main Street
Cascade, Idaho 83611-1350



Phone (208) 382-7100
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ELTING G. HASBROUCK
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DAVID H. BINGAMAN
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dbingaman@co.valley.id.us

SHERRY MAUPIN
Commissioner
smaupin@co.valley.id.us

DOUGLAS A. MILLER
Clerk
dmiller@co.valley.id.us

IN THE OFFICE OF THE VALLEY COUNTY BOARD OF COMMISSIONERS CASCADE, IDAHO September 7, 2021

**PRESENT: DAVE BINGAMAN (COMMISSIONER)
 SHERRY MAUPIN (COMMISSIONER)
 ELTING HASBROUCK (CHAIRMAN)
 GABRIELLE KNAPP FOR DOUGLAS MILLER (CLERK)**

Commissioner, Dave Bingaman led the Pledge of Allegiance.

Chairman Hasbrouck presented the commissioners' agenda for September 7, 2021. Commissioner Maupin made a motion to approve the commissioners' agenda for September 7, 2021. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioners' agenda for September 7, 2021.

Chairman Hasbrouck presented the commissioner meeting minutes of August 23, 2021. Commissioner Bingaman made a motion to approve the commissioner meeting minutes of August 23, 2021. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioner meeting minutes of August 23, 2021.

The commissioners discussed the setting of dates for their October, November, and December meetings. The commissioners picked October 4, 12, 18, 25, November 1, 8, 15, 22 and December 6, 13, 20, 27. Commissioner Maupin moved to approve the commissioner meeting dates. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioner meeting dates.

The commissioners discussed signing a letter of support for Treasure Valley Transit Grant. Commissioner Bingaman moved to approve signing the letter of support for Treasure Valley Transit Grant. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve signing the letter of support for Treasure Valley Transit Grant.

Andy Salisbury discussed the 184 Silver Fox Trail parking. Mr. Salisbury requested to the commissioners that it be a no parking area. The commissioners didn't feel like they could make it a no parking area. Commissioner Bingaman agreed to put a sign at the bottom of the road showing where the access to public lands is. Mr. Salisbury believed that would greatly help his situation.

Chairman Hasbrouck opened the discussion on variance V-1-21 Kulack Setback. The commissioners advised that they did not have any conflict of interest or ex-parte communication. Cynda Herrick gave a staff report on variance V-1-21 Kulack Setback. Cynda recommended that they approve this. Commissioner Maupin moved to approve V-1-21 Kulack Setback Variance as per the Planning and Zoning Commission recommendation to allow a variance of 8' from the required 20' to 12'; and, adopt their Facts and Conclusions as our own. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to approve V-1-21 Kulack Setback Variance as per the Planning and Zoning Commission recommendation to allow a variance of 8' from the required 20' to 12'; and, adopt their Facts and Conclusions as our own.

Chairman Hasbrouck opened the public hearing for Ordinance No. 21-09 Title 10-1-3 Subdivision Regulations-C expectations. The Commissioners did not have any conflict of interest or ex-parte communication. Cynda Herrick did a staff report. Chairman Hasbrouck asked for proponents of the ordinance, and none were present to speak in support of the ordinance. Chairman Hasbrouck asked for anyone uncommitted of the ordinance, and none were present to speak as uncommitted to the ordinance. Chairman Hasbrouck asked for anyone in opposition to the ordinance, and none were present to speak in opposition to the ordinance. Chairman Hasbrouck closed public hearing at 10:16. Chairman Hasbrouck brought the commissioners into deliberation on the ordinance. Commissioner Bingaman made a motion to adopt ordinance no. 21-09 on 09/7/2021 at 10:30 am. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to adopt ordinance no. 21-09 on September 7, 2021, at 10:30 am.

Human Resource Director Pat Duncan requested the commissioners make the "Refresher Respectful Workplace Training" mandatory. Pat explained her plan for the training. Commissioner Maupin moved to make the refresher respectful workplace training mandatory. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to make the refresher respectful workplace training mandatory.

Chief Deputy Clerk Gabrielle Knapp presented a request from Edwards Mosquito Abatement District for an extension of the dollar certification form to September 14, 2021. Chairman Hasbrouck moved to give Edwards Mosquito Abatement District an extension for the dollar certification form to be submitted to the Clerk's office until September 14, 2021, with the understanding that this will be the last extension for them. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to give Edwards Mosquito Abatement District an extension for the dollar certification form to be submitted to the Clerk's

Valley County Planning and Zoning Commission

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Ray Cooper, Chairman
Neal Thompson, Vice-Chair

Brian Benton, Commissioner
Scott Freeman, Commissioner

MINUTES

Valley County Planning and Zoning Commission

October 14, 2021

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

- A. OPEN:** Meeting called to order at 6:05 p.m. by Acting Chairman Freeman. Quorum exists.
- | | | |
|------------------|------------------|---------|
| P&Z Director | – Cynda Herrick: | Present |
| P&Z Commissioner | – Brian Benton: | Present |
| P&Z Commissioner | – Ray Cooper: | Excused |
| P&Z Commissioner | – Scott Freeman: | Present |
| P&Z Commissioner | – Neal Thompson: | Present |
| P&Z Technician | – Lori Hunter: | Present |
- B. MINUTES:** Commissioner Benton moved to approve the minutes of September 9, 2021. Commissioner Thompson seconded the motion. Motion carried unanimously.
- C. NEW BUSINESS:**
- 1. C.U.P. 20-14 RMC / Pinetop Office – Extension:** Rocky Mountain Crane and Equipment Rental LLC is requesting a two-year extension of the conditional use permit. The new office space, shop, parking lot, and covered parking structure were to be established by December 31, 2021. The 3.6-acre site is addressed as 14032 Highway 55 and is Lot 1 of Karsyn Business Park located in the NENE Section 33, T.18N, R.3E, Boise Meridian, Valley County, Idaho. Action Item.

Acting Chairman Freeman introduced the item and opened the public hearing. Acting Chairman Freeman asked if there was any *ex parte* contact or conflict of interest. There was none.

Acting Chairman Freeman asked for the Staff Report. Staff presented the report.

Director Herrick asked the applicant to respond to the questions in the staff report.

Dusty Bitton, representing Rocky Mountain Crane and Equipment Rental LLC, presented telephonically. The chain link fence is 6-ft tall and has been constructed at the 100-ft setback from Highway 55. Landscaping trees were previously planted by Knife River and were not removed. The additional landscaping will be completed when the buildings are constructed. There are about 15 mature trees between the highway and the slatted fence which will screen the equipment. Trees are within the 100' setback area.

Acting Chairman Freeman asked for proponents. There were none.

Acting Chairman Freeman asked for proponents.

Don Reiswig, 13333 Nisula Road, is an adjacent neighbor to the south. More homes mean more taxes which hopefully would increase maintenance on Nisula Rd.

Mathew Blakley, 13381 Nisula Road, is in favor of the proposal.

John Russell, McCall, is a surveyor who has been working with the applicant. The proposed conditions of approval are acceptable.

Acting Chairman Freeman asked for undecided. There were none.

Acting Chairman Freeman asked for opponents. There were none.

Acting Chairman Freeman closed the public hearing.

The Commission deliberated.

Commissioner Benton moved to approve C.U.P. 21-29 with the stated conditions.

Commissioner Thompson seconded the motion. Motion carried unanimously

There is a 10-day appeal period to the Board of County Commissioners if anyone is unhappy with the decision.

8:58 p.m.

8. Ordinance Amendment: Revision to Valley County Subdivision Ordinance: The proposed modification of Valley County Code 10-1-3.C.5 Exceptions would allow land division into parcels containing 160 acres or more. Action Item

Acting Chairman Freeman introduced the item and opened the public hearing. Acting Chairman Freeman asked if there was any conflict of interest. There was none.

Acting Chairman Freeman asked for the Staff Report. Staff presented the report.

Director Herrick explained the emergency ordinance that was approved by the Board of County Commissioners on September 7, 2021. A permanent ordinance must be adopted within 182 days of that approval.

Previously the minimum size of a rural parcel was 20 acres; the emergency order changed the minimum size to 160 acres. The Board of County Commissioners were concerned about the recent creation of several 20-acre parcels without any review of surrounding uses, access, septic ability, utilities, etc. Specific areas in Valley County include the 20-acre splits in Round Valley area that resulted in land that has no access to power, with high ground water complicating septic ability, and unable to get a building permit. Another area of concern is the 20-acre splits south of McCall Airport that occurred without any review or consideration of the airport or ground water. Another area is the Smylie Lane / West Mountain Road area as some of these new parcels are partially or wholly within the floodplain and thus unable to get a building permit.

The Commissioners discussed the minimum parcel size that should be allowed without review; 160 acres was proposed by the Valley County Soil and Water Conservation District. Protecting future buyers, existing property owners, new zoning overlays, and impacts to Valley County infrastructure were discussed by Staff and Commissioners. Staff clarified that the Commissioners would make a recommendation to the Board of County Commissioners who

would then have another public hearing.

Acting Chairman Freeman asked for proponents. There were none.

Acting Chairman Freeman asked for undecided. There were none.

Acting Chairman Freeman asked for opponents.

Josh Leonard, Clark-Wardle Law in Boise, deals with land use cases for clients. He recognizes the need for a minimum parcel size; however, the 20-acre size is sufficient. The concerns previously mentioned could happen regardless of parcel size. It is already illegal to install a septic system without a permit or have more than two RVs without a permit. The existing rules need enforced. Urban-style subdivisions, with high density and paved roads, are often undesirable by property owners of Valley County. This ordinance would drive up the price of lots. A minimum requirement of 160 acres would lead to a greater number of small lots (5 or smaller). He recommends an alternative approach. Boundary County has a "primitive subdivision ordinance"; any deficiencies on the property are included on the recorded plat. This results in [legal] parcels where a building permit is not allowed.

Dwight Jividen, Cascade, also submitted a letter. He sees no reason to change the long-standing agreement of allowing splits into 20-acre parcels. People can't afford to buy 160 acres. He has been a real estate agent for 35 years. He has sold many parcels that will never have electricity or year-round access; some of these are small parcels. Many people want land off-the-grid. Buyers and sellers want cheap isolated land and not necessarily all the amenities that the County seems to want. He has spent a lot of time and money getting ready to split an area into 20-acre parcels. This proposal affects him personally. This will increase the price of the land and force the little guy out. Stay with the 20-acre split.

Jim Neill, Garden City, owns 280 acres on Paddy Flat Road and has begun the splitting process with a surveyor. He does not want a house with full-year car access. He does not need electricity. Perhaps an administrative review for splits is acceptable. This proposal increases cost of low-density parcels and land conservation.

Scott Carlton, McCall, represented DF Development which owns approximately 70,000 acres in Valley County. If required to submit subdivision plats, DF Development will simply propose urban style subdivisions due to the increase cost of development, roads, utilities, etc. There is a demand for unimproved land without maintained roads or utilities. The proposed amendment will have unintended consequences. The amendment is also likely to prevent DF Development from opening roads to public access; there would be no incentive for DF Development to do so.

Acting Chairman Freeman closed the public hearing.

The Commission deliberated. The Board of County Commissioners wanted to change the 20-acre minimum parcel size because of the splits that have been occurring with no-long range planning or consideration of roads, access, septic, floodplain, etc. The emergency ordinance allows a pause in development and thus time for further review and discussion. A property owner could still split into 20-acres lots using the subdivision platting process. Many older subdivisions have lots that are unable to obtain building permits due to the size of lots or topography or inability to get septic approval. Prior to September 7, 2021, Valley County Code 10-1-3.C.5 Exceptions allowed 20-acre parcels to be created by merely recording deeds. The Commissioners and Staff discussed if a review of a proposed split possible without the full subdivision process. Tonight's agenda included two small property splits that did require a Planning and Zoning review and subdivision plat. Prior to the emergency ordinance, no review was required to split land into 20-acre parcels. A settlement of estate is currently an allowed exception to the subdivision process. Peer review includes acceptance by an engineer; staff

specified that the PZ Director should not be the sole decider. A "primitive subdivision" or other subdivision types are possible with a change in Valley County Code. Zoning overlays were discussed. Minimum parcel size was discussed.

The Commissioners discussed removing the minimum parcel size exception altogether thus requiring a review process for any kind of split. This would remove VCC 10-1-3.C.5.

VCC 10-3-1 describes the type of plats that Valley County allows: administrative plat, short plat, and full plat. This section could be re-worked, and additional plat types added to allow for plats with different requirements.

The emergency ordinance put a pause on the splits less than 160 acres. The emergency ordinance expires 182 days from September 7, 2021.

The Commissioners further discussed splits, minimum parcel size, and subdivision requirements. This includes access, utilities, frontage, building site, sanitary restrictions, and pasture-only lots. Subdivision fees were discussed; our fees are not excessive. The Commissioners believe there should be a different checklist of requirements for some subdivisions. This would require rewriting Valley County Code. If an ordinance is not adopted by the Board of County Commissioners, the minimum parcel size will revert to 20 acres after the 182-day period expires. The Commissioners discussed tabling deliberations, specifying a specific minimum parcel size, recommending the elimination of the VCC 10-1-3.C.5 exception, and revising the types of plats

Staff will revise the types of plats allowed by Title 10-3-1 for review at a future public hearing and ordinance amendment.

Commissioner Thompson moved to recommend to the Board of County Commissioners approval of an ordinance to eliminate VCC 10-1-3.C.5 and remove the portion in the definition of an original parcel that reads "or each one-half of a section held in one ownership". Commissioner Benton seconded the motion. Motion carried unanimously

Future work sessions will be planned to discuss subdivision types and requirements.

D. FACTS AND CONCLUSIONS - Action Items:

- VAC 21-06 Vacation of a Portion of San Ignacio Way and Associated Utility, Drainage, and Snow Storage Easements
- C.U.P. 21-18 Hidden Pines Event Venue
- C.U.P. 21-22 Binnion Short-Term Rental
- C.U.P. 21-23 Coughlin Multiple Residence
- C.U.P. 21-24 Needs RV Park

Commissioner Benton moved to approve the Facts and Conclusions as presented and authorize the Acting Chairman to sign. Commissioner Thompson seconded the motion. Motion carried unanimously.

E. ELECT PZ COMMISSION OFFICERS – Action Item

Commissioner Benton moved to elect Ray Cooper as Chairman and Neal Thompson as Vice Chairman. Commissioner Thompson seconded. Motion passed unanimously.

Acting Chairman Freeman adjourned the meeting at 10:10 p.m.

Valley County Board of County Commissioners

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DOUGLAS A. MILLER
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IN THE OFFICE OF THE VALLEY COUNTY BOARD OF COMMISSIONERS CASCADE, IDAHO December 6, 2021

PRESENT: **ELTING HASBROUCK (CHAIRMAN)**
 SHERRY MAUPIN (COMMISSIONER)
 DAVE BINGAMAN (COMMISSIONER)
 DOUGLAS MILLER (CLERK)

Commissioner, Dave Bingaman led the Pledge of Allegiance.

Chairman Hasbrouck presented the commissioners' agenda for December 6, 2021. Commissioner Bingaman made a motion to approve the commissioners' agenda for December 6, 2021. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioners' agenda for December 6, 2021.

Chairman Hasbrouck presented the commissioner meeting minutes of November 22, 2021. Commissioner Maupin made a motion to approve the commissioner meeting minutes of November 22, 2021. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioner meeting minutes of November 22, 2021.

Chairman Hasbrouck presented the FY22 Annual Operation Plan with Payette National Forest-Snow Trail Grooming Program. Commissioner Bingaman made a motion to approve the FY22 Annual Operation Plan with Payette National Forest Snow Trail Grooming Program. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the FY22 Annual Operation Plan with Payette National Forest.

Road Director, Jeff McFadden presented the agreement for a retaining wall on Landale Lane. Jeff explained the agreement and advised that the landowner was responsible for the retaining

the scoping period had passed, and they were conducting an Environmental Assessment. He advised that they did receive several comments and described the area that the RAMP incorporated. He submitted that they do have the collaboratives recommendations but acknowledges that there were concerns with members of the collaborative. He described the motorized management plan proposal and advised that it was a polarized issue with restoration and access being points of discussion. District Ranger Hogen presented on the creation of the Forest Service Travel Management Plan for the area. He discussed the challenges that have been identified including lack of easements across private property. The commissioners discussed the need to continue to allow recreation roads to be open to the public. District Ranger Hogen described the process for making decisions and the response that was received from the public. District Ranger Hogen presented on the hazardous fuel reduction project in 118 acres in Big Creek. He advised that the goal was to complete 1000 acres and he discussed scheduled prescribed fires but presented that there were challenges. He advised that they would be going out for request for bid for the commercial thinning project. The commissioners appreciated the presentation from District Ranger Hogen.

The commissioners recessed for lunch at 12:00 p.m.

The commissioners returned from lunch at 1:00 p.m.

The commissioners conducted the Valley County Jail Quarterly Inspection at 1:00 p.m.

Chairman Hasbrouck opened the Public Hearing for Amendment to Title 10 Subdivision Regulations: Removing 10-1-3-.C. Exceptions 5. A division of land into parcels (containing) one-hundred sixty (160) acres or more; and, one-half a section under Original Parcel definition at 2:00 p.m. and asked if there was any ex-parte communication or conflict of interest. All commissioners advised that none of them had any ex-parte communication or conflict of interest. Chairman Hasbrouck requested a staff report from Planning & Zoning Director, Cynda Herrick.

Planning & Zoning Director, Cynda Herrick provided the commissioners with a staff report and a history of events that occurred prior to the public hearing. She presented on where the notices of the public hearing were distributed and when the notices were published in the Star News and Valley County Website. She discussed the review process and advised that the commissioners had all the analysis information prior to the public hearing. She informed the commissioners of the additional comments that were received including letters from Joshua Leonard who represents DF Development who were in opposition to the proposed amendment to Title 10. She also informed the commissioners about a letter that was received from Mr. Richard Kleint. The commissioners had the opportunity to ask questions to Planning & Zoning Director, Cynda Herrick and she responded accordingly to the questions and gave explanation.

Chairman Hasbrouck asked if there was anyone who wanted to present to the commissioners as a proponent of the proposed Amendment to Title 10.

Mrs. Gretel Kleint who resides in Donnelly, Idaho, presented to the commissioners as a proponent of an Amendment to Title 10 Subdivision Regulations and explained why she was a proponent to the proposed amendment.

Chairman Hasbrouck asked to hear from anyone who was uncommitted to the proposed Amendment to Title 10 Subdivision. The record would reflect that there was no one who presented as an uncommitted individual.

Chairman Hasbrouck asked to hear from anyone who was an opponent to Amendment to Title 10 Subdivision Regulations.

Mr. Joshua Leonard who represents DF Development presented to the commissioners as an opponent to the proposed Amendment to Title 10 Subdivision Regulations and provided an in-depth explanation on why DF Development was opposed to the proposed Amendment. The commissioners had the opportunity to ask questions to Mr. Leonard and provided their opinions regarding the proposed Amendment. Mr. Leonard responded by presenting a request to conduct a comprehensive rewrite. The commissioners explained the reason for the emergency ordinance and why the proposed amendment was scheduled for a Public Hearing. Mr. Leonard requested additional work be conducted to avoid future litigation. He believed that the process needed to be a comprehensive study and not the process that was being pursued by Valley County.

Mr. Scott Carlton who represents DF Development presented to the commissioners as an opponent to the proposed Amendment to Title 10 Subdivision Regulations and explained the reasons for the opposition. The commissioners had the opportunity to ask Mr. Carlton questions regarding his presentation and he responded accordingly.

Mrs. Suzanne Budge who resides in McCall, Idaho wanted to be on the record as an opponent to the proposed amendment.

Chairman Hasbrouck provided his opinion regarding the involvement of government with local government to protect the buyers. He felt that Valley County should allow additional time for the public to provide testimony regarding the issue. Commissioner Maupin asked Josh Leonard for his ideas on how he thought things could move forward using collaboration as tool to address everyone's concerns. Commissioner Bingaman agreed that additional time was needed to develop appropriate amendments to the existing ordinance. Planning & Zoning Director, Cynda Herrick suggested tabling the Public Hearing until next week to obtain a legal opinion from the Valley County Prosecuting Attorney's Office. She also proposed remanding that matter back the Valley County Planning & Zoning Commission but had concerns with the amount of work that was being done by the Valley County Planning & Zoning Commission. Chairman Hasbrouck made a motion to table the Public Hearing Amendment to December 13, 2021, at 4:00 p.m. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to table the Public Hearing Amendment to December 13, 2021, at 4:00 p.m.

Chairman Hasbrouck opened the meeting to the public to present to the commissioners.

Mr. Richard Kleint presented to the commissioners regarding a land that he had that he wanted to develop and discussed the process with the commissioners. He also believed that the realtors in Valley County need to be honest with buyers when individuals purchase property regarding the ability to utilize property purchased.

The commissioners adjourned at 3:20 p.m.

Valley County Board of County Commissioners

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IN THE OFFICE OF THE VALLEY COUNTY BOARD OF COMMISSIONERS CASCADE, IDAHO December 13, 2021

PRESENT: **ELTING HASBROUCK (CHAIRMAN)**
 SHERRY MAUPIN (COMMISSIONER)
 DAVE BINGAMAN (COMMISSIONER)
 DOUGLAS MILLER (CLERK)

Commissioner, Dave Bingaman led the Pledge of Allegiance.

Chairman Hasbrouck presented the commissioners' agenda for December 13, 2021. Commissioner Bingaman made a motion to approve the commissioners' agenda for December 13, 2021. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioners' agenda for December 13, 2021.

Senior Deputy Auditor, Kalyn Mauk presented the commissioners with Fiscal Year 2022 claims and board order claims.

Fiscal Year 2022 Claims

General Fund	\$198,535.36
Road & Bridge	\$117,525.30
District Court	\$3,221.86
Indigent and Charity	\$228.31
Junior College	\$350.00
Revaluation	\$461.80

Board of County Commissioners Meeting
December 13, 2021
Page 1

Chairman Hasbrouck opened the continued Public Hearing that was tabled from December 6, 2021 for Amendment to Title 10 Subdivision Regulations: Removing 10-1-3.C. Exceptions 5. A division of land into parcels (containing) one-hundred sixty (160) acres or more: and, one-half of a section under Original Parcel Definition at 4:00 p.m.

Chairman Hasbrouck asked to hear from anyone who was a proponent. The record will reflect that there was no presentation to the commissioners from anyone who was a proponent.

Chairman Hasbrouck asked to hear from anyone who was uncommitted. The record will reflect that there was no presentation to the commissioners from anyone who was uncommitted.

Chairman Hasbrouck asked to hear from anyone who was an opponent. The record will reflect that there was no presentation to the commissioners from anyone who was an opponent.

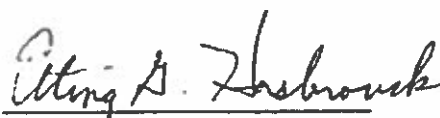
Mr. Josh Leonard who represents DF Development presented to the commissioners as an opponent to the proposed Ordinance.

Chairman Hasbrouck closed the Public Hearing at 4:04 p.m. and brought the matter back to the commissioners for deliberation. The commissioners believed that additional public hearings should take place to allow for additional testimony. The commissioners requested that Planning & Zoning Director, Cynda Herrick communicate with additional individuals. Chairman Hasbrouck advised that he will close the Public Hearing and request that another Public Hearing be scheduled. Commissioner Maupin made a motion to schedule another Public Hearing for January 18, 2022, at 1:00 p.m. Commissioner Bingaman seconded the motion. Chairman Hasbrouck asked a question related to facts and conclusions for the current Public Hearing. Planning & Zoning Director, Cynda Herrick advised that would not be necessary. No further discussion, all in favor. Motion passed to have another Public Hearing for January 18, 2022, at 1:00 p.m.

The commissioners adjourned at 4:10 p.m.

Attest:


Douglas Miller, Clerk


Chairman, Elting Hasbrouck

Valley County Board of County Commissioners

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IN THE OFFICE OF THE VALLEY COUNTY BOARD OF COMMISSIONERS CASCADE, IDAHO January 18, 2022

PRESENT: **ELTING HASBROUCK (CHAIRMAN)**
 SHERRY MAUPIN (COMMISSIONER)
 DAVE BINGAMAN (COMMISSIONER)
 DOUGLAS MILLER (CLERK)

Commissioner, Dave Bingaman led the Pledge of Allegiance.

Chairman Hasbrouck presented the commissioners' agenda for January 18, 2022. Commissioner Bingaman made a motion to approve the commissioners' agenda for January 18, 2022. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioners' agenda for January 18, 2022.

Chairman Hasbrouck presented the commissioner meeting minutes from January 3, 2022. Commissioner Maupin made a motion to approve the commissioner meeting minutes from January 3, 2022. Chairman Hasbrouck seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioner meeting minutes from January 3, 2022.

Chairman Hasbrouck presented the commissioner meeting minutes of January 10, 2022. Commissioner Bingaman made a motion to approve the commissioner meeting minutes from January 10, 2022. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the commissioner meeting minutes from January 10, 2022.

Commissioner Maupin began the discussion related to requesting a letter to submit to Planning & Zoning Commission to request review of overlays. She explained what type of letter that she wanted to submit to the Planning & Zoning Commission. Commissioner Bingaman provided his

Chairman Hasbrouck presented the Southwest Idaho Resource Conservation and Development Council Sponsorship for Fiscal Year 2022 and select the representative. Commissioner Bingaman made a motion to approve the sponsorship for the Southwest Idaho Resource Conservation and Development Council for Fiscal Year 2022 and select Grant Writer, Mary Rosen as the RC&D Representative for Valley County. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to approve the sponsorship for the Southwest Idaho Resource Conservation and Development Council for Fiscal Year 2022 and select Grant Writer, Mary Rosen as the RC&D Representative for Valley County.

Recreation Director, Larry Laxson presented the Idaho Department of Parks & Recreation Grant Application for Wellington Warming Hut Roof Replacement and Chimney Repair Project and Approve letter of commitment for Valley County Contribution. Commissioner Maupin made a motion to approve the grant application and approve the letter of commitment agreeing to an additional contribution of \$5,501. Commissioner Bingaman seconded the motion. No further discussion, all in favor. Motion passed to approve the IDPR grant application and letter of commitment for an additional contribution of \$5,501.

Chairman Hasbrouck advised that the commissioners would be recessing as the Valley County Board of County Commissioners at 11:30 a.m. and convening as the Board of Equalization to hear Appeal #AF0CC1 for Parcel RP17N02E125376. Chairman Hasbrouck swore in the participants, Appraiser, Jennifer Morgan, Appraiser, Anthony Franseconi and Assessor, June Fullmer. Chairman Hasbrouck also swore in Mr. George Tallabas who is representing the applicant.

Mr. George Tallabas representing the appellants presented to the Board of Equalization and does not feel that the assessed value represents the actual value of the existing property and provided his explanation.

Appraiser, Jennifer Morgan presented to the Board of Equalization and provided an overview of how the property was appraised. Appraiser, Anthony Franseconi also presented to the commissioners.

Chairman Hasbrouck began the deliberation regarding Appeal #AF0CC1 for Parcel RP17N02E125376 and felt that the value that was assessed based on the evidence and testimony provided would uphold the value that was determined. Commissioner Maupin provided her opinion during the deliberation. Commissioner Bingaman also provided his opinion during the deliberation. Commissioner Bingaman made a motion to deny the appeal for #AF0CC1 for Parcel RP17N02E125376. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to deny the appeal for #AF0CC1 for Parcel RP17N02E125376.

The commissioners recessed for lunch at 11:56 a.m.

The commissioners returned from lunch at 1:00 p.m.

Chairman Hasbrouck opened the Public Hearing that was continued from December 13, 2021, Amendment to Title 10 Subdivision Regulations: Removing 10-1-3.C. Exceptions 5. A division of land into parcels (containing) one-hundred sixty acres or more: and, one-half of a section under Original Parcel Definition at 1:00 p.m. Chairman Hasbrouck asked if there was any ex-

Board of County Commissioners Meeting

January 18, 2022

Page 4

parte communication or conflict of interest from the commissioners. All commissioners advised that there was no ex-parte communication or conflict of interest. Chairman Hasbrouck asked for an additional staff report from Planning & Zoning Director, Cynda Herrick. Planning & Zoning Director, Cynda Herrick provided a staff report to the commissioners with an overview of additional comments that had been submitted to the commissioners for consideration. The commissioners had the opportunity to ask questions to Planning & Zoning Director, Cynda Herrick and she responded accordingly.

Chairman Hasbrouck opened the Public Hearing to the public and asked for testimony from proponents to the proposed ordinance.

Ms. Lynn Lewinski who resides in McCall, Idaho, presented to the commissioners as a proponent to the proposed ordinance.

Mr. David Gallipoli who resides in McCall, Idaho, presented to the commissioners as a proponent to the proposed ordinance.

Chairman Hasbrouck asked to hear from anyone who was undecided. The record will reflect that there was none.

Chairman Hasbrouck asked to hear from anyone who was an opponent.

Mr. Dwight Jividen who resides in Cascade, Idaho, presented to the commissioners as an opponent to the proposed ordinance.

Mr. Scott Carlton who resides in McCall, Idaho, presented to the commissioners as an opponent to the proposed ordinance.

Ms. Constance Baker who resides in High Valley, Idaho, presented to the commissioners as an opponent to the proposed ordinance.

Ms. Suzanne Budge who owns a home in McCall, Idaho, presented to the commissioners as an opponent to the proposed ordinance.

Mr. Josh Leonard who represents DF Development presented to the commissioners as an opponent to the proposed ordinance. Commissioner Maupin had a question for Mr. Leonard regarding correspondence that was submitted to the commissioners. The commissioners made comments to the public prior to deliberations.

Ms. Lyn Lewinski presented to the commissioners again after the commissioners allowed additional testimony.

Mr. Dwight Jividen presented to the commissioners again after the commissioners allowed additional testimony. He proposed that the commissioners initiate a temporary moratorium.

Chairman Hasbrouck closed the Public Hearing at 1:57 p.m. and brought the ordinance back to the commissioners for deliberation. Chairman Hasbrouck provided his opinion during deliberations and his concerns as well as his perspectives. Commissioner Maupin provided her

opinion during deliberations and her concerns. Commissioner Bingaman provided his opinion during deliberations and his concerns. The commissioners continued to deliberate on the matter and requested direction from Planning & Zoning Director, Cynda Herrick. Cynda requested that she have the ability discuss with Chief Deputy Prosecuting Attorney, Brian Oakey.

Planning & Zoning Director, Cynda Herrick believed that if the commissioners were proposing material changes from the proposed ordinance it would require another public hearing to allow the public to comment. The commissioners asked additional questions and received a response from Chief Deputy Prosecuting Attorney, Brian Oakey. The commissioners continued their deliberation for an extended period. Commissioner Maupin and Chairman Hasbrouck requested that the matter be noticed again for another Public Hearing. Chairman Hasbrouck made a motion to schedule another Public Hearing and notice the hearing for February 22, 2022, at 1:00 p.m. Commissioner Maupin seconded the motion. No further discussion, all in favor. Motion passed to schedule another Public Hearing and notice the hearing for February 22, 2022.

Commissioner Bingaman made a motion to go into Executive Session per Idaho Code 74-206 1(b)-"To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agenda, or public school student."-Personnel. Commissioner Maupin seconded the motion. No further discussion, by roll call vote all commissioners voted "aye". The commissioners went into Executive Session at 3:00 p.m.

Chairman Hasbrouck brought the commissioners out of Executive Session per Idaho Code 74-206 1(b)-Personnel at 3:40 p.m. No decision was made as it was for evaluation purposes.

The commissioners adjourned at 3:41 p.m.

Attest:


Douglas Miller, Clerk


Chairman, Elting Hasbrouck

RE: public hearing - Title 10 Subdivision Regulations

Mike Reno <MReno@cdh.idaho.gov>

Mon 1/24/2022 7:19 AM

To: Lori Hunter <lhunter@co.valley.id.us>

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Lori,

CDH has no objections to either option.

Mike Reno



Connect with us!

Excellence | Positive Impact | Partnership | Innovation | Credibility | Humanity

Mike Reno | Program Manager
Community & Environmental Health
P. 208-327-8522 | M. 208-869-9144 | F. 208-327-8553
E. MReno@cdh.idaho.gov | W. cdh.idaho.gov
707 N. Armstrong Pl., Boise, ID 83704

To Valley County Commissioners,

January 18,2022

This is concerning the temporary rules that prevent the splitting of land into 20-acre parcels without review that should be made permanent. These rules should stand.

As owners of horses and livestock we finding it harder and harder to adjust to the new residents who created their own dystopia and now wish to escape it to places like Valley County.

They are also flippers who purchase homes and live in them 2 years to drive up real estate prices. They are also short term vacation rentals that leave working residents living in substandard housing. These types of houses should be taxed to maximum allowable by law to discourage them.

This is the condition of the places they left to move to Valley County. Eventually, they will abandon Valley County in the same condition they left the last place.. a total disaster.

Valley County should have residential housing in the cities for people who only really need a home. That is where subdivisions should go and use as little land as possible with consideration for taller buildings. Livestock and other users that actually need the land should be prioritized.

That is why they moved here... for the open feeling.

Thank you,

Kevin and Jean Revaul
PO Box 968
Donnelly, Idaho 83615

To Valley County Commissioners,

February 4, 2022

This letter is in agreement to the Option 2 being considered for the February 22nd, 2022 hearing.

5.A division of land into parcels (containing) one-hundred sixty acres(160) or more.

This is still a compromise to satisfy those that still want to divide, divide their lands with an end game of subdividing to housing. It is just a profit motive. This ultimately leads to less and less agriculture lands for livestock, crops, open space, and other uses. Give the agriculture in Valley County a priority.

Subdividing should be held in the proximity to the towns of McCall, Donnelly, Cascade, and Tamarack. Most housing requires little land. It is time to allow housing to go up in height..add another story of housing to permits.

But here we pivot to slowing down sprawl and ending the worker housing shortage. Many of the homes in Valley County are second, vacation rentals or investor controlled. These homes mostly sit empty. We have heard as much as 70%. While these homes sit empty we have workers living in overpriced rentals, campers, tents and generally substandard housing. There is no reason for this and some tweaking of the taxes would incentivize the sale of some of these homes to homeowners who need them. Building more homes would just be swept up by more of the investor and vacation rentals. Not that we don't want more quality houses but there must be a balance, right now there is no balance.

So our suggestion would be a 15% tax added onto the property taxes paid for the year on vacation rentals in the county. These homes are listed on VBRO and Air B&B sites. These funds could go into the county road department monies fixing the roads they tear up.

If some action is not taken nothing will change. It is time for a change here.

Don't give away Idaho.

Thank you,

Kevin and Jean Revaul
PO Box 968
Donnelly, Idaho 83615
208-870-9773

January 19, 2022

TITLE 10

To Cynda Kemick, Valley County Planning & Zoning:

I support having XLL property development proposals reviewed. This allows XLL property to be assessed by the Planning & Zoning protocol and procedures that are being created. If fair, property may be managed as each owner determines, with in due course of law.

If XLL property development does not come to be reviewed, how can any order be kept fairly. How can zoning be overseen?

I support continuing the emergency mandate on permitting as an ordinance until complete comprehensive zoning issues are put in place. The wording should be such that it will be lifted once these issues are resolved.

Start public meetings now! Inform the public of steps being taken, reviews being done. Allow participation and outreach for suggestions, ideas and concerns.

With supportive regards,

Lynn Lewinski
McCall Idaho

January 19, 2022

TITLE 10

To The Valley County Commissioners:

I am so confused by the meeting yesterday!

- All property development plans being reviewed is FAIR.
(perhaps keeping lawsuits at bay.)
- How would zoning be addressed if no review was made?
- P&Z planning for zoning will put protocol and procedure in place that allows straight-forward decisions.
The growth and sustainability will be overseen by these guidelines, making a more efficient workload.
Spending taxpayer dollars on each and every presentation is a waste.
- Address the emergency mandate with a well worded ordinance that will continue to keep prospects from moving forward until comprehensive zoning can be implemented.
- Inform the Public; better knowing can be better supporting.

Lynn Lewinski
McCall Idaho

From: djividen@frontiernet.net <djividen@frontiernet.net>
Sent: Tuesday, February 1, 2022 9:02 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Cc: Valley County Commissioners <commissioners@co.valley.id.us>
Subject: 160 Acres or 20 Acres

Valley County Planning and Zoning Commissioners

Regarding the 160 acre "emergency" ordinance and the elimination of the 20 acre simple split. Our Valley County Commissioners have discovered an emergency where there is no emergency at all. Now the county is in the process of enacting an ill-thought out ordinance that in the end, does not really help anybody.

Idaho Code section 67-6508(a) says you must implement your development plan, in order: "...to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property...

This 160 acre ordinance will clearly make developing land more expensive, and it clearly creates unnecessary technical limitations on the use of property.

The ordinance wants 20 acre parcels to qualify for septic systems, have year round access, have electricity available.....BUT.....

There is definitely a demand in the marketplace for land that does not support a septic system. More significantly, there is a whole movement of people seeking land without year round access and without electricity. This change in the ordinance denies that the public is actively seeking land with these attributes.

As a real estate agent for 35 years, I have sold many lots that would not support a septic system, and many lots that do not have year round access, and many lots that do not have electricity available. I have even personally bought and sold a few of these type of properties. None of the buyers have ever complained. Certainly no emergency ever existed. Why do the commissioners wish to deny these buyers the opportunity to buy land here?

These potential buyers are the people who are being denied opportunities to buy in Valley County because the Commissioners think these potential buyers should be protected..... from themselves. Please note that these people really want to buy land here, they want to buy the type of land that the county wants to effectively eliminate, and therefore they specifically do NOT want to be protected.

But what about us landowners / sellers?

You and I had a deal that said we could easily make 20 acre parcels. It has been so for 50 years or more. With that - companies that I own part of - have spent over \$100K getting ready to make some of those 20 acre parcels. This 160 acre change gives us the shaft and is an affront to the landowners of Valley County.

One of our projects will be delayed and cost a lot more money. Because it costs more, we will go to smaller parcels. The other project will require the building of a multi-hundred thousand dollar road, where previously no road would be necessary, and that will in essence ruin the potential 20 acre parcels. Building that expensive road means that we would absolutely need to make smaller parcels to cost justify the project. This, of course, adds years, expense and uncertainty to our projects.

So you want to enact an ordinance that denies many buyers the possibility of buying land in Valley County, land that they actively desire to buy, the sale of which would increase the county tax base.

WHY WOULD YOU DO THIS?

Moreover, you are about to enact an ordinance that in some cases ruins the possibility of making 20 acre parcels, and definitely forces the creation of smaller parcels, generally making land more expensive.

WHY WOULD YOU DO THIS?

This draconian ordinance is unnecessary and a bad idea, please choose a different path.

Dwight Jividen
413 Cabarton Road
Cascade, ID 83611

P&Z support

Joey Pietri <joey@legendcrossfit.com>

Thu 2/3/2022 6:52 AM

To: Cynda Herrick <cherrick@co.valley.id.us>; Valley County Commissioners <commissioners@co.valley.id.us>

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Dear Commissioners and Ms. Herrick,

I 'd like to express my support for the reviewing of Land Divisions for all Subdivisions in Valley County as recommended by the Planning and Zoning Board in the October 4th , 2021 meeting .

Thank you

Joey Pietri
225 Valley Springs Rd.
McCall

Sent from my iPhone

I support

David Gallipoli <gallipolifish@gmail.com>

Thu 2/3/2022 7:43 AM

To: Cynda Herrick <cherrick@co.valley.id.us>

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To Cynda Herrick, Planning and Zoning Administrator,

I support the subdivision review for all land divisions as recommended by the Valley County planning and zoning board meeting on Oct 4, 2021. I urge the Valley County Commissioners to support the Planning and Zoning Board's recommendation.

A failure to support the Board would mean no oversight on planned subdivisions which would add to all the issues people in our community are experiencing. A failure to support our Zoning Board's recommendation would be a catastrophic mistake for our county, people, the land, wildlife, and watersheds.

David Gallipoli, 200 Scott St, McCall, ID

From: Jocelyn Pulver <jpulver1212@gmail.com>
Sent: Thursday, February 3, 2022 9:49 AM
To: Cynda Herrick <cherrick@co.valley.id.us>; Valley County Commissioners <commissioners@co.valley.id.us>
Subject: Support for planning and zoning recommendations

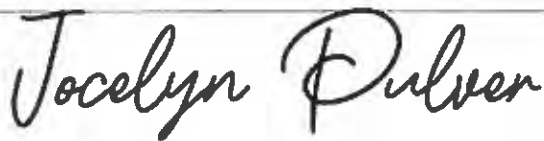
Hello,

I support the subdivision review for all land divisions as recommended by the Valley County planning and zoning board meeting on Oct 4, 2021. I urge the Valley County Commissioners to support the Planning and Zoning Board's recommendation.

A failure to support the Board would mean no oversight on planned subdivisions which would add to all the issues people in our community are experiencing. A failure to support our Zoning Board's recommendation would be a catastrophic mistake for our county, people, the land, wildlife, and watersheds.

Thank you,
Jocelyn

--



Jocelyn Pulver
Environmental Consultant, CJ Environmental, LLC

208-869-6903 | jpulver1212@gmail.com

McCall, ID, 83638



Please consider your environmental responsibility. Before printing this e-mail message, ask yourself whether you really need a hard copy.

"Just because something doesn't do what you planned it to do doesn't mean it's useless." - Thomas A. Edison.

From: CHRIS CHURCH <christopherchurch@msn.com>
Sent: Thursday, February 3, 2022 7:42 PM
To: Cynda Herrick <cherrick@co.valley.id.us>
Cc: Valley County Commissioners <commissioners@co.valley.id.us>
Subject: Subdivision Review

I support the subdivision review for all lands in Valley County. I urge County officials to support the Planning and Zoning Board's recommendation, especially with the amount of growth we are seeing to our area.

Thanks,

Christopher L. Church
12 Buckskin Dr., Donnelly, ID 83615

From: Bethany T <bethanylengfellner@gmail.com>
Sent: Wednesday, February 9, 2022 10:02 AM
To: Cynda Herrick <cherrick@co.valley.id.us>; Valley County Commissioners <commissioners@co.valley.id.us>
Subject: Subdivision review

Hello

I support the subdivision review for all land divisions as recommended by the Valley County planning and zoning board meeting on Oct 14, 2021. I urge the Valley County Commissioners to support the Planning and Zoning Board's recommendation.

A failure to support the Board would mean no oversight on planned subdivisions which would add to all the issues people in our community are experiencing. A failure to support our Zoning Board's recommendation would be a catastrophic mistake for our county, people, the land, wildlife, and watersheds.

Concerned Valley County resident,
Bethany Thomas

Fwd: Title 10 sub regulations

Dave Bingaman <davebing70@gmail.com>

Tue 1/18/2022 8:44 AM

To: Cynda Herrick <cherrick@co.valley.id.us>

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I just got this and wanted you to have it too! Happy Monday/Tuesday!

Dave

----- Forwarded message -----

From: **Rick Fereday** <aviator81t@gmail.com>

Date: Tue, Jan 18, 2022 at 7:06 AM

Subject: Title 10 sub regulations

To: Dave Bingaman <davebing70@gmail.com>, elt Hasbrouck <ehasbrouck@co.valley.id.us>, <elting.hasbrouck@gmail.com>

Dave & Elt,

I support tightening up existing ordinances to make subdivision requirements more restrictive. Beyond that - the County should be initiating a full zoning study to put in place zoning for Round Valley north to the Adams county line for the valley floor and associated nearby lands. In total support of initiating a moratorium.

I believe that your requirements for public comment are unrealistic at 1 week before meetings. Should not be more than 2 days before. Deb and I looked at this yesterday and realized it was too late to comment. We weren't going to comment but thought that you may read your personal emails.



Rick Fereday

January 15, 2022

To the Valley County Commissioners:

Thank you for protecting the lands and waterways from being overdeveloped by creating this ordinance concerning 26 acre splits; title 10. THIS IS ONLY A BEGINNING!

The need for valley wide zoning is an immediate need.

Be pro-active with this complex issue. Create a pause of all development until a full detailed comprehensive plan is put together. Protecting the lands, waters, night sky, and environment for the well being of this immense area is vitally important. We neighbor the largest wild place of the lower 48 states of America; something beyond monetary value. Stop the greed of those who wish to exploit this place we call home.

The growth & sustainability concerns of Valley County need to be addressed in depth. Those issues include, but are not limited to:

- Agriculture, farming and ranching
- Infrastructure of all utilities
 - Water, sewer/septic, garbage, electric, technology
- Infrastructure of roads & byways, including maintenance
- Infrastructure of emergency services & healthcare
- Fiscal responsibility to ensure proper implementation
- Most importantly, green space, natural environments on all levels to ensure the spirit and well-being of all communities

Empower the public to bring suggestions for solutions, comments of concerns and issues; ideas for wise use and balanced growth. Use the experiences of places that have failed and concepts that may apply to our needs.

Now is the time! We cannot put off our responsibilities to protect the future of one of the last great places on earth.

LYNN LEWINSKI · MC CALL IDAHO

Ex 1

Dick Kleint - Parcel # RP16N03E227205 - Request For Official Split.

Richard Kleint <richardkleint@gmail.com>

Tue 11/30/2021 7:29 PM

To: Cynda Herrick <cherrick@co.valley.id.us>

Cc: Lori Hunter <lhunter@co.valley.id.us>

📎 1 attachments (829 KB)

Dick Kleint - Parcel ## RP16N03E227205.PNG.jpg;

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Cynda and Lori,

In preparation for the December 6th meeting, I would like to present the attached picture showing why I believe my above parcel meets all of the requirements for access to power, water, sewer, and road.

I plan to attend the meeting as well.

FYI and thank you,

Dick Kleint

E-mail: richardkleint@gmail.com

Cell: 971-288-6872



Water (Red)
Sewer (Red)
House (Orange)
Road (Yellow)
Power (Blue)



Dick Kleint - Parcel# RP16N03E227205

October 5, 2021

Valley County Commissioners

Regarding the 160 acre "emergency" ordinance

Our Valley County Commissioners have discovered an emergency where there is no emergency at all. You have enacted an ill-thought out ordinance that in the end, does not really help anybody.

Idaho Code section 67-6508(a) says you must Implement your development plan, in order: "...to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property...

This 160 acre ordinance will clearly make land more expensive, and it clearly creates unnecessary technical limitations on the use of property.

The ordinance wants 20 acre parcels to qualify for septic systems.....

There is definitely a demand in the marketplace for land that does not support a septic system. The demand exists because land is expensive, and if no septic is possible, it means that particular piece of land is cheaper. As a real estate agent I have sold many lots that would not support a septic system. None of the buyers have complained. Why do the commissioners wish to deny these buyers the opportunity to buy land here?

The ordinance wants 20 acre parcels to have year round access.....

There is definitely a demand in the marketplace for land that does not have year round road access. The demand exists because land is expensive, and no winter access means that particular piece of land is cheaper. Again, I have sold many lots that do not have year round access. None of the buyers have complained. Why do the commissioners wish to deny these buyers the opportunity to buy land here?

The ordinance wants 20 acre parcels to have electricity.....

There is also definitely a demand in the marketplace for land that does not have electricity. The demand exists for a couple of reasons. Yes, one is because land is expensive and no electricity means that particular piece of land is cheaper. Again, as a real estate agent I have sold many lots that do not have electricity. None of the buyers have complained. There is currently a pretty big movement to build off the grid. There is even a TV show. People want that place with no electricity, that place that is typically 'way out' and difficult to get to, in order to build their really secluded off the grid cabin. Why do the commissioners wish to deny these buyers the opportunity to buy land here?

These potential buyers are the people who are denied opportunities to buy in Valley County because the Commissioners think these potential buyers should be protected..... from themselves.

But what about us landowners / sellers?

You and I had a deal that said we could easily make 20 acre parcels. Toward that end, companies that I am part of have spent over \$100K getting ready to make some of those 20 acre parcels. This 160 acre non-emergency ordinance does not make me happy.

One project will merely be delayed and cost more money. Because it costs more, we will go to smaller parcels. The other project will require the building of a multi-hundred thousand dollar road and that will in essence ruin the potential 20 acre parcels. Building that expensive road means that we would absolutely need to make smaller parcels to cost justify the project.

So the commissioners have enacted an ordinance that denies many buyers the possibility of buying land in Valley County, which would in turn increase the tax base. WHY?

Moreover, the commissioners have enacted an ordinance that in some cases ruins the possibility of making 20 acre parcels, and definitely forces the creation of smaller parcels. WHY?

This is a bad ordinance, please rescind it. And do not try to compromise at 40 acre parcels, that did not fly before and it should not fly now.

Dwight Jividen
413 Cabarton Road
Cascade, ID 83611
208-315-3034

From: Rem Fox <rem@madfoxfarms.com>
Sent: Wednesday, September 15, 2021 10:37 AM
To: Valley County Commissioners <commissioners@co.valley.id.us>
Subject: Thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I read in the Star news that you supported the 20 acre subdividing moratorium. I want to thank you for considering the over building in Valley County without the substantial process of services, septic and water table studies. We have reached a time period where water resource mgmt. is not an option but rather a factual outcome in the decision of permitting builds. I can only assume you are aware of how many wells have dried up this year in the State of Idaho and I have great concerns over this supporting conservation practices and land mgmt.. I just wanted to say thank you for effort here. I have great concerns for overbuilding and balancing agriculture needs in valley county.

Thank you,

Rem Fox
Mad Fox Farms
Cascade, Id 83611
425-315-2617



October 28th, 2021

Wesley Keller wkwesleykeller@gmail.com
260 Moonridge Drive
McCall, ID 83638

Dear Valley County Planning & Zoning Commission,

Thank you for the opportunity to provide comments on the **Ordinance Amendment Revision to Title 10 Valley County Code**. I support your decision to modify the minimum size of a rural parcel from 20 acres to 160 acres. With Valley County growing and being developed at its current rate, it is wise to ensure that groundwater, septic, power, road rights of way are thought through proactively rather than reactively. With outside developers moving in I have witnessed 20 acre lots being developed, without much planning, that will likely bring about issues in the future. I think the County is doing the right thing with this Ordinance Amendment so thoughtful development and protection of open space continues to exist in Valley County.

Thanks for your consideration.

Sincerely,

Wesley Keller



Valley County Transmittal
Division of Community and Environmental Health

Return to:

- ☐ Cascade
☐ Donnelly
☐ McCall
☐ McCall Impact
☒ Valley County

Rezone # Ordinance Amendment

Conditional Use # Revision to Title 10 Valley County Code

Preliminary / Final / Short Plat _____

- ☒ 1. We have No Objections to this Proposal.
- ☐ 2. We recommend Denial of this Proposal.
- ☐ 3. Specific knowledge as to the exact type of use must be provided before we can comment on this Proposal.
- ☐ 4. We will require more data concerning soil conditions on this Proposal before we can comment.
- ☐ 5. Before we can comment concerning individual sewage disposal, we will require more data concerning the depth of:
☐ high seasonal ground water ☐ waste flow characteristics
☐ bedrock from original grade ☐ other _____
- ☐ 6. This office may require a study to assess the impact of nutrients and pathogens to receiving ground waters and surface waters.
- ☐ 7. This project shall be reviewed by the Idaho Department of Water Resources concerning well construction and water availability.
- ☐ 8. After written approvals from appropriate entities are submitted, we can approve this proposal for:
☐ central sewage ☐ community sewage system ☐ community water well
☐ interim sewage ☐ central water
☐ individual sewage ☐ individual water
- ☐ 9. The following plan(s) must be submitted to and approved by the Idaho Department of Environmental Quality:
☐ central sewage ☐ community sewage system ☐ community water
☐ sewage dry lines ☐ central water
- ☐ 10. Run-off is not to create a mosquito breeding problem
- ☐ 11. This Department would recommend deferral until high seasonal ground water can be determined if other considerations indicate approval.
- ☐ 12. If restroom facilities are to be installed, then a sewage system MUST be installed to meet Idaho State Sewage Regulations.
- ☐ 13. We will require plans be submitted for a plan review for any:
☐ food establishment ☐ swimming pools or spas ☐ child care center
☐ beverage establishment ☐ grocery store
- ☐ 14. _____

Reviewed By: WHR

Date: 2/17/21

Fw: VSWCD Comment

Cynda Herrick <cherrick@co.valley.id.us>

Mon 10/18/2021 1:18 PM

To: Lori Hunter <lhunter@co.valley.id.us>

Cynda Herrick, AICP, CFM
Valley County
Planning and Zoning Director
Floodplain Coordinator
PO Box 1350
Cascade, ID 83611
(208)382-7115

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

Service **T**ransparent **A**ccountable **R**esponsive

From: Farr, Durena - NRCS-CD, Cascade, ID <Durena.Farr@id.nacdnet.net>

Sent: Friday, September 3, 2021 7:22 PM

To: Cynda Herrick <cherrick@co.valley.id.us>; Dave Bingaman <dbingaman@co.valley.id.us>; Sherry Maupin <smaupin@idahofirstbank.com>; Elt Hasbrouck <ehasbrouck@co.valley.id.us>; Douglas Miller <dmiller@co.valley.id.us>

Subject: VSWCD Comment

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Please accept attached comment from Valley Soil & Water Conservation District Board.

Thank you

Durena L. Farr



Valley Soil & Water Conservation District
209 N Idaho Street
PO Box 580
Cascade, Idaho 83611
(208) 315-3530
Durena.Farr@id.nacdnet.net



Valley Soil & Water Conservation District
209 N Idaho Street
Cascade, ID 83611

September 3, 2021

Valley County Commissioners
PO Box 1350
219 North Main Street
Cascade, ID 83611-1350

Honorable Commissioners,

The Valley Soil and Water Conservation District supports the proposed moratorium on subdivisions of agricultural lands in Valley County. The District Board has unanimously voted to submit this letter stating the District's recommendation that only parcels of more than 160 acres be allowed to be split, without County review and input, from larger parcels for the proposed 182-day moratorium. We feel there are strong indications and District experience to support our position.

Lake Irrigation District has encountered many difficulties when dealing with landowners in large, subdivided farms that have been cut off from their water allotment when the developer didn't include irrigation infrastructure in the development phase. Even though lot owners are no longer able to access their water they are still required to pay for their allotment. This has created ongoing friction between water managers and lot owners for many years. State Water Law allows Irrigation Districts to take back water allotments. However, in some Districts, this is only allowed if the individuals wishing to divest themselves from their allotment find a willing taker within the Irrigation District. This is a complex and burdensome process which may take years to complete (Idaho Statute; Title 31; Chapter 38 discusses this very issue. A close reading of this Statute covers many issues surrounding subdivisions of irrigated land).

We believe that a moratorium on subdivision of parcels of no less than 160 acres provides a more realistic approach to work out some of the complex issues surrounding the pressures brought on by rapid real estate development in our County.

Thank you for your consideration,
Valley Soil and Water Conservation District Board
Art Troutner, Paul Kleint, John Lillehaug, Bill Leaf and Colt Brown

VSWCD/dlf

RE: Public Hearing - Title 10 Subdivision Regulations - Jan. 18, 2022

Mike Reno <MReno@cdh.idaho.gov>

Wed 12/15/2021 11:09 AM

To: Lori Hunter <lhunter@co.valley.id.us>

Cc: Tom White <TWhite@cdh.idaho.gov>; Suzanne Mack <SMack@cdh.idaho.gov>; Jack Nygaard <JNygaard@cdh.idaho.gov>

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Lori,

CDH has no objections.

Mike Reno



Mike Reno | Program Manager
Community & Environmental Health
P. 208-327-8522 | M. 208-869-9144 | F. 208-327-8553
E. MReno@cdh.idaho.gov | W. cdh.idaho.gov
707 N. Armstrong Pl., Boise, ID 83704

Excellence | Positive Impact | Partnership | Innovation | Credibility | Humanity

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From: Rem Fox <rem@madfoxfarms.com>
Sent: Thursday, December 16, 2021 10:24 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Cc: Douglas Miller <dmiller@co.valley.id.us>
Subject: Comment Submittal Fox- Public Hearing - Title 10 Subdivision Regulations - Jan. 18, 2022

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning,

I would like to submit this email as a comment on the proposed Title 10 modification in Valley County.

My wife and I have been part time residents at 11062 Twin View in Cascade for 13 years. We recently rebuilt our home this year with plans to become full time residents in July of 2022. We own 11 acres and plan to have a small agriculture operation.

I appreciate the formulation of stronger requirements to govern the home building pace in valley county. I would specifically like to comment about natural resource studies in terms of impact related to water. In subdivision locations like the Goslin tract, there are no natural streams with water rights, so all water is supported by wells. Even as a part time resident, last year we started to have well problems and as the summer progressed, our well has experienced less water and we are going to have to redrill.

Whether individual studies or larger tract studies occur, I feel it is important to know the water resource impact for all building growth. Especially with the large developments that have been approved like the river district. It wont be known for some time how the ground water impacts will turn out. With climate changes and more users, resource management is key to availability. If that is a consideration in public comment, I think residents would support the importance of periodic studies to prevent problems.

Appreciate your efforts on this topic.

Rem and Karman Fox

From: djividen@frontiernet.net <djividen@frontiernet.net>
Sent: Tuesday, January 4, 2022 8:13 AM
To: Valley County Commissioners <commissioners@co.valley.id.us>
Cc: Cynda Herrick <cherrick@co.valley.id.us>
Subject: 160 Acre "Emergency Ordinance"

Valley County Commissioners,

Regarding the misguided elimination of the 20 acre "simple split".

This effort to eliminate the 20 acre 'simple split' is at best misguided and closer to criminally offensive to the landowning citizens of Valley County. There was no emergency necessitating the change to 160 acres and there is no emergency today. Moreover, there is certainly no need to mandate that in order to create 20 acre parcels, a normal subdivision must be done.

Eliminating the split will limit available large lots, exacerbate already rising land prices, hit existing landowners with needless limitations, and deny the county an increase in its tax base which would come with little, or in most cases, no increase at all in county services.

There is no valid reason to eliminate the 20 acre split. It has been theorized that there is a problem with land that has no winter access, or no electricity available, or no septic or sewer system available. Yet in the real estate marketplace, I can testify with 35 years of experience, there is SIGNIFICANT demand for properties with each of these attributes. Primarily the demand is from those seeking 'cheaper' land, but increasing demand also comes from those who specifically want to be without winter access and/or specifically do not care about electric power.

As a real estate agent, I have helped many buyers and sellers move land with these so called problem properties. Many of these lots were in Valley County, many of them as small as 5 acres. I have also personally bought and sold land with these same attributes. NOBODY ever had a complaint or problem with their transactions.

I am part owner of 2 companies that have been working towards selling some 'simple split' 20 acre lots. Toward that end, over the last few years, we have spent \$100,000 plus, and now you are proposing to give us the shaft by changing a decades long-standing rule telling us we can no longer do those 'simple splits' that we have been working toward. This is just plain wrong. It seems like you are cancelling a contract without good cause.

The county does not have to "control" everything. If you really need to change the rules, make it so the 'simple split' to 20 acres only happens with some sort of legal access. That is all the public really needs. Making a full on subdivision in many areas that legitimately could or should have 20 acre lots will become impossible with the proposed rules.

I strongly urge you to give up this needless over-legislating of land splits.

Dwight Jividen
413 Cabarton Road
Cascade, ID 83611
djividen@frontiernet.net

Correspondence from Joshua L.J. Leonard, Clark Wardle

*	Date and Time	Topic
	Oct. 18, 2021 3:35 PM Oct. 18, 2021 12:28 PM Oct. 18, 2021 11:30 AM Oct. 18, 2021 10:57 AM Sept. 23, 2021 10:56 AM	"Proposed Subdivision Ordinance Amendments" email chain between J. Leonard & C. Herrick
	Oct. 18, 2021	Public Records Request
	Nov. 18, 2021 11:34 AM Nov. 18, 2021 11:33 AM Nov. 18, 2021 11:23 AM Nov. 3, 2021 8:50 AM Nov. 2, 2021 7:25 PM	"Proposed ordinance amendment (12/6/2021 Bd. Of Commrs meeting) email chain between J. Leonard & C. Herrick
*	Nov. 18, 2021 5:02 PM	response letter dated Nov. 18, 2021
	Nov. 29, 2021 1:43 PM	"Deadline for written public comments on Subdivision Ordinance" – referred to Procedures for <u>Public Hearings 2020</u> that was on website
*	Nov. 29, 2021 4:59 PM	Response letters dated Nov. 19, 2021 & Nov. 29, 2021
*	Nov. 29, 2021 4:57 PM	
*	Dec. 3, 2021 3:38 PM Dec. 3, 2021 2:47 PM	Letter dated Dec. 3, 2021 – J. Leonard to B. Naugle
*	Jan. 11, 2022 4:56 PM	Response letter dated Jan. 11, 2022

- * Emails were presented in record at public hearings or sent directly to Board of County Commissioners (cc'd).

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Monday, October 18, 2021 3:35 PM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: RE: proposed subdivision ordinance amendments

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10:30 AM? If that works for you, will you call my cell? 208 ~~208-382-7115~~

Thank you!

- Josh

Joshua J. Leonard, Attorney

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

From: Cynda Herrick <cherrick@co.valley.id.us>
Sent: Monday, October 18, 2021 12:28 PM
To: Josh Leonard <jleonard@clarkwardle.com>
Subject: Re: proposed subdivision ordinance amendments

Tomorrow is wide open....let me know what time works for you....the earlier the better for me.

Cynda Herrick, AICP, CFM
Valley County
Planning and Zoning Director
Floodplain Coordinator
PO Box 1350
Cascade, ID 83611
(208)382-7115

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

Service **T**ransparent **A**ccountable **R**esponsive

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Monday, October 18, 2021 11:30 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: RE: proposed subdivision ordinance amendments

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Hi, Cynda -

Thank you for reaching out. I would love to discuss changes to the County's subdivision process, but my day today is C~R~A~Z~Y. In fact, my week is pretty terrible, but... I can do any time between 10:30 am and 4:00 pm tomorrow (Tuesday, 10/19), or any time after 3:00 pm on Friday, 10/22. Do you have availability for a phone call in either of those windows? If not, let me know your availability and I'll try to move some things around on my calendar.

Thanks again,

- Josh

Joshua J. Leonard, Attorney

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

From: Cynda Herrick <cherrick@co.valley.id.us>
Sent: Monday, October 18, 2021 10:57 AM
To: Josh Leonard <jleonard@clarkwardle.com>
Subject: Re: proposed subdivision ordinance amendments

Hello Josh,

I would be interested in your recommendations on changing the process for subdivision approvals as you stated at the October 14 hearing.

If you would like to discuss please let me know....

Thanks, Cynda

Cynda Herrick, AICP, CFM
Valley County
Planning and Zoning Director
Floodplain Coordinator
PO Box 1350
Cascade, ID 83611
(208)382-7115

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

Service **T**ransparent **A**ccountable **R**esponsive

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Thursday, September 23, 2021 10:56 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: proposed subdivision ordinance amendments

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Cynda -

I've had a couple of clients reach out to me to ask about Valley County's proposed amendment to the minimum lot split parcel size in the Subdivision Ordinance. Can I get a copy of the ordinance that was approved/adopted on September 7th, along with the staff report to the Board of County Commissioners? Can I also get a copy of the proposed draft ordinance (and staff report) that the Board of County Commissioners will be considering after the public hearing on October 14th? (Let me know if I need to submit a public records request to obtain these documents.)

Also, can you tell me... is the Board of County Commissioners pretty set on 160 acres? And how was that number (160 acres) reached?

I'm happy to get on a call, if it would be easier/quicker to discuss than to exchange emails - just let me know. (My cell is 208-891-0874.)

Thanks, Cynda -

- Josh



Joshua J. Leonard

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Front Desk 208.388.1000 | Fax 208.388.1001

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REQUEST TO EXAMINE/COPY
PUBLIC RECORDS

TO: Valley County Clerk
Doug Miller
Phone: (208) 382-7102
Fax: (208) 382-7107

DATE: 10/18/2021

I hereby request, pursuant to Idaho Code § 74-102, to examine and/or copy the following public records:

all emails sent by Cynda Herrick to one or more
members of the Valley County Planning & Zoning
Commission between October 1, 2021 and
October 17, 2021

☐ These records specifically pertain to myself.

☐ I wish to merely examine these records.

☒ I wish copies of these records.

Printed Name: Joshua Leonard

Mailing Address: P.O. Box 639
Boise, Idaho 83701-0639

jleonard@clarkwardle.com

Telephone Number: (208) 388-1000

Signature: 

*I acknowledge by my signature that the records sought by this request
will not be used for mailing list or telephone list as set forth in Idaho
Code §74-120*

REQUEST TO EXAMINE/COPY PUBLIC RECORDS

REQUEST TO EXAMINE/COPY
PUBLIC RECORDS

TO: Valley County Clerk
Doug Miller
Phone: (208) 382-7102
Fax: (208) 382-7107

DATE: 10/18/2021

I hereby request, pursuant to Idaho Code § 74-102, to examine and/or copy the following public records:

all emails sent by Cynda Herrick to, and all emails received by Cynda Herrick from, any of the following: Art Troutner, Paul Kleint, John Lillehaug, Justin Florence, and/or Durena Farr between July 15, 2021 and October 17, 2021

☐ These records specifically pertain to myself.

☐ I wish to merely examine these records.

☒ I wish copies of these records.

Printed Name: Joshua Leonard

Mailing Address: P.O. Box 639
Boise, Idaho 83701-0639

jleonard@clarkwardle.com

Telephone Number: (208) 388-1000

Signature: _____

I acknowledge by my signature that the records sought by this request will not be used for mailing list or telephone list as set forth in Idaho Code §74-120

REQUEST TO EXAMINE/COPY PUBLIC RECORDS

(3 of 4)

REQUEST TO EXAMINE/COPY
PUBLIC RECORDS

TO: Valley County Clerk
Doug Miller
Phone: (208) 382-7102
Fax: (208) 382-7107

DATE: 10/18/2021

I hereby request, pursuant to Idaho Code § 74-102, to examine and/or copy the following public records:

- a complete copy of the minutes of the September 7, 2021 meeting of the Board of County Commissioners
- a complete copy of the agenda of the September 7, 2021 meeting of the Board of County Commissioners

☐ These records specifically pertain to myself.

☐ I wish to merely examine these records.

☒ I wish copies of these records.

Printed Name: Joshua Leonard

Mailing Address: P.O. Box 639
Boise, Idaho 83701-0639
jleonard@clarkwardle.com

Telephone Number: (208) 388-1000

Signature: _____

I acknowledge by my signature that the records sought by this request will not be used for mailing list or telephone list as set forth in Idaho Code §74-120

REQUEST TO EXAMINE/COPY PUBLIC RECORDS

(4 of 4)

REQUEST TO EXAMINE/COPY
PUBLIC RECORDS

TO: Valley County Clerk
Doug Miller
Phone: (208) 382-7102
Fax: (208) 382-7107

DATE: 10/18/2021

I hereby request, pursuant to Idaho Code § 74-102, to examine and/or copy the following public records:

- a complete copy of Ordinance 2021-09, including any factual findings made by the Board of County Commissioners in adopting Ordinance 2021-09
 - a complete copy of all staff reports and supplemental staff reports to the Board of County Commissioners regarding Ordinance 2021-09
- ☐ These records specifically pertain to myself.

☐ I wish to merely examine these records.

☒ I wish copies of these records.

Printed Name:

Joshua Leonard

Mailing Address:

P.O. Box 639

Boise, Idaho 83701-0639

jleonard@clarkwardle.com

Telephone Number:

(208) 388-1000

Signature:



I acknowledge by my signature that the records sought by this request will not be used for mailing list or telephone list as set forth in Idaho Code § 74-120

REQUEST TO EXAMINE/COPY PUBLIC RECORDS

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Thursday, November 18, 2021 11:34 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: RE: proposed ordinance amendment (12/6/2021 Bd. of Commrs meeting)

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Perfect, thanks. And yes - working on examples now. I'll forward shortly.

Thanks,

- Josh

Joshua J. Leonard, Attorney

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

From: Cynda Herrick <cherrick@co.valley.id.us>
Sent: Thursday, November 18, 2021 11:33 AM
To: Josh Leonard <jleonard@clarkwardle.com>
Subject: Re: proposed ordinance amendment (12/6/2021 Bd. of Commrs meeting)

There is no link...

You go to the Valley County website and click on Watch Commissioner Meetings Live...it is an YouTube channel.

[Valley County Idaho - YouTube](#)

Did you have any examples you wanted to give me?

Cynda Herrick, AICP, CFM
Valley County
Planning and Zoning Director
Floodplain Coordinator
PO Box 1350
Cascade, ID 83611
(208)382-7116

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

Service **T**ransparent **A**ccountable **R**esponsive

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Thursday, November 18, 2021 11:23 AM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: RE: proposed ordinance amendment (12/6/2021 Bd. of Commrs meeting)

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Hi, Cynda -

What is the link to view tonight's Planning and Zoning work session? (I'm hoping to avoid having to drive up!)

Thank you!

- Josh

Joshua J. Leonard, Attorney

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

From: Cynda Herrick <cherrick@co.valley.id.us>
Sent: Wednesday, November 3, 2021 8:50 AM
To: Josh Leonard <jleonard@clarkwardle.com>
Subject: Re: proposed ordinance amendment (12/6/2021 Bd. of Commrs meeting)

The proposed ordinance is attached.

The P&Z Commission has set a work session to discuss subdivision processes on November 18, 2021, at 6:00 p.m. It is not a public hearing.

Cynda Herrick, AICP, CFM
Valley County
Planning and Zoning Director
Floodplain Coordinator
PO Box 1350
Cascade, ID 83611
(208)382-7115

"Live simply, love generously, care deeply, speak kindly, and leave the rest...."

Service **T**ransparent **A**ccountable **R**esponsive

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Tuesday, November 2, 2021 7:25 PM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: proposed ordinance amendment (12/6/2021 Bd. of Commrs meeting)

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Hi, Cynda -

Can I get a copy of the proposed subdivision ordinance amendment that the Board of County Commissioners will be considering at their 12/6 meeting?

Thank you!

- Josh



Joshua J. Leonard, Attorney

251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

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From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Thursday, November 18, 2021 5:02 PM
To: Cynda Herrick <cherrick@co.valley.id.us>
Cc: Scott Carlton <scott.carlton@dfdevelopmentllc.com>; Suzi Budge <sbs@sbsidaho.com>
Subject: letter to C. Herrick

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Cynda,

Please see attached.

Thank you,

- Josh



Joshua J. Leonard, Attorney
251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

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Joshua J. Leonard
jleonard@clarkwardle.com
(208) 388-1000

November 18, 2021

Sent via email to: CHerrick@co.valley.id.us

Cynda Herrick, Planning and Zoning Director
Valley County
P.O. Box 1350
Cascade, Idaho 83611

Re: Subdivision Processing - on the agenda of Planning & Zoning Commission's November 18, 2021 Work Session
CW File No. 24013.1

Dear Ms. Herrick,

As you know, I represent DF Development, LLC ("DF Development"), a Nevada limited liability company duly registered to do business in the state of Idaho. DF Development owns approximately 70,000 acres of property in Valley County.

When DF Development acquired its property, the Valley County Subdivision Ordinance excepted 20-acre rural parcels from the intensive standards required for a formal subdivision plat. However, on September 7, 2021, the Valley County Board of Commissioners adopted an Emergency Ordinance (2021-09) that changed the minimum size of a split from 20 acres to 160 acres. Subsequently, on October 14, 2021, the Planning and Zoning Commission recommended eliminating that exception altogether, which would have the effect of subjecting all property splits, regardless of the number or sizes of resulting parcels, to the intensive (and expensive) requirements applicable to a full subdivision. The Planning and Zoning Commission also expressly directed staff to return with suggestions for further amendments to the Valley County Subdivision Code that would require only a staff-level review of certain lot splits resulting in "rural," "primitive," or "off-the-grid" lots. The contemplated staff-level review would require significantly less that is currently required for subdivisions. (*See, e.g.*, Title 10, Chapter 5, Valley County Code.)

The Planning and Zoning Commission's clear direction to staff at the October 14 meeting was twofold:

- First, the commissioners wanted every subdivision of land to be subject to a basic, *minimum* review by County staff; and
- Second, the commissioners wanted only certain subdivisions --those proposing dense developments requiring urban services (electrical, sewer, water) to be subject to the intensive standards required for a subdivision.

DF Development fundamentally agrees with both elements of the Commission's direction to staff, but implementation of the first point must be contingent upon implementation of the second point, or DF Development's investment-backed expectations in acquiring its property holdings in Valley County will be frustrated.

As multiple people testified during the October 14, 2021 public hearing held by the Planning and Zoning Commission, there is significant demand for larger (20-80 acres), unimproved, natural, rural, mountainous land that is not easily accessible. The ordinance that the Planning and Zoning Commission recommended to the Board of Valley County Commissioners will reduce the supply of parcels that meet these criteria, thereby resulting in a sharp increase in the cost for such parcels.

The ordinance recommended by the Planning and Zoning Commission also will result in much higher costs and a much longer timeframe to do simple 2 and 3 lot subdivisions, which could have been exempt lot splits under the former exception for 20-acre minimum lots. Increased costs for what had been simple lot splits until the so-called "emergency" ordinance was adopted in September) will include:

- a. paying surveyors, engineers, architects, and attorneys to assist with the County's technical subdivision process;
- b. paying engineers to perform required septic and perc tests;
- c. paying engineers to design improve roads;
- d. paying contractors to construct improved roads to meet County road standards;
- e. paying attorneys to set up associations to maintain the improved roads, and then funding those associations; and
- f. paying engineers to design utilities infrastructure (in particular, electricity), and paying contractors to install the utilities infrastructure.

These costs likely will not be borne by developers; rather, they will be passed on to buyers in the form of higher per-acre property costs, thereby pricing many Valley County residents out of the Valley County property market, except for tiny lots in urban-style subdivisions of dozens (or hundreds) of single-family homes. And the number of such dense residential subdivisions with urban services (utilities) will sharply increase. If (for example) subdividing one 90-acre parcel into 3 lots, each of 30 acres, would be subject to the intensive (and expensive) formal subdivision process and would be required to meet the exacting requirements for a subdivision (*see* Title 10, Chapter 5, Valley County Code), then property owners will simply take the same hypothetical 90-acre parcel and subdivide it into a much more lucrative 180 lots, each just 0.5 acres.

To subject splits of large tracts of land to the intensive requirements of a full subdivision would violate the Valley County Comprehensive Plan in numerous ways, including (without limitation):

First, it would violate private property rights by creating unnecessary technical limitations on the use of private property (*see* Comp. Plan, Chapter 3, Goal I, Objectives 1 and 4 (p. 13); *see also* Comp. Plan, Chapter 3, Goal I, Objectives 4. and 5 (p. 13));

Second, it would violate private property rights by negatively impacting owners' economic interests (*see* Comp. Plan, Chapter 3, Goal I, Objectives 7.d. and e. (p. 14));

Third, it would deny a fundamental attribute of ownership - the ability to dispose of property by selling it (*see* Comp. Plan, Chapter 3, Goal I, Objective 7.e. (p. 14)); and

Fourth, it is unnecessary, and it fails to substantially advance its purpose (*see* Comp. Plan, Chapter 3, Goal I, Objective 7.f. (p. 14)).

For these reasons, we ask the Planning and Zoning Commission to consider recommending adoption of another Subdivision Ordinance amendment. This additional amendment must include the following elements:

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 A; provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"THERE IS NO PUBLIC STREET ACCESS OR UTILITY CONNECTION TO THE PROPERTY DESCRIBED IN THIS INSTRUMENT."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 C, provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"ACCESS TO THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS VIA EASEMENT, NOT VIA AN IMPROVED PUBLIC STREET OR PRIVATE ROAD."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 D, provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"AS OF THE DATE OF THIS INSTRUMENT, UTILITIES HAVE NOT BEEN INSTALLED TO SERVE THE PROPERTY DESCRIBED IN THIS INSTRUMENT."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirement, contained in Valley County Code § 10-5-1 E, of a public road connection; provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

**"THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS NOT
CONNECTED DIRECTLY TO A PUBLIC ROAD."**

- There also should be a way to advise potential buyers that the County has not reviewed and does not confirm such buyer's ability to obtain a building permit for the resulting parcel, because the split did not go through the full subdivision process.

By including these elements in a proposed ordinance, the Planning and Zoning Commission can balance the Constitutionally-guaranteed private property rights of DF Development (and other owners of large parcels of land) with the goals of the Planning and Zoning Commission, which included protecting uninformed, unsophisticated, and out-of-town buyers of Valley County property from a situation in which the property they purchased might be unbuildable.

Although we object that it does not include public participation or an opportunity for public comment, we look forward to watching tonight's Planning and Zoning Commission work session. We trust that Planning and Zoning staff will ensure that the Planning and Zoning Commission is aware of the concerns and recommendations of DF Development (and other owners of large tracts of land in Valley County), and that the Commission will consider such concerns and recommendations during tonight's work session.

A representative of DF Development, Scott Carlton, will be present tonight if questions arise from Commissioners.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua J. Leonard". The signature is stylized with a large, looped initial "J" and a cursive "L".

Joshua J. Leonard

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Monday, November 29, 2021 1:43 PM
To: Cynda Herrick <cherrick@co.valley.id.us>
Subject: deadline for written public comments on Subdivision Ordinance

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Cynda -

I have a few questions about the December 6th Commissioners' meeting and the Subdivision Ordinance Amendments:

- First, I know there's a "7-days before public hearing" deadline for written comments to be submitted, which would be today (Monday, 11/29) for comments related to the Subdivision Ordinance amendments. Do I need to get my letter to you by 5:00 PM (MST), or is the cut-off simply 11:59 PM?
- Second, the County's website has a link to a downloadable document entitled "Procedures for PUBLIC HEARINGS 2020" (see attached), which includes the following:

Procedures for PUBLIC HEARINGS 2020

PRIOR TO THE HEARING:

⇒ WRITTEN TESTIMONY TAKEN UP TO ONE WEEK IN ADVANCE

⇒ To Testify.....Sign up with the Clerk, Douglas Miller, as follows:

- Telephonically: (208)382-7102 until Friday preceding the hearing or E-mail dmiller@co.valley.id.us until testimony is opened
- In-Person...not at this time.

(Markups in red are mine.) Is this correct? There won't be an opportunity to provide in-person testimony at the December 6th Commissioners' meeting?

- Third, have the County Commissioners considered postponing the public hearing until after Highway 55 is re-opened?

Thanks, Cynda!

- Josh



Joshua J. Leonard, Attorney
251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
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From: Josh Leonard <jleonard@clarkwardle.com>

Sent: Monday, November 29, 2021 4:59 PM

To: Douglas Miller <dmiller@co.valley.id.us>

Cc: Valley County Commissioners <commissioners@co.valley.id.us>; Cynda Herrick <cherrick@co.valley.id.us>; Scott Carlton <scott.carlton@dfdevelopmentllc.com>; Suzi Budge <sbs@sbsidaho.com>

Subject: RE: Public Comment: Subdivision Ordinance Amendment

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Please also include the attached letter dated November 18, 2021, in the record.

Joshua J. Leonard, Attorney

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jleonard@clarkwardle.com | Office 208.388.1000 | Fax 208.388.1001

From: Josh Leonard

Sent: Monday, November 29, 2021 4:57 PM

To: dmiller@co.valley.id.us

Cc: commissioners@co.valley.id.us; Cynda Herrick <cherrick@co.valley.id.us>; Scott Carlton <scott.carlton@dfdevelopmentllc.com>; Suzi Budge <sbs@sbsidaho.com>

Subject: Public Comment: Subdivision Ordinance Amendment

Please see attached for the record.

Thank you,



Joshua J. Leonard, Attorney

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Joshua J. Leonard
jleonard@clarkwardle.com
(208) 388-1000

November 18, 2021

Sent via email to: CHerrick@co.valley.id.us

Cynda Herrick, Planning and Zoning Director
Valley County
P.O. Box 1350
Cascade, Idaho 83611

Re: Subdivision Processing - on the agenda of Planning & Zoning Commission's November 18, 2021 Work Session
CW File No. 24013.1

Dear Ms. Herrick,

As you know, I represent DF Development, LLC ("DF Development"), a Nevada limited liability company duly registered to do business in the state of Idaho. DF Development owns approximately 70,000 acres of property in Valley County.

When DF Development acquired its property, the Valley County Subdivision Ordinance excepted 20-acre rural parcels from the intensive standards required for a formal subdivision plat. However, on September 7, 2021, the Valley County Board of Commissioners adopted an Emergency Ordinance (2021-09) that changed the minimum size of a split from 20 acres to 160 acres. Subsequently, on October 14, 2021, the Planning and Zoning Commission recommended eliminating that exception altogether, which would have the effect of subjecting all property splits, regardless of the number or sizes of resulting parcels, to the intensive (and expensive) requirements applicable to a full subdivision. The Planning and Zoning Commission also expressly directed staff to return with suggestions for further amendments to the Valley County Subdivision Code that would require only a staff-level review of certain lot splits resulting in "rural," "primitive," or "off-the-grid" lots. The contemplated staff-level review would require significantly less that is currently required for subdivisions. (*See, e.g., Title 10, Chapter 5, Valley County Code.*)

The Planning and Zoning Commission's clear direction to staff at the October 14 meeting was twofold:

- First, the commissioners wanted every subdivision of land to be subject to a basic, *minimum* review by County staff; and
- Second, the commissioners wanted only certain subdivisions --those proposing dense developments requiring urban services (electrical, sewer, water) to be subject to the intensive standards required for a subdivision.

DF Development fundamentally agrees with both elements of the Commission's direction to staff, but implementation of the first point must be contingent upon implementation of the second point, or DF Development's investment-backed expectations in acquiring its property holdings in Valley County will be frustrated.

As multiple people testified during the October 14, 2021 public hearing held by the Planning and Zoning Commission, there is significant demand for larger (20-80 acres), unimproved, natural, rural, mountainous land that is not easily accessible. The ordinance that the Planning and Zoning Commission recommended to the Board of Valley County Commissioners will reduce the supply of parcels that meet these criteria, thereby resulting in a sharp increase in the cost for such parcels.

The ordinance recommended by the Planning and Zoning Commission also will result in much higher costs and a much longer timeframe to do simple 2 and 3 lot subdivisions, which could have been exempt lot splits under the former exception for 20-acre minimum lots. Increased costs for what had been simple lot splits until the so-called "emergency" ordinance was adopted in September) will include:

- a. paying surveyors, engineers, architects, and attorneys to assist with the County's technical subdivision process;
- b. paying engineers to perform required septic and perc tests;
- c. paying engineers to design improve roads;
- d. paying contractors to construct improved roads to meet County road standards;
- e. paying attorneys to set up associations to maintain the improved roads, and then funding those associations; and
- f. paying engineers to design utilities infrastructure (in particular, electricity), and paying contractors to install the utilities infrastructure.

These costs likely will not be borne by developers; rather, they will be passed on to buyers in the form of higher per-acre property costs, thereby pricing many Valley County residents out of the Valley County property market, except for tiny lots in urban-style subdivisions of dozens (or hundreds) of single-family homes. And the number of such dense residential subdivisions with urban services (utilities) will sharply increase. If (for example) subdividing one 90-acre parcel into 3 lots, each of 30 acres, would be subject to the intensive (and expensive) formal subdivision process and would be required to meet the exacting requirements for a subdivision (*see* Title 10, Chapter 5, Valley County Code), then property owners will simply take the same hypothetical 90-acre parcel and subdivide it into a much more lucrative 180 lots, each just 0.5 acres.

To subject splits of large tracts of land to the intensive requirements of a full subdivision would violate the Valley County Comprehensive Plan in numerous ways, including (without limitation):

First, it would violate private property rights by creating unnecessary technical limitations on the use of private property (*see* Comp. Plan, Chapter 3, Goal I, Objectives 1 and 4 (p. 13); *see also* Comp. Plan, Chapter 3, Goal I, Objectives 4. and 5 (p. 13));

Second, it would violate private property rights by negatively impacting owners' economic interests (*see* Comp. Plan, Chapter 3, Goal I, Objectives 7.d. and e. (p. 14));

Third, it would deny a fundamental attribute of ownership - the ability to dispose of property by selling it (*see* Comp. Plan, Chapter 3, Goal I, Objective 7.e. (p. 14)); and

Fourth, it is unnecessary, and it fails to substantially advance its purpose (*see* Comp. Plan, Chapter 3, Goal I, Objective 7.f. (p. 14)).

For these reasons, we ask the Planning and Zoning Commission to consider recommending adoption of another Subdivision Ordinance amendment. This additional amendment must include the following elements:

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 A; provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"THERE IS NO PUBLIC STREET ACCESS OR UTILITY CONNECTION TO THE PROPERTY DESCRIBED IN THIS INSTRUMENT."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 C, provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"ACCESS TO THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS VIA EASEMENT, NOT VIA AN IMPROVED PUBLIC STREET OR PRIVATE ROAD."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirements of Valley County Code § 10-5-1 D, provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

"AS OF THE DATE OF THIS INSTRUMENT, UTILITIES HAVE NOT BEEN INSTALLED TO SERVE THE PROPERTY DESCRIBED IN THIS INSTRUMENT."

- At the election of the subdivider, resulting parcels larger than [20, 40, or 60?] acres shall be exempted from the requirement, contained in Valley County Code § 10-5-1 E, of a public road connection; provided, however, that the following notation (or similar) must be included on the deed by which the parcel split is effected:

**"THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS NOT
CONNECTED DIRECTLY TO A PUBLIC ROAD."**

- There also should be a way to advise potential buyers that the County has not reviewed and does not confirm such buyer's ability to obtain a building permit for the resulting parcel, because the split did not go through the full subdivision process.

By including these elements in a proposed ordinance, the Planning and Zoning Commission can balance the Constitutionally-guaranteed private property rights of DF Development (and other owners of large parcels of land) with the goals of the Planning and Zoning Commission, which included protecting uninformed, unsophisticated, and out-of-town buyers of Valley County property from a situation in which the property they purchased might be unbuildable.

Although we object that it does not include public participation or an opportunity for public comment, we look forward to watching tonight's Planning and Zoning Commission work session. We trust that Planning and Zoning staff will ensure that the Planning and Zoning Commission is aware of the concerns and recommendations of DF Development (and other owners of large tracts of land in Valley County), and that the Commission will consider such concerns and recommendations during tonight's work session.

A representative of DF Development, Scott Carlton, will be present tonight if questions arise from Commissioners.

Very truly yours,



Joshua J. Leonard

Joshua J. Leonard
jleonard@clarkwardle.com

November 29, 2021

Via Email to County Clerk Doug Miller (dmiller@co.valley.id.us)

Board of Valley County Commissioners
c/o Doug Miller, County Clerk
219 North Main Street
P.O. Box 1350
Cascade, Idaho 83611

Re: Comment on Proposed Amendment to Valley County Subdivision Code
CW File No. 23902.6

Dear Valley County Commissioners:

This firm represents DF Development, LLC ("DF Development"), which owns roughly 70,000 acres of property in Valley County. We write in opposition to the proposed Valley County Subdivision Code amendments (the "Amendments"), which are a direct attack on private property rights.

When DF Development acquired its property, the Valley County Subdivision Ordinance excepted 20-acre rural parcels from intensive formal subdivision plat standards - lot splits resulting in parcels of 20 acres or more could be accomplished simply, without including the unnecessary technical requirements of a subdivision plat.¹ On September 7, 2021, however, the Valley County Board of Commissioners (the "Board") adopted an Emergency Ordinance (2021-09) that changed the minimum size of a split from 20 acres to 160 acres.

Emergency ordinances are authorized in Idaho's Local Land Use Planning Act, or "LLUPA," which provides (in pertinent part):

If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, *it shall state in writing its reasons for that finding.*

¹ See Title 10, Chapter 5, Valley County Code, for the technical standards required for a full subdivision plat.

Idaho Code (“I.C.”) § 67-6523, emphasis added. Although it was *called* an ‘Emergency Ordinance,’ and although it included vague, conclusory statements about “imminent peril to the public health, safety, or welfare... resulting in an emergency necessitating the immediate implementation of this Ordinance upon its passage,” the so-called ‘Emergency Ordinance’ failed to include any record of the *types* of impacts imminently likely to occur absent “immediate implementation” of the ordinance. In other words, the so-called ‘Emergency Ordinance’ failed to include any basis in fact upon which the Board could “state in writing its reasons for that finding” that an imminent peril to the public health, safety, or welfare existed. As a result, the so-called ‘Emergency Ordinance’ is void, and would be so found by a court of competent jurisdiction.

In the unlikely event that it withstood judicial scrutiny, state statute provides that the so-called ‘Emergency Ordinance’ “may be effective for a period of not longer than one hundred eighty-two (182) days” (I.C. § 67-6523), which would mean that the so-called ‘Emergency Ordinance’ would not expire until March 8, 2022.

Notwithstanding the ample time (until March 8, 2022!) during which a thoughtful, well-crafted, and legally sufficient amendment easily could be drafted, vetted, and made available for robust public comment, Valley County Planning and Zoning staff immediately began a rushed process to permanently amend the County’s Subdivision Ordinance to kill the 20-acre subdivision exception. On October 14, 2021, after an especially troubling public hearing,² the Planning and Zoning Commission (the “Commission”) recommended eliminating the 20-acre subdivision exception altogether, which would have the effect of subjecting all property splits, regardless of the number or sizes of resulting parcels, to the intensive (and expensive) requirements applicable to a full subdivision. The Commission also expressly directed staff to return with suggestions for further amendments to the Valley County Subdivision Ordinance that would require only a staff-level review of certain lot splits resulting in “rural,” “primitive,” or “off-the-grid” lots. Pursuant to comments made by the three Commission Members in attendance at the October 14 meeting, the contemplated staff-level review would require significantly less that is currently required for subdivisions. Our notes from the October 14 meeting note that the Commission’s clear direction to staff was twofold:

- First, Commission Members wanted every subdivision of land to be subject to a basic, minimum review by County staff; and

² We strongly encourage the Board of County Commissioners to listen to the record of the October 14, 2021, public hearing held by the Planning and Zoning Commission before taking any action on the proposed amendment to the County’s Subdivision Ordinance.

- Second, Commission Members wanted only certain subdivisions --those proposing dense developments requiring urban services (electrical, sewer, water) to be subject to the intensive standards required for a subdivision.

Our client, DF Development, fundamentally agrees with both elements of the Commission's direction to staff, but **implementation of the first point must be contingent upon implementation of the second point**, or DF Development's investment-backed expectations in acquiring its property holdings in Valley County will be frustrated.

County staff scheduled a work session on November 18, 2021, for the Commission to consider options for the "subdivision lite" ordinance it discussed during its October 14 meeting; however, the November 18 meeting was canceled for lack of a quorum.³

With County staff now advocating for permanent removal of the 20-acre exception *without* also pushing forward an accompanying "subdivision lite" ordinance, as directed by the Commission, the *private property rights of DF Development and many other owners of large tracts of land are in dire jeopardy*. County staff is asking the Board to approve an ordinance amendment that will require all lot splits to conform to the processes required in county code for formal subdivisions. The proposed ordinance amendment:

- violates private property rights;
- violates the County's comprehensive plan in several ways;
- is wholly unnecessary (it seeks to stop actions that already are illegal under the County's code);
- creates requirements that will result in unnecessary conditions, delays, and costs for landowners;
- significantly limits the availability of affordable rural and mountainous lots of all sizes, but particularly between 20-160 acres;
- incentivizes landowners to develop dense residential subdivisions with urban services;
- negatively affects DF Development and its large tracts of land more than any other landowner in the County; and
- reduces the likelihood that public access via DF Development -owned properties will be re-opened.

³ We believe only one Commission Member attended the Commission's November 18, 2021 work session. To our knowledge, the canceled work session has not been rescheduled.

A. THE PROPOSED ORDINANCE AMENDMENT VIOLATES PRIVATE PROPERTY RIGHTS AND THE COMPREHENSIVE PLAN.

The proposed ordinance amendment is an attack on private property rights, which puts the proposed ordinance in direct opposition to Valley County's Comprehensive Plan. The first goal identified in the Comprehensive Plan reads:

Goal I: Protect individual private property rights while considering community rights.

Valley County Comprehensive Plan, p.13.

1. The Proposed Ordinance Violates Private Property Rights by Creating Unnecessary Technical Limitations on the Use of Private Property.

The Comprehensive Plan's implementing objectives follow its stated goal to protect individual private property rights. The implementing objectives include the following points of analysis for all County land use actions, including the proposed ordinance amendment:

1. Design all provisions of the Comprehensive Plan in order to protect both private property rights and the community's rights to have a safe and healthy community.

[...]

4. Implement the Plan, in order: "...to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property..." (Idaho Code section 67-6508(a)).

Comp. Plan, Chapter 3, Goal I, Objectives 1 and 4 (p. 13), emphasis added. The above objectives are identified under the first goal in Valley County's Comprehensive Plan, which further recognizes the supreme importance Valley County citizens and their elected officials place on protecting individual private property rights.

2. The Proposed Ordinance Amendment Violates Private Property Rights by Negatively Impacting Owners' Economic Interests.

The Comprehensive Plan further emphasizes the importance of protecting private property rights by restating the Idaho Attorney General's checklist for determining a regulation's potential impact on private property rights:

7. Use the following generalization of the Idaho Attorney General's checklist as an implementation tool:

...

- d. Does the regulation or action have a significant impact on the landowner's economic interest in the property as a whole? (If yes, the impact must not be a severe reduction in value.)
- e. Does the regulation or action deny any fundamental attribute of ownership, such as the ability to possess, to exclude others, or to dispose of the property?

Comp. Plan, Chapter 3, Goal I, Objectives 7.d. and e. (p. 14), emphasis added. Each of these two subsections (d. and e.) is discussed in the following two sub-points:

a. Comp. Plan Chapter 3, Goal I, Objective 7.d.

The proposed ordinance amendment will significantly impact owners' economic interests. The subdivision ordinance that existed when DF Development purchased its property in Valley County allowed landowners to utilize a unilateral exception to the Subdivision Ordinance's platting requirements to create parcels comprised of 20 acres or more. The 20-acre exception to the subdivision requirement formed the basis for DF Development's business plan for all of its properties in Valley County. Under the "emergency" ordinance and the proposed ordinance recommended by the County's Planning and Zoning Commission, though, a landowner's ability to split a large tract of land into minimum 20-acre parcels is eliminated, thereby significantly negatively impacting DF Development's economic interest. *See* Comp. Plan, Chapter 3, Goal I, Objective 7.d. (p. 14).

b. Comp. Plan Chapter 3, Goal I, Objective 7.d.

The proposed ordinance amendment denies a fundamental attribute of ownership - ability to dispose of property. The "emergency" ordinance and the proposed ordinance recommended by the County's Planning and Zoning Commission do not directly deny DF Development its right to dispose of its Valley County properties; however, the effect of elimination of the 20-acre lot split exception is exactly that: By prohibiting 20-acre lot splits without going through a full subdivision process, Valley County effectively and materially inhibited DF Development's right to dispose of its Valley County properties. *See* Comp. Plan, Chapter 3, Goal I, Objective 7.e. (p. 14).

B. THE PROPOSED ORDINANCE AMENDMENT IS UNNECESSARY.

The proposed ordinance amendment is objectively unnecessary, because staff's complained-of issues already are illegal and the proposed ordinance amendment will not "substantially advance" the purpose for which staff proposed the ordinance amendment. Returning to the Idaho Attorney General's checklist (as restated in the Valley County Comprehensive Code) for determining a regulation's potential impact on private property rights:

- f. Does the regulation or action serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance that purpose?

Comp. Plan, Chapter 3, Goal I, Objective 7.f. (p. 14), emphasis added.

1. Staff's proposed ordinance amendment is aimed at curbing conduct that already is illegal.

Both the so-called 'emergency ordinance' and the proposed ordinance subsequently recommended by the Commission at its October 14 meeting were based on Valley County planning staff's allegations that:

- groundwater quality was suffering as a result of the construction and use of unpermitted septic systems and RV waste disposal;
- construction debris, abandoned or non-running vehicles, and other solid was accumulating on properties in Valley County;
- the lack of improved roads (to County standards) for emergency vehicle access poses a threat to public health and safety;
- the unavailability of utilities (particularly electricity) poses a threat to public health and safety;
- potential buyers of property need to be protected against unknowingly purchasing land that is ineligible for a building permit;

and that all these alleged harms somehow were caused, or were made materially worse, by the exception in Valley County's Subdivision Ordinance that authorizes lot splits into minimum 20-acre parcels, outside of the County's formal subdivision process.

Most of the harms alleged by staff to support the proposed ordinance amendment already are directly prohibited by law:

- unlawful installation of an unpermitted sewage disposal system (see Valley County Code §§ 3-1-2 through 3-1-4; see also IDAPA 58.01.03 (entitled “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), Section 012); and
- creating or contributing to a “nuisance” (see Valley County Code § 3-5-6 (“It shall be unlawful for any person to create or aid in creating or contributing to, or to maintain a nuisance, or to cast or having thrown and cast, to allow to remain upon or in any street, road, ditch, gutter, public place, private premises, vacant lot, watercourse, lake, spring or well, or in any building, any refuse, offal, garbage, dead animals, decaying vegetable matter, or solid waste substance of any kind.”), and § 1-3-2 (definition of “Nuisance,” which states: “Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the county, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.”)).

Enforcement by the County of its existing ordinances, which already directly prohibit the same conduct cited by staff in support of staff’s proposed ordinance amendment, would serve the same purpose as the proposed ordinance amendment. However, the direct prohibitions that already exist, do not violate private property rights (unlike the proposed ordinance amendment).

2. 20-Acre Parcels are Unrelated to the Harms Cited by Staff.

No causal link has been established between (a) parcels created using the 20-acre minimum lot size exception in the County’s Subdivision Code, and (b) staff’s complained-of harms. Although staff mentioned a couple of anecdotal, non-specific instances of problematic parcels, zero facts were provided to link staff’s assertions that the concerns are any worse on parcels created by one-time 20-acre lot splits than they are on parcels formed pursuant to the County’s formal subdivision process. Due to the lack of a causal link, removing the 20-acre minimum lot split exception from the County’s Subdivision will not materially cure any of staff’s complained-of harms listed above.

Returning to the sixth question in the Idaho Attorney General’s checklist for determining a regulation’s potential impact on private property rights (as restated in the Valley County Comprehensive Code):

- f. Does the regulation or action serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance that purpose?

Comp. Plan, Chapter 3, Goal I, Objective 7.f. (p. 14). The proposed ordinance amendment would “serve the same purpose that would be [*and already is*] served by directly prohibiting the use or action,” and the proposed ordinance amendment would not “substantially advance that purpose.” As a result, the proposed ordinance amendment violates both private property rights and the County’s Comprehensive Plan, and should not be adopted.

C. THE PROPOSED ORDINANCE AMENDMENT WOULD CREATE UNNECESSARY TECHNICAL LIMITATIONS ON THE USE OF PROPERTY.

The proposed ordinance amendment will “create unnecessary technical limitations on the use of property,” making it impossible to “avoid[] any unnecessary conditions, delays, and costs.” As a result, the proposed ordinance amendment is in direct violation of Valley County’s Comprehensive Plan:

4. Implement the Plan, in order: “...to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property... ” (Idaho Code section 67-6508(a)).
5. Design land use regulations to protect the health, safety, and welfare of the community, avoiding any unnecessary conditions, delays, and costs.

Comp. Plan, Chapter 3, Goal I, Objectives 4. and 5 (p. 13).

County staff is asking the Board of Valley County Commissioners to remove the 20-acre lot split exception, which allowed property owners to split their larger tracts of land into parcels of at least 20 acres. If the proposed ordinance amendment is approved, ALL lot splits will be required to go through the County’s detailed and highly technical subdivision processes, which includes innumerable unnecessary technical limitations, all of which will result in long delays and significantly increased costs, in violation of the Comprehensive Plan (*see* Comp. Plan, Chapter 3, Goal I, Objectives 4. and 5).

D. THERE IS DEMAND FOR UNIMPROVED, NATURAL, RURAL AND MOUNTAINOUS LAND.

There is a market for land that:

- isn’t easily accessible via an improved road that gets maintained year-round;
- may not support a septic system;
- doesn’t have electricity or other utility infrastructure; and

- as a result, is unlikely to have any permanent structures built on it.

If the County adopts the ordinance proposed by staff, then the supply of parcels that range in size between 20 acres and 160 acres will be significantly reduced, which will result in sharp increase in the cost for those parcels.

E. REQUIRING EVERY LOT SPLIT TO GO THROUGH THE FORMAL SUBDIVISION PROCESS WILL RESULT IN A SIGNIFICANT INCREASE IN THE NUMBER OF DENSE RESIDENTIAL SUBDIVISIONS WITH URBAN SERVICES (UTILITIES).

The ordinance amendment proposed by staff will result in much higher costs and a much longer timeframe to do simple 2 and 3 lot subdivisions, which could have been lot splits under the former exception for 20-acre minimum lots.

Increased costs for formal subdivisions will include:

- paying surveyors, engineers, architects, and attorneys to assist with the County's technical subdivision process;
- paying engineers to perform required septic and perc tests;
- paying engineers to design improve roads, and contractors to construct them;
- paying attorneys to set up associations to maintain the improved roads, and then funding those associations; and
- paying engineers to design utilities infrastructure (in particular, electricity), and paying contractors to install the utilities infrastructure.

These increased costs for formal subdivisions will be passed on to buyers. In fact, the proposed amendment will price many Valley County residents out of the Valley County property market, except for small lots in urban-style subdivisions of dozens (or hundreds) of single-family homes.

A proliferation of cell towers (and other infrastructure) will occur to serve more dense residential development, even in remote rural and mountainous areas of Valley County.

F. REQUIRING IMPROVED ROADS FOR ACCESS TO ALL PARCELS WILL HAVE UNFORESEEN NEGATIVE CONSEQUENCES.

Requiring improved access roads to every subdivided lot defeats the very purpose for which people often purchase property in hard-to-reach areas. Many people purchase remote rural or mountainous property because it's remote and hard-to-reach. Better access roads mean increased

availability of emergency services, but it also means that more vehicles of all kinds will have access to previously hard-to-reach areas. Everyone who purchases remote property accepts that emergency services will be less readily available to serve their property.

G. MORE ANALYSIS AND FACTFINDING IS NECESSARY.

Rather than adopting the rushed emergency ordinance, and instead of acting on the Planning and Zoning Commission's poorly-conceived recommendation to eliminate the exception to the County's Subdivision Ordinance for 20-acre minimum lots, the County has until March 8, 2022 (182 days from the date of the so-called "emergency ordinance") to research and examine possible alternative ordinance amendments, conduct stakeholder outreach, consider all potential impacts, and craft a more comprehensive proposed draft amendment that addresses the actual problem without trading one fixable problem for several much more difficult problems.

Instead of eliminating the exception to the subdivision ordinance for 20-acre minimum lots, could amend the Subdivision Ordinance to include a "primitive subdivision" or "off-the-grid subdivision" option to split remote, unimproved, less-accessible lots.

PLEASE DO NOT APPROVE THE TERRIBLE SUBDIVISION ORDINANCE AMENDMENTS.

Very truly yours,



Joshua J. Leonard

Cc: Cynda Herrick (cherrick@co.valley.id.us)

/lc

From: Brian Oakey <boakey@co.valley.id.us>
Sent: Friday, December 3, 2021 3:38 PM
To: Elt Hasbrouck <ehasbrouck@co.valley.id.us>; Sherry Maupin <smaupin@co.valley.id.us>;
Dave Bingaman <dbingaman@co.valley.id.us>
Cc: Cynda Herrick <cherrick@co.valley.id.us>; Brian Naugle <bnaugle@co.valley.id.us>
Subject: Fw: Proposed Amendment to Valley County Subdivision Code

Please review the attached letter carefully. I am sorry I am unable to be at the board meeting on Monday. As the letter correctly points out the emergency ordinance does not expire until March leaving plenty of time to review the risk of litigation and the legal issues raised by DF Developments attorney. I think it is wise to table this for now, schedule an executive session to review and discuss the issues and determine the best possible legal strategy going forward.

From: Sara Cousineau <scousineau@clarkwardle.com>
Sent: Friday, December 3, 2021 2:47 PM
To: Brian Naugle <bnaugle@co.valley.id.us>
Cc: Brian Oakey <boakey@co.valley.id.us>; Cynda Herrick <cherrick@co.valley.id.us>; Josh Leonard <jleonard@clarkwardle.com>
Subject: Proposed Amendment to Valley County Subdivision Code

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Please see the attached correspondence of today's date from Joshua Leonard.

Thank you,

Sara C. Cousineau, Paralegal
251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
scousineau@clarkwardle.com | Direct 208.388.0035 | Fax 208.388.1001



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Joshua J. Leonard
jleonard@clarkwardle.com

December 3, 2021

Via Email to: bnaugle@co.valley.id.us

Brian Naugle
Valley County Prosecuting Attorney
P.O. Box 1350
Cascade, Idaho 83611

Re: Proposed Amendment to Valley County Subdivision Code
CW File No. 23902.6

Dear Brian,

This firm represents DF Development, LLC ("DF Development"), which owns roughly 70,000 acres of property in Valley County. On Monday, December 6, 2021, at 2:00 PM, the Board of Valley County Commissioners ("Board") will hold a public hearing on staff-advanced amendments to the Valley County Subdivision Ordinance. Specifically, the proposed amendments eliminate the exception to the formal subdivision process for resulting parcels of 20 acres or more.

I write to notify you and, through you, Valley County, that our client has instructed us to file suit against the County if it adopts the proposed ordinance permanently eliminating the exception to formal subdivision requirements. The proposed amendments:

- **Exacerbate a legally insufficient (and thus invalid) "emergency" ordinance.** As discussed in greater detail in my letter to the Board dated November 29, 2021, the so-called "emergency" ordinance failed to include the most important element required of emergency land use ordinances by Idaho's Local Land Use Planning Act, or "LLUPA" (codified at Idaho Code ("I.C.") § 67-6501 *et seq.*) - the so-called "emergency" ordinance failed to "state in writing its reasons for that finding" that an emergency existed. In other words, the Board, when it adopted the so-called "emergency" ordinance on September 7, 2021, found the existence of "imminent peril to the public health, safety, or welfare," but provided neither a basis in fact for its finding nor the reasons supporting that finding. (See pages 1 and 2 of my letter to the Board, dated November 29, 2021, and I.C. § 67-6523 for additional information on emergency land use ordinances.)

- **Violate the County's Comprehensive Plan.** Pursuant to LLUPA, "zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan." (I.C. § 67-6511(1).) The proposed amendments are in *no way* "in accordance with" Valley County's Comprehensive Plan. (See my letter to the Board, dated November 29, 2021, for additional information about the proposed amendments' failure to comply with the Comprehensive Plan.)
- **Result from numerous procedural and substantive due process violations.** We encourage you to listen to the audio recording of the October 14, 2021, public hearing held by the Planning and Zoning Commission, during which innumerable procedural and substantive due process violations occurred.¹ We are confident that a legal challenge to the proposed amendments will be successful, due to the egregious due process violations that occurred during the Planning and Zoning Commission's public hearing on October 14, 2021.
- **Unduly and unnecessarily violate personal property rights to the point that it constitutes a "taking" of our client's property.** Our client, DF Development, LLC, purchased its significant Valley County property in reliance upon its ability to perform excepted 20-acre lot splits, which would result in the sale of reasonably-sized, affordable, natural, rural or mountainous lots. If the amendments are adopted and take effect, the County will be "taking" our client's property. And this isn't a small exercise of the County's eminent domain authority for public purposes; rather, this is a calculated "take," via inverse condemnation, of most or all of our client's 70,000 acres. We are confident that the County, if it adopts the proposed amendments, will be required to compensate DF Development for the lost value of its 70,000 acres in Valley County. As you no doubt recognize, even a small per-acre monetary award in a takings claim would be a significant financial hit to Valley County when multiplied over the 70,000 acres DF Development owns in Valley County.
- **Will result in costly litigation.** As mentioned at the outset of this letter, our client has directed us to file suit against the County on several bases if the proposed amendments are adopted. We truly hope that Valley County will recognize the considerable problems with these amendments; if not, however, the massive amount of property value that DF Development stands to lose as result of the County's bold attack on private property

¹ In addition to myriad other ways in which the rights of citizens and residents of Valley County were disregarded, we urge you to listen for two particular problems: First, the advocacy role assumed by staff; and second, the comment made by one of the Planning and Zoning Commissioners that he doesn't care what the public's comments were about the proposed ordinance.

rights will require DF Development to commit significant resources to defending against the County's ill-conceived and poorly executed inverse condemnation of private property.

We are confident that our client will prevail against the County's bold assault on Constitutionally-protected private property rights. Our confidence is based on: (a) the existence of innumerable due process violations during the County's development of the proposed amendments, and (b) the inverse condemnation that will occur if the proposed amendments are adopted. In particular, the inverse condemnation would come at great cost to Valley County.

We truly hope the Board recognizes its opportunity to prevent the long and expensive litigation that surely will result from its adoption of the proposed amendments. As we mentioned in our November 29 letter to the Board, the County has until March 8, 2022 (182 days from the date of the so-called "emergency" ordinance) to research and examine alternative ordinance amendments, conduct stakeholder outreach, consider all potential impacts, and craft a more comprehensive (and *legal*) proposed draft amendment that addresses the actual problems without requiring our clients to resort to court action to protect their private property rights.

Please contact me (208-388-3868, or jleonard@clarkwardle.com) with any questions, concerns, or responses to this letter.

Very truly yours,



Joshua J. Leonard

Cc: Brian Oakey (via email to: boakey@co.valley.id.us);
Cynda Herrick (via email to: cherrick@co.valley.id.us)

From: Josh Leonard <jleonard@clarkwardle.com>
Sent: Tuesday, January 11, 2022 4:56 PM
To: Douglas Miller <dmiller@co.valley.id.us>
Cc: Cynda Herrick <cherrick@co.valley.id.us>; **Valley County Commissioners**
<commissioners@co.valley.id.us>
Subject: Valley County Subdivision Code - proposed amendments

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please see attached - please provide to the Commissioners and include in the public record.



Joshua J. Leonard, Partner
251 E Front Street, Suite 310 | PO Box 639 | Boise, Idaho 83701
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Joshua J. Leonard
jleonard@clarkwardle.com

January 11, 2022

Via Email to County Clerk Doug Miller (dmiller@co.valley.id.us)

Board of Valley County Commissioners
c/o Doug Miller, County Clerk
219 North Main Street
P.O. Box 1350
Cascade, Idaho 83611

**Re: Comment on Proposed Amendment to Valley County Subdivision Code
CW File No. 23902.6**

Dear Valley County Commissioners:

As you know, this firm represents DF Development, which owns approximately 70,000 acres of property in Valley County. We continue to firmly oppose the draft amendments to the County's Subdivision Ordinance.

We share the common concern of Valley County residents that unchecked growth will change the unique characteristics and rural way of life that make Valley County so special, but we strongly disagree with the approach taken by the proposed amendments to the Subdivision Ordinance.

To summarize our arguments, the proposed amendments:

- Are an attack on Idahoans' private property rights;
- Violates the County's comprehensive plan;
- Will have the opposite of their intended effect;
- Do not stop or manage growth in Valley County;
- Incentivizes property owners to develop high-density, small lot, suburban, residential subdivisions;
- Significantly limits the availability and affordability of rural and mountainous lots; and
- Disproportionately affect owners of large tracts of land, including families that have owned their farmland and timberland for generations.

We also have significant concerns about the process by which the proposed amendments were developed. For example, we have submitted numerous written comments opposing the amendments, but the Staff

Reports linked on the County's official webpage reference none of our written comments.¹ Those Staff Reports do include the written comments submitted by others, but do not include the written comments submitted on behalf of DF Development in opposition to the proposed amendments. As another example, at the first public hearing held by the Board of Valley County Commissioners, it was obvious that our written comments, which were timely submitted several days before the meeting, were given to the Commissioners only a short time before the meeting. These examples are violations of DF Development's procedural due process rights.

We ask the Board of Valley County Commissioners to reject these terrible amendments to the County's Subdivision Ordinance.

At a minimum, we ask the Board to make permanent the amendment contained in the County's Emergency Ordinance. Specifically, instead of eliminating the exception to the subdivision requirements contained in Valley County Subdivision Code Section 10-1-3(A)(5), we ask the Board to keep the exception but modify the minimum parcel size from 20 acres to 160 acres.

We look forward to attending the Board's public hearing on January 18th to offer testimony and answer questions posed by the Commissioners.

Very truly yours,



Joshua J. Leonard

Cc: Cynda Herrick (cherrick@co.valley.id.us)

1

Board of County Commissioners

2022		
Date & Time	Name	Resources
Monday January 24 2 00 PM	Public Hearing - C.U.P. 21-36	Attachments CUP 21-36 Notice BOCC.pdf
Tuesday January 18 1 00 PM	Public Hearing - Title 10 Subdivision Regulations	Attachments Board - Title 10 Exceptions Jan 18 2022.pdf Staff Reports Addendum Dec 8 2021.pdf Dec 8 Staff Report Removal of Exception.pdf
Monday January 10 9 10 AM	Commissioners Meeting	Agendas Commissioners Agenda 01-10-22.docx

**Office of the
Attorney General**

**Idaho
Regulatory Takings Act
Guidelines**



MARCH 2020

LAWRENCE WASDEN
Attorney General
700 West Jefferson Street
Boise, ID 83720-0010
www.ag.idaho.gov



State of Idaho Office of Attorney General Lawrence Wasden

Dear Fellow Idahoans:

Property rights are most effectively protected when government and citizens understand their respective rights. The purpose of this pamphlet is to facilitate that understanding and provide guidelines to governmental entities to help evaluate the impact of proposed regulatory or administrative actions on private property owners.

One of the foundations of American democracy is the primacy of private property rights. The sanctity of private property ownership found expression in the 5th Amendment to the U.S. Constitution, written by James Madison, and in Article I, § 14 of the Idaho Constitution. Both provisions ensure private property, whether it be land or intangible property rights, and will not be arbitrarily confiscated by any agency of government.

Madison wrote in Federalist Paper 54, that "government is instituted no less for the protection of the property than of the persons of individuals." As your Attorney General, I feel a responsibility to ensure that the Constitution and state laws protecting the property rights of Idahoans are enforced. I am committed to ensuring that every state agency, department and official complies with both the spirit and letter of these laws.

In furtherance of this goal, the Idaho legislature enacted, and the Governor signed into law, Chapter 80, Title 67 of the Idaho Code. Originally passed in 1994, the law required the Attorney General to provide a checklist to assist state agencies in determining whether their administrative actions could be construed as a taking of private property. In 1995, the legislature amended the statute to apply to local units of government. Idaho Code § 67-6508 was also amended to ensure that planning and zoning land use policies do not violate private property

rights. In 2003, Idaho legislators amended Chapter 80, Title 67 of the Idaho Code, allowing a property owner to request a regulatory takings analysis from a state agency or local governmental entity should their actions appear to conflict with private property rights. In 2016, the legislature amended the statute to clarify that a property owner's right to request a regulatory takings analysis is discretionary and does not limit the property owner's right to pursue other legal or equitable remedies. The 2016 amendment also clarified that the regulatory takings analysis applies to potential takings of both real and personal property. Combined, these laws assure Idaho property owners that their rights will be protected.

My office has prepared this informational brochure for your use. If you have any questions, feel free to call your city or county prosecuting attorney.

LAWRENCE G. WASDEN
Attorney General

TABLE OF CONTENTS

IDAHO REGULATORY TAKINGS LAWS.....	1
IDAHO CONSTITUTIONAL PROVISIONS	1
IDAHO STATUTORY PROVISIONS	1
ADVISORY MEMORANDUM	5
GENERAL BACKGROUND PRINCIPLES	6
ATTORNEY GENERAL’S RECOMMENDED PROCESS.....	7
ATTORNEY GENERAL’S CHECKLIST CRITERIA	8
APPENDIX A: SIGNIFICANT FEDERAL AND STATE	
CASES	A-1
SUMMARIES OF SIGNIFICANT FEDERAL “TAKINGS” CASES.....	A-1
SUMMARIES OF SIGNIFICANT IDAHO “TAKINGS” CASES	A-9
APPENDIX B: REQUEST FOR REGULATORY	
TAKING ANALYSIS.....	B-1
APPENDIX C: REGULATORY TAKINGS CHECKLIST	C-1

Idaho Regulatory Takings Guidelines

IDAHO REGULATORY TAKINGS LAWS

Idaho Constitutional Provisions

Article I, section 13. Guaranties in criminal actions and due process of law. In all criminal prosecutions, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel.

No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law.

Article I, section 14. Right of eminent domain. The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

Idaho Statutory Provisions

67-8001. Declaration of purpose. The purpose of this chapter is to establish an orderly, consistent review process that better enables state agencies and local governments to evaluate whether proposed regulatory or administrative actions may result in a taking of private property without due process of law. It is not the purpose of this chapter to expand or reduce the scope of private property protections provided in the state and federal constitutions. [67-8001, added 1994, ch. 116, sec. 1, p. 265; am. 1995, ch. 182, sec. 1, p. 668.]

Idaho Regulatory Takings Act Guidelines

67-8002. Definitions. As used in this chapter:

“Local government” means any city, county, taxing district or other political subdivision of state government with a governing body.

“Private property” means all property protected by the constitution of the United States or the constitution of the state of Idaho.

“State agency” means the state of Idaho and any officer, agency, board, commission, department or similar body of the executive branch of the state government.

“Regulatory taking” means a regulatory or administrative action resulting in deprivation of private property that is the subject of such action, whether such deprivation is total or partial, permanent or temporary, in violation of the state or federal constitution. [67-8002, added 1994, ch. 116, sec. 1, p. 265; am. 1995, ch. 182, sec. 2, p. 668; am. 2003, ch. 141, sec. 1, p. 409.]

67-8003. Protection of private property.

1. The attorney general shall establish, by October 1, 1994, an orderly, consistent process, including a checklist, that better enables a state agency or local government to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in law. All state agencies and local governments shall follow the guidelines of the attorney general.

2. An owner of private property that is the subject of such action may submit a written request with the clerk or the agency or entity undertaking the regulatory or administrative action. Not more than twenty-eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the private property owner no longer than forty-two (42) days after the date of the filing of the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this action shall be considered public information.

3. A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. A

Idaho Regulatory Takings Act Guidelines

private property owner, whose property is the subject of governmental action, affected by a governmental action without the preparation of a requested taking analysis as required by this section, may seek judicial determination of the validity of the governmental action by initiating a declaratory judgment action or other appropriate legal procedure. A suit seeking to invalidate a governmental action for noncompliance with subsection (2) of this section must be filed in a district court in the county in which the private property owner's affected private property is located. If the affected property is located in more than one (1) county, the private property owner may file suit in any county in which the affected private property is located.

4. During the preparation of the taking analysis, any time limitation relevant to the regulatory or administrative actions shall be tolled. Such tolling shall cease when the taking analysis has been provided to the property owner. Both the request for a taking analysis and the taking analysis shall be part of the official record regarding the regulatory or administrative action.

5. A private property owner is not required to submit a request under this chapter. The decision by the private property owner not to submit a request under this chapter shall not prevent or prohibit the private property owner from seeking any legal or equitable remedy including, but not limited to, the payment of just compensation. [67-8003, added 1994, ch. 116, sec. 1, p. 265; am. 1995, ch. 182, sec. 3, p. 669; am. 2003, ch. 141, sec. 2, p. 409; am. 2016, ch. 225, sec. 1, p. 620.]

67-6508. Planning duties. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) **Property Rights --** An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

67-6523. Emergency ordinances and moratoriums. If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred eighty-two (182) days. Restrictions established by an emergency ordinance or moratorium may not be imposed for consecutive periods. Further, an intervening period of not less than one (1) year shall exist between an emergency ordinance or moratorium and reinstatement of the same. To sustain restrictions established by an emergency ordinance or moratorium beyond the one hundred eighty-two (182) day period, a governing board must adopt an interim or regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code. [67-6523, added I.C., sec. 67-6523, as added by 1975, ch. 188, sec. 2, p. 515; am. 2003, ch. 142, sec. 6, p. 415.]

67-6524. Interim ordinances and moratoriums. If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section 67-6509, Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one (1) calendar year, when it shall be in full force and effect. To sustain restrictions established by an interim ordinance or moratorium, a governing board must adopt a regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code. [67-6524, added I.C., sec. 67-6524, as added by 1975, ch. 188, sec. 2, p. 515; am. 2003, ch. 142, sec. 7, p. 415.]

ADVISORY MEMORANDUM

**STATE OF IDAHO ATTORNEY GENERAL'S ADVISORY
MEMORANDUM FOR EVALUATION OF PROPOSED
REGULATORY OR ADMINISTRATIVE ACTIONS TO
IDENTIFY POTENTIAL TAKINGS OF PRIVATE PROPERTY**

The Office of the Attorney General is required to develop an orderly, consistent internal management process for state agencies and local governments to evaluate the effects of proposed regulatory or administrative actions on private property. Idaho Code § 67-8003(1).

This is the Attorney General's recommended process and advisory memorandum. It is not a formal Attorney General's Opinion under Idaho Code § 67-1401(6), and should not be construed as an opinion by the Attorney General on whether a specific action constitutes a "taking." Agencies shall use this process to identify those situations requiring further assessment by legal counsel. Appendix A contains a brief discussion of some of the important federal and state cases that set forth the elements of a "taking."

State agencies and local governments are required to use this procedure to evaluate the impact of proposed administrative or regulatory actions on private property. Idaho Code § 67-8003(1). Upon the written request of an owner of private property that is the subject of such action, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Appendix B contains a form that can be used to request a taking analysis. Appendix C contains a sample form for completing a regulatory taking analysis. The written request must be filed *not more than* twenty-eight (28) days after the final decision concerning the matter at issue and the completed takings analysis shall be provided to the property owner *no longer than* forty-two (42) days after the date of filing the request with the clerk or secretary of the agency whose action is questioned. Idaho law also provides that "a regulatory taking analysis shall be considered public information." See Idaho Code § 67-8003(2).

Should a state agency or local governmental entity not prepare a regulatory taking analysis following a written request, the property owner may seek judicial determination of validity of the action by initiating legal action. Such a claim must be filed in a district court in the county in which the private property owner's affected private property is located. See Idaho Code § 67-8003(3).

General Background Principles

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. Article I, section 14 of the Idaho State Constitution provides in relevant part:

Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

Thus, under both the federal and state constitutions, private property may not be taken for public purposes without payment of just compensation.

Courts have recognized three situations in which a taking requiring just compensation may occur: (1) when a government action causes physical *occupancy* of property, (2) when a government action causes physical *invasion* of property, and (3) when government *regulation* effectively eliminates all economic value of private property. A “taking” may be permanent or temporary.

The most easily recognized type of “taking” occurs when government physically occupies private property. This may happen when the government exercises its eminent domain authority to take private property for a public use. Property owners must be paid just compensation when the government acquires private property through eminent domain authority. The types of public uses that may be the subject of eminent domain authority under state law are identified in section 7-701, Idaho Code. Clearly, when the government seeks to use private property for a public building, a highway, a utility easement, or some other public purpose, it must compensate the property owner.

Physical invasions of property, as distinguished from physical occupancies, may also give rise to a “taking” where the invasions are of a recurring or substantial nature. Examples of physical invasions include, among others, flooding and water-related intrusions and overflight or aviation easement intrusions.

Like physical occupations or invasions, a regulation that affects the value, use, or transfer of property may also constitute a “taking,” but only if it “goes too far.” Although most land use regulation does not constitute a “taking” of property, the courts have recognized that when regulation divests an owner of the essential attributes of ownership, it amounts to a “taking” subject to compensation.

Idaho Regulatory Takings Act Guidelines

Regulatory actions are harder to evaluate for “takings” because government may properly regulate or limit the use of private property, relying on its authority and responsibility to protect public health, safety and welfare. Accordingly, government may abate public nuisances, terminate illegal activity, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory “taking.” Government may also limit the use of property through land use planning, zoning ordinances, setback requirements, and environmental regulations.

If a government regulation, however, destroys a fundamental property right – such as the right to possess, exclude others from, or dispose of property – it could constitute a compensable “taking.” Similarly, if a regulation imposes substantial and significant limitations on property use, there could be a “taking.” In assessing whether there has been such a limitation on property use as to constitute a “taking,” the court will consider both the purpose of the regulatory action and the degree to which it limits the owner’s property rights.

An important factor in evaluating each action is the degree to which the action interferes with a property owner’s reasonable investment-backed development expectations; in other words, the owner’s expectations of the investment potential of the property and the impact of the regulation on those expectations. For instance, in determining whether a “taking” has occurred, a court might, among other things, weigh the regulation’s impact on vested development rights against the government’s interest in promulgating the regulation.

If a regulation prohibits all economically viable or beneficial uses of property, there may be liability for just compensation unless government can demonstrate that laws of nuisance or other pre-existing limitations on the use of the property prohibit the proposed uses.

If a court determines there has been a regulatory “taking,” the government has the option of either paying just compensation or withdrawing the regulatory limitation. If the regulation is withdrawn, the government may still be liable to the property owner for a temporary “taking” of the property.

Attorney General’s Recommended Process

1. State agencies and local governments must use this evaluation process whenever the agency contemplates action that affects privately owned property. Each agency and local government must also use this process to assess the impacts of proposed regulations before the agency publishes the regulations for public comment. In Idaho, real property

Idaho Regulatory Takings Act Guidelines

includes land, possessors' rights to land, ditch and water rights, mining claims (lode and placer), and freestanding timber. Idaho Code §§ 55-101 and 63-108. In addition, the right to continue to conduct a business may be a sufficient property interest to invoke the protections of the just compensation clause of the Idaho Constitution. For example, see Idaho Code §§ 22-4501 to 22-4504.

2. Agencies and local governments must incorporate this evaluation process into their respective review processes. It is not a substitute, however, for that existing review procedure. Since the extent of the assessment necessarily depends on the type of agency or local government action and the specific nature of the impacts on private property, the agency or local government may tailor the extent and form of the assessment to the type of action contemplated. For example, in some types of actions, the assessment might focus on a specific piece of property. In others, it may be useful to consider the potential impacts on types of property or geographic areas.

3. Each agency and local government must review this advisory memorandum and recommended process with appropriate legal counsel to ensure that it reflects the specific agency or local government mission. It should be distributed to all decision makers and key staff.

4. Each agency and local government must use the following checklist to determine whether a proposed regulatory or administrative action should be reviewed by legal counsel. If there are any affirmative answers to any of the questions on the checklist, the proposed regulatory or administrative action must be reviewed in detail by staff and legal counsel. Since the legislature has specifically found the process is protected by the attorney-client privilege, each agency and local government can determine the extent of distribution and publication of reports developed as part of the recommended process. However, once the report is provided to anyone outside the executive or legislative branch or local governmental body, the privilege has been waived.

Attorney General's Checklist Criteria

Agency or local government staff must use the following questions in reviewing the potential impact of a regulatory or administrative action on specific property. While these questions also provide a framework for evaluating the impact proposed regulations may have generally, takings questions normally arise in the context of specific affected property. The public review process used for evaluating proposed regulations is another tool that the agency or local government should use aggressively to safeguard rights of private property owners. If property is

Idaho Regulatory Takings Act Guidelines

subject to regulatory jurisdiction of multiple governmental agencies, each agency or local government should be sensitive to the cumulative impacts of the various regulatory restrictions.

Although a question may be answered affirmatively, it does not mean that there has been a “taking.” Rather, it means there could be a constitutional issue and that the proposed action should be carefully reviewed with legal counsel.

1. Does the Regulation or Action Result in a Permanent or Temporary Physical Occupation of Private Property?

Regulation or action resulting in a permanent or temporary physical occupation of all or a portion of private property will generally constitute a “taking.” For example, a regulation that required landlords to allow the installation of cable television boxes in their apartments was found to constitute a “taking.” See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164 (1982).

The acquisition of private property through eminent domain authority is distinct from situations where a regulation results in the physical occupation of private property. The exercise of eminent domain authority is governed by the procedures in chapter 7, title 7, Idaho Code. Whenever a state or local unit of government, or a public utility, is negotiating to acquire private property under eminent domain, the condemning authority must provide the private property owner with a form summarizing the property owner’s rights. Section 7-711A, Idaho Code, identifies the required content for the advice of rights form.

2. Does the Regulation or Action Condition the Receipt of a Government Benefit on a Property Owner Dedicating a Portion of Property, Granting an Easement, or Expending Funds for Items Unrelated to the Impacts of the Proposed Action?

A government entity may condition or regulate an action that it has the authority to prohibit altogether. However, there must be a nexus and rough proportionality between the government’s demands and the social costs of the proposed action. Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S. Ct. 2586 (2013); Nollan v. California Coastal Commission, 483 U.S. 825, 107 S. Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994). The condition must be reasonably and specifically designed to prevent or compensate for adverse impacts of the proposed development. Likewise, the magnitude of the burden placed on the proposed development should be reasonably related to the adverse impacts created by the development. Where a condition to

a land-use permit includes the dedication of property or grant of an easement, courts consider whether the exaction “has an essential nexus and rough proportionality” to the social impacts of the permitted action. Put another way, does the dedication or grant substantially advance the same state interest that would allow the government entity to deny the permit altogether? Lacking this connection, the dedication of property to public use would be just as unconstitutional as it would be if imposed outside the permit context. For example, the United States Supreme Court determined in Nollan v. California Coastal Comm’n, 483 U.S. 825, 107 S. Ct. 3141 (1987), that compelling an owner of waterfront property to grant a public easement across his property that does not substantially advance the public’s interest in beach access, constitutes a “taking.” Likewise, the United States Supreme Court held that compelling a property owner to leave a *public* green way, as opposed to a private one, did not substantially advance protection of a flood plain, and was a “taking.” Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994).

In Koontz, the United States Supreme Court applied the same reasoning to a monetary condition on a land-use permit. The Court held that the regulatory takings analysis applied to a water management district’s conditioning a land-use permit on a landowner funding offsite wetland mitigation. The Court held that such a condition would be an unconstitutional taking if the condition did not have an essential nexus and rough proportionality to the impacts of the proposed development. After Koontz, government entities need to consider monetary conditions for potential regulatory takings, not just conditions that involve an easement or dedication of property.

3. Does the Regulation Deprive the Owner of All Economically Viable Uses of the Property?

If a regulation prohibits all economically viable or beneficial uses of the land, it will likely constitute a “taking.” In this situation, the agency can avoid liability for just compensation only if it can demonstrate that the proposed uses are prohibited by the laws of nuisance or other preexisting limitations on the use of the property. See Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886 (1992).

Unlike 1 and 2 above, it is important to analyze the regulation’s impact on the property as a whole, and not just the impact on a portion of the property. See Murr v. Wisconsin, ___ U.S. ___, 137 S. Ct. 1933 (2017). It is also important to assess whether there is any profitable use of the remaining property available. See Florida Rock Industries, Inc. v. United States, 18 F.3d 1560 (Fed. Cir. 1994). The remaining use does not

necessarily have to be the owner's planned use, a prior use or the highest and best use of the property. One factor in this assessment is the degree to which the regulatory action interferes with a property owner's reasonable investment-backed development expectations.

Carefully review regulations requiring that all of a particular parcel of land be left substantially in its natural state. A prohibition of all economically viable uses of the property is vulnerable to a takings challenge. In some situations, however, there may be pre-existing limitations on the use of property that could insulate the government from takings liability.

4. Does the Regulation Have a Significant Impact on the Landowner's Economic Interest?

Carefully review regulations that have a significant impact on the owner's economic interest. Courts will often compare the value of property before and after the impact of the challenged regulation. Although a reduction in property value alone may not be a "taking," a severe reduction in property value often indicates a reduction or elimination of reasonably profitable uses. Another economic factor courts will consider is the degree to which the challenged regulation impacts any development rights of the owner. As with 3, above, these economic factors are normally applied to the property as a whole.

A moratorium as a planning tool may be used pursuant to Idaho Code § 67-6523—Emergency Ordinances and Moratoriums (written findings of imminent peril to public health, safety, or welfare; may not be longer than 182 days); and Idaho Code § 67-6524—Interim Ordinances and Moratoriums (written findings of imminent peril to public health, safety, or welfare; the ordinance must state a definite period of time for the moratorium). Absence of the written findings may prove fatal to a determination of the reasonableness of the government action.

The Idaho moratorium provisions appear to be consistent with the United States Supreme Court's interpretation of moratorium as a planning tool as well. In Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002), the Court held that planning moratoriums may be effective land use planning tools. Generally, moratoriums in excess of one year should be viewed with skepticism, but should be considered as one factor in the determination of whether a taking has occurred. An essential element pursuant to Idaho law is the issuance of written findings in conjunction with the issuance of moratoriums. *See* Idaho Code §§ 67-6523 to 67-6524.

5. Does the Regulation Deny a Fundamental Attribute of Ownership?

Regulations that deny the landowner a fundamental attribute of ownership -- including the right to possess, exclude others and dispose of all or a portion of the property -- are potential takings.

The United States Supreme Court held that requiring a public easement for recreational purposes where the harm to be prevented was to the flood plain was a “taking.” In finding this to be a “taking,” the Court stated:

The city has never said why a public greenway, as opposed to a private one, was required in the interest of flood control. The difference to the petitioner, of course, is the loss of her ability to exclude others. . . . [T]his right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994).

The United States Supreme Court has also held that barring the inheritance (an essential attribute of ownership) of certain interests in land held by individual members of an Indian tribe constituted a “taking.” Hodel v. Irving, 481 U.S. 704, 107 S. Ct. 2076 (1987).

More recently, the United States Supreme Court held that a regulation requiring producers to reserve a certain percentage of their raisin crop for government use constituted a per se physical taking of property. Horne v. Dep’t of Agric., ___ U.S. ___, 135 S. Ct. 2419 (2015). There, the Court reasoned that “[r]aisin growers subject to the reserve requirement...lose the entire bundle of property rights in the appropriated raisins—the rights to possess, use and dispose of them.”

Regulatory actions which closely resemble, or have the effects of a physical invasion or occupation of property, are more likely to be found to be takings. The greater the deprivation of use, the greater the likelihood that a “taking” will be found.

Idaho Regulatory Takings Act Guidelines

APPENDIX A: SIGNIFICANT FEDERAL AND STATE CASES

Summaries of Significant Federal “Takings” Cases

Knick v. Twp. of Scott, Penn., ___ U.S. ___, 139 S. Ct. 2162 (2019).

A property owner brought a Fifth Amendment Takings claim under 42 U.S.C. § 1983 in federal court. The property owner had not brought an inverse condemnation claim under state law, and prior to the federal action, the township withdrew the violation notice and stayed enforcement of the ordinance. The United States Supreme Court overruled Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 105 S. Ct. 3108 (1985), and held that a property owner may bring a takings claim under § 1983 regardless of whether the property owner had previously sought compensation through procedures available under state law. The Court concluded that a takings claim under § 1983 becomes ripe as soon as a government takes a person's property for public use without paying for it.

Murr v. Wisconsin, ___ U.S. ___, 137 S. Ct. 1967 (2017).

The United States Supreme Court held that a regulation preventing the use of adjacent lots on the Lower St. Croix River as separate building sites unless each lot had at least one acre of land suitable for development did not effect a regulatory taking. The regulation at issue had been adopted by the Wisconsin State Department of Natural Resources in response to the Lower St. Croix River being designated a Wild and Scenic River under federal law. Due to that designation, Wisconsin was required to develop a management and development program for the river area.

The Court concluded that for purposes of a regulatory takings analysis, the two adjacent lots must be evaluated as a single parcel because: (1) the state regulation in effect merged the two lots; (2) the physical characteristics, location, and relationship between the two lots made the lots significantly more valuable together than when considered separately; and (3) the characteristics of the lots made it reasonable to expect that the range of their potential uses separately may be limited.

The Court concluded that the property owner had not been deprived of all economically beneficial use of the property because the lots together could still be used for residential purposes, including larger residential improvements. The Court also concluded that the property owner had not suffered a takings under the Penn Central test because the

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

property owner could not have reasonably expected to develop the lots separately because the regulation predated their acquisition of both lots; the appraisal of the property showed the value of the properties decreased by less than ten percent; and the regulation was reasonable as part of a coordinated effort by federal, state, and local governments to protect a designated Wild and Scenic River.

Horne v. Dep't of Agric., ___ U.S. ___, 135 S. Ct. 2419 (2015).

The United States Supreme Court considered a regulatory takings challenge to the United States Department of Agriculture's California Raisin Marketing Order which required producers to reserve a percentage of their raisin crop in certain years free of charge for the government to dispose of in ways it determines are necessary to maintain an orderly market. The Court held that the same standard should apply regardless of whether the property at issue was personal or real property. The Court then concluded that the reserve requirement imposed is a physical taking not a regulatory taking of personal property as the reserve requirement removes from the producer the entire bundle of property rights in the reserved raisins. Additionally, because the reserve rule effectuated a *per se* physical taking, the fact that the producers received the value of the reserved raisins if sold by the government and that the producers could choose to plant different crops did not weigh against the finding of a taking.

Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S. Ct. 2586 (2013).

The United States Supreme Court considered a regulatory takings challenge to a water management district's decision to require a landowner to fund off-site wetland mitigation as a condition of a land-use permit. The Court reversed the Florida Supreme Court's holding that the regulatory takings analysis did not apply to the water management district's decision because the condition at issue was a demand for money. The Court held that the constitutional takings analysis applied to monetary exaction on land-use permits. Additionally, the Court held that the constitutional takings analysis applied equally whether a permit was granted with an allegedly unconstitutional condition or denied because the applicant failed to agree to the allegedly unconstitutional condition. The Court emphasized that while a government entity may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, it may not leverage its interests in mitigation to pursue governmental interests that lack an essential nexus and rough proportionality to those impacts.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Stop the Beach Renourishment, Inc. v. Fla. Dept. of Env. Prot., 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010).

The United States Supreme Court considered a judicial taking challenge to a decision by the Florida Supreme Court. A Florida state agency granted a permit under state law to restore a beach. The beach was eroded by hurricanes, and the permit would have allowed the restoration of the beach by adding sand to the beach. A non-profit corporation comprised of beachfront landowners challenged the agency decision in state court arguing the decision eliminated the littoral rights of landowners to receive accretions to their property and the right to have contact of their property with water remain intact. The Florida Supreme Court reversed a lower court and held the state law authorizing the beach restoration did not unconstitutionally deprive littoral rights. The non-profit corporation claimed the Florida Supreme Court's decision itself effectuated a taking of its members' littoral rights.

The United States Supreme Court unanimously held that the Florida Supreme Court did not take private property without just compensation in violation of the Fifth and Fourteenth Amendments. The Court recognized two property law principles under Florida law:

1. The State owned the seabed and was allowed to fill in its own seabed; and
2. When an avulsion exposes land seaward of littoral property that had previously been submerged, the land belongs to the State even if it interrupts the littoral owner's contact with water.

Therefore, when the State filled in previously submerged land for beach restoration, the State treated it as an avulsion for purposes of ownership. The non-profit members' right to accretions was therefore subordinate to the State's right to fill in its land. The United States Supreme Court did not reach a majority on the judicial taking question.

Kelo, et al. v. City of New London, Connecticut, et al., 545 U.S. 469, 125 S. Ct. 2655 (2005).

The United States Supreme Court held that a city's exercise of eminent domain power in furtherance of its economic development plan satisfied the Constitution's Fifth Amendment requirement that a taking be for public use. To effectuate its plan, the city invoked a state statute that specifically authorized the use of eminent domain to promote economic development. The Court observed that promoting economic development

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

is a traditional and long accepted governmental function that serves a public purpose. Although the condemned land would not be open in its entirety to actual use by the general public, the purpose of its taking satisfied the constitutional requirement that a taking be for public use.

In response to the Kelo decision, the Fifty-eighth Idaho Legislature enacted House Bill No. 555 adding a new section, 7-701A, to the Idaho Code that specifically prohibits the use of eminent domain power to promote or effectuate economic development except where allowed by existing statute.

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 125 S.Ct. 2074 (2005).

The United State Supreme Court reversed and remanded a decision of the Ninth Circuit Court of Appeals concluding that a Hawaii statute limiting rent that oil companies could charge dealers leasing company-owned service stations was an unconstitutional taking. In so holding the United States Supreme Court abrogated prior decisions that held that a government regulation of private property that does not substantially advance legitimate state interests effects a taking. The Court concluded that the “substantially advances” test was not an appropriate regulatory takings test because it reveals nothing about the magnitude or character of the burden a particular regulation imposes upon private property rights or provide any information about how any regulatory burden is distributed among property owners. The Court was also concerned that such an inquiry invited courts to substitute their predictive judgments for those of elected legislatures and expert agencies.

The United States Supreme Court did, however, indicate that the determination of whether a dedication of property substantially advances a government interest may be appropriate in situations where a government entity includes a dedication of property as a condition of approving a permit. In that situation the question is not whether the exaction substantially advances some legitimate state interest, but whether the exaction substantially advances the same interest that would allow the government entity to deny the permit altogether. Lacking this connection, the dedication of property would be just as unconstitutional as it would be if imposed outside the permit context.

Tahoe-Sierra Preservation Council, Inc., et al. v. Tahoe Regional Planning Agency, et al., 535 U.S. 302, 122 S. Ct. 1465 (2002).

The United States Supreme Court held that imposition of a moratorium lasting thirty-two (32) months restricting development within

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

the Lake Tahoe Basin was not a compensable taking. The Court noted the importance of Lake Tahoe in that it is one of only three lakes with such transparency of water due in large part to the absence of nitrogen and phosphorous which in turn results in a lack of algae. The Court also noted the rapid development of the Lake Tahoe area. In noting this development, the Court recognized the uniqueness of the area, and the importance of planning tools to the preservation of Lake Tahoe. The Court further noted that the geographic dimensions of the property affected, as well as the term in years, must be considered when determining whether a taking has occurred. Finally, the interest in protecting the decisional process is stronger when the process is applied to regional planning as opposed to a single parcel of land. Noteworthy is the extensive process that was followed by the Tahoe Regional Planning Agency along with the uniqueness of the Lake Tahoe region. The balance of interests favored the use of moratorium.

Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994).

In this case, the United States Supreme Court held that reconditioning an issuance of a permit on the dedication of bond to public use violated the Fifth Amendment. The city council conditioned Dolan's permit to expand her store and pave her parking lot upon her agreement to dedicate land for a public greenway and a pedestrian/bicycle pathway. The expressed purpose for the public greenway requirement was to protect the flood plain. The pedestrian/bicycle path was intended to relieve traffic congestion. The United States Supreme Court held that the city had to make "some sort of individualized determination that the required dedication [was] related both in nature and extent to the impact of the proposed development" in order to justify the requirements and avoid a "takings" claim. In this case, the Court held that the city had not done so. It held that the public or private character of the greenway would have no impact on the flood plain and that the city had not shown that Dolan's customers would use the pedestrian/bicycle path to relieve congestion.

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886 (1992).

Lucas was a challenge to the 1988 South Carolina Beach Front Management Act. The stated purpose of this Act was to protect life and property by creating a storm barrier, providing habitat for endangered species and to serve as a tourism industry. To accomplish the stated purposes, the Act prohibited or severely limited development within certain critical areas of the state's beach-dune system.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Before the Act's passage, David Lucas bought two South Carolina beach front lots intending to develop them. As required by the Act, the South Carolina Coastal Council drew a "baseline" that prevented Mr. Lucas from developing his beach front property. Mr. Lucas sued the council, alleging its actions under the Act constituted a "taking" requiring compensation under the Fifth Amendment. The trial court agreed, awarding him \$1,232,387.50. A divided South Carolina Supreme Court reversed, however, holding that the Act was within the scope of the nuisance exception.

The United States Supreme Court reversed. Justice Scalia's majority opinion held that a regulation which "denies all economically beneficial or productive use of land" will be a "taking" unless the government can show that the proposed uses of the property are prohibited by nuisance laws or other pre-existing limitations on the use of property. This opinion noted that such total takings will be "relatively rare" and the usual balancing approach for determining takings will apply in the majority of cases.

Hodel v. Irving, 481 U.S. 704, 107 S. Ct. 2076 (1987).

Where the character of the government regulation destroys "one of the most essential" rights of ownership -- the right to devise property, especially to one's family -- this is an unconstitutional "taking" without just compensation.

In 1889, portions of Sioux Indian reservation land were "allotted" by Congress to individual tribal members (held in trust by the United States). Allotted parcels could be willed to the heirs of the original allottees. As time passed, the original 160-acre allotments became fractionated, sometimes into very small parcels. Good land often lay fallow, amidst great poverty, because of the difficulties in managing property held in this manner. In 1983, Congress passed legislation that provided that any undivided fractional interest that represented less than two percent of the tract's acreage and which earned less than \$100 in the preceding year would revert to the tribe. Under the statute, tribal members who lost property as a result of this action would receive no compensation. Tribal members challenged the statute. The United States Supreme Court held this was an unconstitutional "taking" for which compensation was required.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S. Ct. 3141 (1987).

The United States Supreme Court held that it was an unconstitutional “taking” to condition the issuance of a permit to land owners on the grant of an easement to the public to use their beach.

James and Marilyn Nollan, the prospective purchasers of a beach front lot in California, sought a permit to tear down a bungalow on the property and replace it with a larger house. The property lay between two public beaches. The Nollans were granted a permit, subject to the condition that they allow the public an easement to pass up and down their beach. On appeal, the United States Supreme Court held that such a permit condition is only valid if it substantially advances legitimate state interests. Since there was no indication that the Nollans’ house plans interfered in any way with the public’s ability to walk up and down the beach, there was no “nexus” between any public interest that might be harmed by the construction of the house and the permit condition. Lacking this connection, the required easement was just as unconstitutional as it would be if imposed outside the permit context. (The Court noted that protecting views from the highway by limiting the size of the structure or banning fences may have been lawful.)

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S. Ct. 3164 (1982).

The United States Supreme Court ruled that a statute that required landlords to allow the installation of cable television on their property was unconstitutional. The Court concluded that “a permanent physical occupation authorized by government is a ‘taking’ without regard to the public interest that it may serve.” The Court reasoned that an owner suffers a special kind of injury when a “stranger” invades and occupies the owner’s property, and that such an occupation is “qualitatively more severe” than a regulation on the use of the property. The installation in question required only a small amount of space to attach equipment and wires on the roof and outside walls of the building.

Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646 (1978).

The United States Supreme Court upheld the constitutionality of a New York City historic preservation ordinance under which the city had declared Grand Central Station a “landmark.” In response to Penn Central’s takings claim, the United States Supreme Court noted that there

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

was a valid public purpose to the city ordinance, and that Penn Central could still make a reasonable return on its investment by retaining the station as it was. Penn Central argued that the landmark ordinance would deny it the value of its “preexisting air rights” to build above the terminal. The Court found that it must consider the impact of the ordinance upon the property as a whole, not just upon “air rights.” Further, under the ordinance in question, these rights were transferable to other lots, so they might not be lost.

Florida Rock Industries, Inc. v. United States, 18 F.3d 1560 (Fed. Cir. 1994) *cert. denied*, 513 U.S. 1109, 115 S. Ct. 898 (1995) (**Florida Rock IV**).

This is a Clean Water Act case. There have been several court decisions, and the most recent one affirms the holding that in the absence of a public nuisance, economic impact alone may be determinative of whether a regulatory “taking” under the Fifth Amendment has occurred. If the regulation categorically prohibits *all* economically beneficial use of land, destroying its economic value for private ownership, and the use prohibited is not a public nuisance, the court held that regulation has the effect equivalent to permanent physical occupation, and there is, without more, a compensable “taking.”

In 1972, a mining company purchased 1,560 acres of wetlands (formerly part of the Everglades, but now excluded by road, canal and levee) for the purposes of mining limestone. In 1980, the company applied to the U.S. Army Corps of Engineers for a “section 404” permit for the dredging and filling involved in the mining operation. The Corps of Engineers denied the application, primarily for the purpose of protecting the wetlands. While several courts had previously held that the United States had unconstitutionally taken the mining company’s property, and required the government to compensate the company, the Federal Circuit ruled that the evidence did not support a finding that the permit denial prohibited *all* economically beneficial use of the land or destroyed its value. On remand, the Court of Federal Claims held that permit denial resulted in a compensable partial regulatory taking of property and that a “partial taking” occurs when a regulation singles out a few property owners to bear burdens, while benefits are spread widely across the community. **Florida Rock Industries, Inc. v. United States**, 45 Fed.Cl. 21, 49 ERC 1292 (1999).

Summaries of Significant Idaho “Takings” Cases

REGULATORY TAKINGS UPDATES

N. Idaho Bldg. Contractors Assoc. v. City of Hayden, 164 Idaho 530, 432 P. 3d 976 (2018).

Plaintiff brought a claim alleging that a city’s sewer connection/capitalization fee was an unlawful regulatory taking. The Idaho Supreme Court held that the plaintiffs were not required to file a notice of claim under Idaho Code §§ 50-219 and 6-906 to maintain a claim against a city based upon the Takings Clause in the United States Constitution. The Court also concluded that the plaintiff’s federal taking claim was not barred by failing to file a written request for a regulatory takings analysis under Idaho Code § 67-8003. The Court concluded that when the plaintiff filed the complaint the Regulatory Takings Act only applied to owners of real property.

The Court’s reasoning that Idaho Code § 67-8003 only applies to real property is likely no longer applicable since the Idaho Legislature passed Senate Bill No. 1325, amending Idaho Code § 67-8003 to change the term “real property” to “private property.” 2016 Idaho Sess. Laws ch. 225, sec. 1, p. 620.

Hehr v. City of McCall, 155 Idaho 92, 305 P.3d 536 (2013).

The Idaho Supreme Court held that the developer’s claims for inverse condemnation under state law were barred under Idaho Code §§ 50-219 and 6-906 because the developer failed to file a notice of claim with the city within the required 180 day period. The Court also held that the developer’s federal takings claims were not ripe because the contribution was made by voluntarily agreement, not as a final decision of the city regarding the application of the ordinances to the property at issue. Additionally the Court found that the developer failed to exhaust its remedies because it did not request a regulatory takings analysis under Idaho Code § 67-8003.

The Court’s reasoning that the federal takings claim was not ripe is likely no longer applicable after the United States Supreme Court’s decision in *Knick v. Twp. of Scott, Penn.*, ___ U.S. ___, 139 S. Ct. 2162 (2019). Additionally, in 2016, the Idaho Legislature passed Senate Bill No. 1325, amending Idaho Code § 67-8003 to specifically provide that a private property owner is not required to submit a written request for a regulatory takings analysis as a prerequisite to seeking other legal and

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

equitable remedies including payment of just compensation. 2016 Idaho Sess. Laws ch. 225, sec. 1, p. 620.

Alpine Vill. Co. v. City of McCall, 154 Idaho 930, 303 P.3d 617 (2013).

The Idaho Supreme Court held that the developers claims for inverse condemnation under state law were barred under Idaho Code §§ 50-219 and 6-906 because the developer failed to file a notice of claim with the city within the required 180 day period. The Idaho Supreme Court also upheld the dismissal of the developer's federal claims for unlawful taking concluding that the claims were not ripe because the city had made no final decision as to the application of the ordinance to the development and because the developer had not requested a regulatory takings analysis under Idaho Code § 67-8003.

The Court's reasoning that the federal takings claim was not ripe is likely no longer applicable after the United States Supreme Court's decision in Knick v. Twp. Of Scott, Penn., ___ U.S. ___, 139 S. Ct. 2162 (2019). Additionally, in 2016, the Idaho Legislature passed Senate Bill No. 1325, amending Idaho Code § 67-8003 to specifically provide that a private property owner is not required to submit a written request for a regulatory takings analysis as a prerequisite to seeking other legal and equitable remedies including payment of just compensation. 2016 Idaho Sess. Laws ch. 225, sec. 1, p. 620.

Buckskin Props., Inc v. Valley Cty., 154 Idaho 486, 300 P.3d 18 (2013).

The Idaho Supreme Court considered a regulatory takings challenge brought by a developer challenging conditions contained in an agreement between the county and the developer that the developer would contribute capital to road impact mitigation for its proposed development. The Idaho Supreme Court ruled that a governmental entity had authority to enter into a voluntary agreement with a developer for the developer to fund and construct capital improvements that will facilitate the developer's development plans.

The Court also concluded that there was no taking because the capital contribution condition had been initially proposed by the developer in its application and the developer did not object to the inclusion of the condition by seeking judicial review of the county's permitting decision under the Local Land Use Planning Act or by requesting a regulatory takings analysis.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

The Court's reasoning that there was no takings claim because the developer did not timely request a regulatory takings analysis is no longer applicable. In 2016, the Idaho Legislature passed Senate Bill No. 1325, amending Idaho Code § 67-8003 to specifically provide that a private property owner is not required to submit a written request for a regulatory takings analysis as a prerequisite to seeking other legal and equitable remedies including payment of just compensation. 2016 Idaho Sess. Laws ch. 225, sec. 1, p. 620.

City of Coeur d'Alene v. Simpson, 142 Idaho 839, 136 P.3d 310 (2006).

The Idaho Supreme Court ruled that regulatory taking claims were ripe, even though the landowners had not sought a variance under the ordinance. A regulatory takings claim accrues when the burden of the ordinance on the landowners' property is known, not upon the enactment of an ordinance.

Generally, if an ordinance provides a procedure for a variance, the landowner must seek the variance before filing a regulatory takings claim. The Court explained that landowners' failure to seek a variance was not fatal here because the city did not have discretion under the ordinances to grant a variance. The requirement for a variance was not fatal because a variance in this situation could not have provided the property owners with relief under the stated purposes of the city's ordinances.

The Court also considered the valuation of property when the basis for regulatory takings claims is that an ordinance deprives the property of all economically productive or beneficial uses, or alternatively, that the value of the property is diminished by city ordinances. The Court explained that the task is to compare the value of the property taken with the value that remains in the property. This process requires identifying the property to be valued as realistically and fairly as possible in light of the regulatory scheme and factual circumstances. In this case, the property in question was divided during the course of the litigation, and the parcels owned by separate entities. The lower court concluded that the transfer of the property had no effect on valuation and dismissed the regulatory takings claims. The Idaho Supreme Court reversed and remanded, concluding that, based on the current record, it was improper for the district court to disregard the separate ownership of the parcels for the purpose of determining the property taken and the value of the property.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Inama v. Boise County, 138 Idaho 324, 63 P.3d 450 (2003).

Boise County was not obligated to compensate the plaintiff for the loss of his front end loader because the Idaho Disaster Preparedness Act of 1975 created immunity for a subdivision of the state engaged in disaster relief activities following a declaration of disaster emergency. First, the Idaho Supreme Court rejects the plaintiff's argument that the scope of immunity granted by Idaho Code § 46-1017 is narrowed by Idaho Code § 46-1012(3), which provides for compensation for property "only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or his representative." The Court held that the statute was "clear and unambiguous," and since Idaho Code § 46-1017 does not specifically limit the scope of immunity to damages compensable under Idaho Code § 46-1012, Idaho Code § 46-1017 grants Boise County immunity from damages. Second, the Court held that compensation is not allowed for inverse condemnation under art. I, sec. 14 of the Idaho Constitution because of the immunity granted under Idaho Code § 46-1017.

McCuskey v. Canyon County Comm'rs, 128 Idaho 213, 912 P.2d 100 (1996).

The Idaho Supreme Court held that when a regulation of private property that amounts to a taking is later invalidated, the subsequent invalidation converts the taking to a "temporary" taking. In such cases, the government must pay the landowner for the value of the use of the land during the period that the invalid regulation was in effect.

The Idaho Supreme Court also discussed the application of the statute of limitations to takings and inverse condemnation actions. The Court ruled that a taking occurs as of the time that the full extent of the plaintiff's loss of use and enjoyment of the property becomes apparent. As a result, the Court ruled that the statute of limitations begins to run when the plaintiff's loss of use and enjoyment of the property first becomes apparent, **even if** the full extent of damages cannot be assessed until a later date.

Sprenger Grubb & Assoc. v. Hailey, 127 Idaho 576, 903 P.2d 741 (1995).

The Idaho Supreme Court held that the City of Hailey's decision to rezone a parcel of land from "Business" to "Limited Business" was not a taking because some "residual value" remained in the property. The rezone reduced the value of the plaintiff's property from \$3.3 million to

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

\$2.5 million. In addition, the Idaho Supreme Court held that the rezone did not violate the “proportionality” standard set out in Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309 (1994), because none of the plaintiff’s property was dedicated to a public use.

Brown v. City of Twin Falls, 124 Idaho 39, 855 P.2d 876 (1993).

The Idaho Supreme Court held that the placement of road median barriers by city and state, which restrained business traffic flow to a shopping center, was exercise of police power and did not amount to compensable taking, since landowners had no property right in the way traffic flowed on streets abutting their property.

Hayden Pines Water Co. v. Idaho Public Utilities Commission, 122 Idaho 356, 834 P.2d 873 (1992).

Without extensive discussion, the Idaho Supreme Court held that an Idaho Public Utilities Commission order requiring a water company to perform certain accounting functions (at an estimated cost of \$15,000 per year), without considering those costs in the rate proceeding, was an unconstitutional “taking.”

Coeur d’Alene Garbage Service v. Coeur d’Alene, 114 Idaho 588, 759 P.2d 879 (1988).

The just compensation clause of the Idaho State Constitution art. I, sec. 14, requires compensation be paid by a city, where that city either by annexation or by contract prevents a company from continuing service to its customers. The Idaho Supreme Court held that a company has a property interest protected by the Idaho Constitution in continuing to conduct business. In this case, a garbage company already operating in the city and providing garbage service to customers lost the right to continue its business when the city entered into an exclusive garbage collection contract with another company, permitting only that company to operate within the annexed areas.

Ada County v. Henry, 105 Idaho 263, 668 P.2d 994 (1983).

The Idaho Supreme Court held that property owners had no “takings” claim where the owners were aware of zoning restrictions before they purchased the property, even though the zoning ordinance reduced their property’s value.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977).

In times of shortage, a call on water that allows water right holders with junior priority dates to use water while senior holders of beneficial use water rights are not allowed to use water, is not a taking protected by the just compensation clause of the Idaho Constitution.

Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977).

A zoning ordinance that deprives an owner of the highest and best use of his land is *not*, absent more, a “taking.” There are two methods for finding a zoning ordinance unconstitutional. First, it may be shown that it is not “substantially related to the public health, safety, or welfare.” Second, it may be shown that the “zoning ordinance precludes the use of . . . property for *any* reasonable purpose.”

State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

The Idaho Supreme Court held that where statutory or regulatory provisions are reasonably related to an enactment’s legitimate purpose, provisions regulating property uses are within the legitimate police powers of the state and are not a “taking” of private property without compensation. In this case, the Court upheld the permit, bonding, and restoration requirements of the Dredge and Placer Mining Protection Act. It found that they were reasonably related to the enactment’s purpose in protecting state lands and watercourses from pollution and destruction and in preserving these resources for the enjoyment and benefit of all people.

Boise Redevelopment Agency v. Yick Kong Corporation, 94 Idaho 876, 499 P.2d 575 (1972).

The Idaho Supreme Court held that the Idaho Constitution grants a power of eminent domain much broader than that granted in most other state constitutions. According to the Idaho Supreme Court, even completely private irrigation and mining businesses can use eminent domain. It held that the state, both through the power of eminent domain and the police powers, may protect the public from disease, crime, and “blight and ugliness.”

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Unity Light & Power Co. v. City of Burley, 92 Idaho 499, 445 P.2d 720 (1968).

Once a supplier of a service lawfully enters into an area to provide that service, annexation by a city does not authorize an ouster of that supplier from that area without condemnation.

Johnston v. Boise City, 87 Idaho 44, 390 P.2d 291 (1964).

Where government exercises its authority under its police powers and the exercise is reasonable and not arbitrary, a harmful effect to private property resulting from that exercise alone is insufficient to justify an action for damages. The court must weigh the relative interests of the public and that of the individual to arrive at a just balance in order that government will not be unduly restricted in the proper exercise of its functions for the public good, while at the same time giving due effect to the policy of the eminent domain clause of ensuring the individual against an unreasonable loss occasioned by the exercise of governmental power.

Roark v. City of Caldwell, 87 Idaho 557, 394 P.2d 641 (1964).

The Idaho Supreme Court held that certain height restrictions, which limited use of private land adjacent to an airport to agricultural uses or to single family dwelling units, was an unconstitutional “taking” if no compensation was provided. The Court held that a landowner’s property right in the reasonable airspace above his land cannot be taken for public use without reasonable compensation.

Mabe v. State, 83 Idaho 222, 360 P.2d 799 (1961).

The Idaho Supreme Court held that destroying or impairing a property owner’s right to business access to his or her property constitutes a “taking” of property whether accompanied by actual occupation of or confiscation of the property.

Anderson v. Cummings, 81 Idaho 327, 340 P.2d 1111 (1959).

The Idaho Supreme Court recognized individual water rights are real property rights protected from “taking” without compensation.

Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

The Idaho Supreme Court held that private property of all classifications is protected under the Idaho Constitution just compensation clause.

Idaho Regulatory Takings Act Guidelines
Appendix A: Significant Federal and State Cases

Robison v. Hotel & Restaurant Employees Local #782, 35 Idaho 418, 207 P. 132 (1922).

The Idaho Supreme Court held that the right to conduct a business is a property interest protected under the Idaho Constitution just compensation clause.

Idaho Regulatory Takings Act Guidelines
APPENDIX B: REQUEST FOR REGULATORY TAKING
ANALYSIS

Recommended Form for:
REQUEST FOR TAKING ANALYSIS

Name: _____
Address: _____
City: _____ Zip Code: _____
County: _____

1. Background Information

This form satisfies the written request requirement for a regulatory taking analysis from a state agency or local governmental entity pursuant to Idaho Code § 67-8003(2). The owner of the property subject to the government action must file this with the clerk or secretary of the agency whose act is questioned within twenty-eight (28) days of the final decision concerning the matter at issue. A regulatory taking analysis is considered public information. Such an analysis is to be performed in accordance with the checklist established by the Attorney General of the State of Idaho pursuant to Idaho Code § 67-8003(1). See page 8 of the *Idaho Regulatory Takings Act Guidelines* for a description of the checklist.

2. Description of Property

a. Location of Property:

b. Legal Description of Property:

3. Description of Act in Question

a. Date Property was Affected:

b. Description of How Property was Affected:

c. Regulation or Act in Question:

d. Are You the Only Affected Property Owner? ☐ Yes ☐ No

e. State Agency or Local Governmental Entity Affecting Property:

f. Address of Agency or Local Governmental Entity:

Idaho Regulatory Takings Act Guidelines
APPENDIX C: REGULATORY TAKINGS CHECKLIST

State of Idaho Office of the Attorney General Regulatory Takings Checklist		
	Yes	No
1 Does the Regulation or Action Result in Either a Permanent or Temporary Physical Occupation of Private Property?	_____	_____
2 (a) Does the Regulation or Action Require a Property Owner to Either Dedicate a Portion of Property or to Grant an Easement?	_____	_____
(b) If Yes, is There a "Nexus and Rough Proportionality" Between the Property that the Government Demands and the Impacts of the Property Use Being Regulated?	_____	_____
3 Does the Regulation or Action Require the Owner to Expend Funds to Address Items That Lack a "Rough Proportionality" to the Social Costs of the Proposed Use of Property?	_____	_____
4 Does the Regulation Deprive the Owner of All Economically Viable Uses of the Property?	_____	_____
5 Does the Regulation Have a Significant Impact on the Landowner's Economic Interest?	_____	_____
6 Does the Regulation Deny a Fundamental Attribute of Ownership?	_____	_____
Remember: Although a question may be answered affirmatively, it does not mean that there has been a "taking." Rather, it means there could be a constitutional issue and that proposed action should be carefully reviewed with legal counsel.		

This checklist should be included with a requested analysis pursuant to Idaho Code § 67-8003(2).