Area of City Impact Agreements in Idaho

Report 12-01

Economic Development Clinic
University of Idaho College of Law

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This report does not represent the views or policies of the University of Idaho, the University of Idaho College of the Law, its Law Advisory Board or its faculty. This report does not establish an attorney-client relationship. Cities and counties are urged to retain legal counsel when drafting area of city impact agreements.

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Introduction

This is a report of the Economic Development Clinic at the University of Idaho College of Law's Boise campus (the "Clinic"). The Clinic's director and five third-year law students, in cooperation with a coalition organized by Idaho Smart Growth and the Urban Land Institute, Boise Chapter, began to investigate area of city impact agreements ("AOI Agreements" or "Agreements") in Fall, 2012. AOI Agreements are required by Idaho Code section 67-6526 "to delineate areas of future contiguous growth in order to assure their orderly development and thereby reconcile potentially competing designs for boundary expansion with accepted land use planning principals." *City of Garden City v. City of Boise*, 104 Idaho 512, 514, 660 P.2d 1355, 1357 (1983).

The Clinic collected AOI Agreements through the months of September, 2012 to November, 2012. The Clinic did so primarily through direct telephone and e-mail contact with county officials. All counties were contacted. For its efforts, the Clinic obtained 125 AOI Agreements in 37 counties, which is believed to be a significant proportion of all the AOI Agreements entered into by Idaho's 200 cities and 44 counties. The AOI Agreements obtained are grouped by county and reproduced in Appendix A.

The AOI Agreements obtained are also referenced throughout this report. Where referenced, the county is stated first followed by the city. For instance, "Ada/Boise" refers to the AOI Agreement between Ada County and the City of Boise.

Based upon the AOI Agreements obtained in the Clinic's research, this report provides four contributions to understanding and advancing AOI Agreements in Idaho. First, the report provides a checklist for counties and cities to review in drafting AOI Agreements. Each part of the checklist is then referenced to a more detailed analysis in the following chapter. Specific provisions in enacted AOI Agreements provided in Appendix A are referenced. Second, the legislative history of Idaho Code section 67-6526, which governs AOI Agreements, is provided in Appendix B. Third, the report provides analysis of the effective dates of AOI Agreements in Idaho. Finally, this report provides a brief case law history relevant to Idaho Code section 67-6526.

All questions or comments regarding the information contained in this report are welcome, and should be directed to the Clinic's Director, Stephen R. Miller, at millers@uidaho.edu.

Checklist for drafting an AOI Agreement

This checklist for drafting AOI Agreements was developed after review of 125 existing AOI Agreements throughout the State of Idaho. The checklist is designed to help local governments select and develop a variety of provisions that they may want to consider or include in an AOI Agreement.

The elements and provisions identified in the substantive sections of the checklist are not all required; many are identified solely as potentially useful provisions for an effective and efficient AOI agreement, but most are not necessary to meet statutory obligations, and not all will be relevant to all jurisdictions. The checklist is first presented in outline form. Then, each term in the checklist is discussed in greater depth in the next chapter. Most provisions in this checklist were suggested by the Clinic's review of existing AOI Agreements. As such, the detailed checklist in the next chapter also provides examples of AOI Agreements that have considered such a term. These AOI Agreement examples are not necessarily presented as "best practices," as no attempt was made in this research to determine how the provisions work as applied. However, by reviewing these referenced AOI Agreements, counties and cities may find a useful beginning in drafting their own AOI Agreements.

Statutory requirements for an AOI Agreement (Idaho Code § 67-6526)

- **Does the AOI Agreement comply with statutory requirements?**
  - Map: "[A] map identifying an area of city impact within the unincorporated area of the county" adopted by ordinance by both city and county?
  - Agreement: "[A] separate ordinance providing for application of plans and ordinances for the area of city impact" adopted by both city and county?
  - Statutory considerations
    - "In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future."
  - Negotiation and renegotiation
    - "Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation."

- Review
  - "The governing boards shall undertake a review at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry."

"Ordinance providing for application of plans and ordinances" component of an AOI Agreement

- Prefatory statements of purpose and findings
- Helpful reference provisions
  - Are key terms defined in one central reference provision?
  - Codification
    - Where is the AOI Agreement codified and referenced (e.g., zoning code, comprehensive plan, etc.)?
    - What other plans, codes, ordinances, or documents are operative in the area covered by the AOI Agreement, and where are they codified?
- Incorporation of the Map (*see also* Map Ordinance section of outline below)
  - Is there a legal description of the area of city impact ("AOI") map boundaries in the AOI Agreement?
  - Is the ordinance adopting the map referenced in the AOI Agreement?
  - Is the ordinance adopting the map incorporated into the AOI Agreement?
  - Are the dates of the adoption and amendment date(s) of the map stated?
- Does the AOI Agreement address the following substantive issues?
  - AOI Agreement boundaries
    - Issues to consider
      - Statutory
        - Trade area
        - Geographic factors
        - Areas that can reasonably be expected to be annexed to the city in the future
      - Using natural boundaries
      - Do roads make good boundaries?
      - Other considerations
        - Airports, water supply, etc.
    - Use of multiple tiers, urban growth boundaries, and growth management tools
  - Applicable law or code for the area of impact
    - Comprehensive plan (county, city, or AOI-specific)
    - Codes

        - Zoning codes
        - Subdivision codes
    - Planned unit developments
    - Development agreements
    - Other development ordinances
- Annexation
    - Statute appears to require county land to be annexed by city to be within AOI. But see *Coeur D'Alene Indus. Park Prop. Owners Ass'n, Inc. v. City of Coeur D'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).
    - Permissive annexation by city within AOI?
    - Forced application for annexation of certain development proposals?
- Application process
    - What is the application process for projects covered by the AOI Agreement? Is the application process transparent to applicants?
    - Does the AOI Agreement delegate powers to either city or county staff to create rules or policies not addressed by the AOI Agreement?
- Pre-application meeting
    - Does the AOI Agreement provide for a pre-application meeting?
    - Role of city and county staff in pre-application meeting?
- Decision-making on applications and permit issuance
    - Roles of the city council and county commissioners?
    - Roles of city and county staff?
    - Is there an AOI-specific commission?
    - Time limits or estimates for review and comment? Remedy for failure to meet time limit?
    - Is there opportunity for public notice and comment in addition to any such notice-and-comment requirement?
    - Which local government finally approves the project?
    - To which local government are appeals filed? Which local government decides appeals?
    - Which local government issues the permits (e.g., building permits, construction permits, etc.)?
- Fees
    - What types of fees are covered by the AOI Agreement?
    - To which entity is the fee paid by the applicant?
    - What is the amount of the fee?
    - How is the fee allocated or distributed between city and county?
- Procedure for mandatory 10-year review

        - Date?
        - Who initiates?
    - Renegotiation of AOI Agreement
        - What is the trigger for renegotiation?
            - Request by party?
        - Timeline
        - Procedure
    - Enforcement and remedies
        - Against private party
            - Who is responsible for enforcement?
            - Penalty or remedy?
                - Procedure?
                - Nature of remedy?
        - Against party to AOI Agreement
            - What is means of enforcement?
            - Penalty or remedy?
                - Procedure?
                - Nature of remedy?
- Miscellaneous provisions
    - Effective date
    - Severability
- Appendices
    - Place plans, codes, ordinances, or documents operative in the area covered by the AOI Agreement in appendices?

Map component of an AOI Agreement

- Map basics
    - Was a map created and passed by ordinance?
    - Is the map incorporated into the AOI Agreement ordinance, and is the AOI Agreement incorporated into the map ordinance?
    - Is the map attached to the AOI Agreement in an appendix?
    - Where is the map codified?
- Map accessibility
    - Is the map stored in hard copy and/or digital format?
        - Is the map easily accessible to city/county staff?
        - Is the map accessible to the public?
- Map clarity
    - Does the map have a scale?
    - Does the map have a key or legend?

    - Do the boundaries on the map reflect the boundaries in the legal description in the AOI Agreement?
    - Is the map of high enough quality to provide legal notice to private parties of the inclusion of a parcel within the AOI?
- Map currentness
    - Was the current map adopted within the last 10 years?
    - Is there a date on the map?
    - Do the adoption and amendment dates on the map match the dates in the AOI Agreement?

Analysis of checklist terms

This section provides detailed analysis of the checklist provisions listed previously.

Statutory requirements for an AOI Agreement (Idaho Code § 67-6526)

Two components of AOI Agreement. Idaho Code section 67-6526(a) provides that "each county and each city therein" shall adopt the following: (i) "a map identifying an area of city impact within the unincorporated area of the county" adopted by ordinance by both city and county (the "Map Ordinance"); and (ii) "a separate ordinance providing for application of plans and ordinances for the area of city impact" (the "Plans Ordinance"). Compliance with this statute thus requires two ordinances, which this report collectively refers to as the "AOI Agreement." Although not required by statute, it is suggested that each ordinance of the AOI Agreement at least reference the other applicable ordinance. Another approach would be for the Map Ordinance to be adopted first with its effectiveness contingent upon adoption of the Plans Ordiance, and then for the Plans Ordinance to incorporate by reference the Map Ordinance into the Plans Ordinance. This would provide one legally complete AOI Agreement, which makes for administrative ease.

Public notice and hearing requirements. Idaho Code section 67-6526(a) requires that both the Map Ordinance and the Plans Ordinance be adopted subject to public notice and hearing procedures. The city and county may want to consider additional public hearings or consultation where the AOI Agreement could be contentious.

Statutory considerations for AOI Agreements. Idaho Code section 67-6526(b) provides, in relevant part, that "in defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future." Read in isolation, the above language would appear to require explicit consideration of each of these three factors. However, this language only appears within section 67-6526(b), which provides procedures for when cities and counties cannot agree to an area of city impact area. As such, these factors could be construed to apply only where the section 67-6526(b) procedures are in use. Nonetheless, it is suggested that consideration of each of these factors is useful and, given the statutory ambiguity, it is recommended that all AOI Agreements address each of these factors. This statutory language also appears to permit parties to an AOI Agreement to consider additional factors beyond those listed because it does not indicate that the enumerated list is exclusive of all other considerations that could apply.

Negotiation and renegotiation. Idaho Code section 67-6526(e) provides that, "[p]rior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation." The "questions" to be submitted are undefined; however, this provision appears to require that commissions governing planning and zoning in both the county and city must be consulted prior to negotiation or renegotiation.

Review. Idaho Code section 67-6526(e) provides that "[t]he governing boards shall undertake a review at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry." This does not appear to require the county and city to renegotiate the AOI Agreement every 10 ten years, but simply to "determine" whether renegotiation is appropriate. If renegotiation is not deemed necessary, it is suggested that, at a minimum, an ordinance be passed upon such determination to record the city and county's respective decisions.

"Ordinance providing for application of plans and ordinances" component of an AOI Agreement

Prefatory statements of purpose and findings. Purpose and findings statements are where the city and county explain why they are entering into the AOI Agreement. The purpose and findings clauses are important because they explain the reasoned decisionmaking of the city and county in implementing the AOI Agreement. The purpose and findings statements should "bridge the analytical gap" between the basic facts that caused the city and county to enter into the AOI Agreement and explain how the city and county came to believe that the particular provisions in the AOI Agreement were in the interest of the county commission and city council's constituents. It is suggested that purpose and findings statements specifically address at least the three statutory considerations of Idaho Code section 67-6526(b): (1) trade area; (2) geographic factors; and (3) areas expected to be annexed by the city. Good purpose and findings clauses do not merely state that such considerations were addressed, but explain how each of these considerations will be addressed by the AOI Agreement. Purpose and findings clauses may also reference and incorporate any studies or reports conducted that are relevant to the decisionmaking of the local governments.

It is also suggested that both the city and county ordinances share the same prefatory language of purpose and findings that are mutually relevant in their decisionmaking process. Of course, if the county and city have other considerations leading to their

respective adoptions of the AOI Agreement, those should also be stated in the respective local government's AOI Agreement statement of purpose and findings.

Definitions. Defining key terms is essential to a well-drafted AOI Agreement. All defined terms in the document should either be defined in its first use in the AOI Agreement, or all defined terms should be collected into one "definition section," typically at the beginning of the document.[1]

Codification. The AOI Agreement should be codified in both county and city code. The location in the code should be explicitly stated in the AOI Agreement. If the AOI Agreement incorporates or implicates other sections of the county or city code, such as zoning, building, or subdivision codes, those sections should be amended to cross-reference the AOI Agreement.

Incorporation of Map. Although not required by statute, it is suggested that incorporating the Map Ordinance into the Plans Ordinance facilitates having one complete ordinance that fully expresses the AOI Agreement.

Legal Description of the AOI Agreement boundary. The statute does not require the city and county to adopt a legal description of the area of city impact. However, the necessity to avoid vagueness recommends a legal description of the area of city impact, even though Idaho law is generally lenient in its requirements governing private property descriptions.[2] Given the expense potentially associated with a legal description, an alternative would be to clearly indicate on the map the parcels that are subject to the area of city impact. Another approach would be to simply list, in an appendix to the AOI Agreement, all parcels that are within the area of city impact.

A number of AOI Agreements contain a legal description of the AOI boundaries.[3] In some AOI Agreements, a boundary can be something as simple as a forest boundary or a mountain trail, and these types of boundaries may not be apparent on a map. A legal description assists in providing notice of the area of city impact to private parties.[4]

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[1] Owyhee/Marsing § 8-2B-3.

[2] *See, e.g., Cowan v. Bd. of Com'rs of Fremont County*, 143 Idaho 501, 513, 148 P.3d 1247, 1259 (2006) (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 715, 791 P.2d 1285, 1294 (1990) ("Statutes that are found to be vague, indefinite or uncertain are in violation of the constitutional provisions found in the Fourteenth Amendment to the United States Constitution or Article I, section 13 of the Idaho Constitution."); *compare* Idaho Code Ann. § 54-2050 (requiring a "description of the property to be bought or sold which sufficiently identifies the property so as to evidence an understanding of the parties as to the location of the real property" but not requiring a legal description or metes and bounds description); *see also* David Ballard, *Legally Described*, 49 Advocate 9 (2006).

[3] Adams/New Meadows § 3-2; Bear Lake/St. Charles, Map and City Impact Area Description.

[4] Bear Lake/St. Charles, Map and City Impact Area Description.

Dates of adoption and amendment of map. Many area of city impact maps do not indicate adoption dates or effective dates. Clearly stating the adoption date and the effective date of a map in both the Plans Ordinance and the Map Ordinance, as well as on the map itself, would create clarity. All the AOI Agreements in Ada County list the original adoption date of the AOI map, as well as each date the AOI map was amended.[5] This is a desirable practice because, over time, multiple versions of the map will be created, and a permit applicant may locate old versions of the map. By placing the date of the current map in the AOI Agreement, as well as placing the adoption date on the map, it lets local government staff and applicants know whether they are using the current map.

AOI Agreement Boundaries. As noted in other sections of this discussion, it may be argued that the statute requires the AOI Agreement to address how the area of city impact addresses trade area; geographic factors; and annexation. A well-crafted AOI Agreement would address each of these statutory factors in detail. Such provisions could arguably be placed within the prefatory purpose and findings clauses.

The AOI Agreement should also give consideration to where the boundary lines are drawn. For instance, roads might, at first blush, appear to be a good place to draw the line.[6] However, the city and county will then need to decide factors such as who takes care of the road and whether it makes sense to have different development standards apply on two facing sides of the road.

Similarly, geographic features also make for good boundary lines. Several AOI agreements and maps explicitly used geographic features as boundaries.[7] However, streams and rivers can present similar issues with roads. Do the city and county intend to have different development standards apply on different sides of a river?

In addition, cities may well have extra-territorial concerns not enumerated by the statute that would affect areas of city impact. For instance, some small communities with airports need to ensure certain open space requirements to maintain federal funding for those airports, and those open space requirements would likely extend into the county. Another example arises from water supply concerns, where county development adjacent to a city could affect the viability of the city's water source. Cities will want to ensure that they have considered all potential extra-territorial concerns in addition to those enumerated by the statute prior to discussion with a county.

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[5] Ada/Boise § 9-3-1-A; Ada/Eagle § 9-2-1-A; Ada/Garden City § 9-5-1-A; Ada/Kuna § 9-1-1-A; Ada/Meridian § 9-4-1-A; Ada/Star § 9-6-1-A.
[6] Teton/Driggs, Map.
[7] Bear Lake/St. Charles, Map; Payette/Payette, Map; Ada/Star, Map.

There also appears to be a number of cities and counties that believe that the area of city impact must be simply one mile beyond the city limits. The statute provides no such limitation or directive.

The use of township section lines is a very common practice in AOI Agreements.[8] While township section lines were likely used for administrative ease, it is not clear that such lines indicate substantial thought about why those township lines make sense as the area of city impact boundary line.

Use of multiple tiers within the area of impact, urban growth boundaries, and growth management tools. Some cities and counties employ a multi-tiered area of city impact area to which they apply differing regulations.[9] This more nuanced approach to growth management may be of particular use to cities that are experiencing rapid growth. Other cities that have urban growth boundaries or related growth management tools should explicitly coordinate the area of city impact area with those growth management tools to facilitate planning goals.

Applicable law or code for the area of city impact. The statute requires that the AOI Agreement state the applicable "plans and ordinances" in the area of city impact. This should include, at a minimum, how the AOI Agreement relates to the county and city comprehensive plans; zoning codes; building codes; subdivision codes; planned unit development codes; and any other ordinances that may relate to the development of land in the area of city impact. This could also include issues that involve federal and state law. For instance, some federal and state laws delegate power over siting to local governments. An example is the Idaho Solid Waste Facilities Act, which gives counties substantial control over siting of waste facilities in accordance with federal environmental laws.[10] If a county were to site a waste facility within the area of city impact, would that be governed by the AOI Agreement if it derives from a mandate of state or federal law? An AOI Agreement should be clear whether it governs such decisions where a city or county is acting under state or federal mandate.

In *Burns Holdings, LLC v. Teton County Bd. of Com'rs*, 152 Idaho 440, 272 P.3d 412 (2012), a case otherwise about variances and conditional use permits, the Idaho Supreme Court provided a succinct summary of the power relationship between cities and counties with regard to area of city impact areas:

> A county cannot delegate to a city the power to make zoning decisions beyond the city's limits. *Reardon v. City of Burley*, 140 Idaho 115, 119, 90 P.3d 340, 344 (2004). The county and the city can agree that the city comprehensive plan and

[8] Boise/Placerville, Map; Clearwater/Orofino § 3 & Map; Elmore/Glenns Ferry § 7-2-4-A.
[9] Blaine/Ketchum § 3.
[10] I.C. §§ 39-7401, *et seq*.

> zoning ordinances will apply in the unincorporated area of the county that is within the city's area of city impact, but the county must adopt an ordinance providing for the application of the city plan and zoning ordinances in the area of city impact. I.C. § 67–6526.

Id. at 442. In review of existing AOI Agreements, some include provisions clearly indicating the ordinances and plans apply in the area of city impact.[11] AOI Agreements with provisions that anticipate code changes affecting the area of city impact[12] and agreements that list specific sections of codes applicable to the area of city impact[13] provide further guidance for those referencing the document. Likewise, provisions addressing development agreements,[14] planned unit developments,[15] and building codes[16] provide clarity to applicants reading the AOI Agreement.

Adoptions of city or county codes "thereafter." Several AOI Agreements provide that a city or county code is adopted in the area of city impact and all such changes "thereafter." Such provisions may be beyond the powers of a city council or county commission.[17]

Annexation. The statute appears to require that county land to be annexed by a city must be within the area of city impact, although the court of appeals decision in *Coeur D'Alene Indus. Park Prop. Owners Ass'n, Inc. v. City of Coeur D'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985) casts doubt on such a reading.[18] Nonetheless, it is suggested that cities and counties continue to assume that annexation by a city requires a property to be within the city's area of city impact absent a ruling by the Idaho Supreme Court.

In review of existing AOI Agreements, some reference the annexation statutes and include additional notification provisions that require the city to notify the county of any hearings when the city is considering annexation.[19] Generally, such an annexation provision contains standard language that the agreement does not apply to land after it has been annexed (it would no longer be part of the AOI, but rather within the city).[20]

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[11] Gem/Emmett § 1-7-3-3; Canyon/Caldwell §§ 09-01-17, 09-01-19.
[12] Madison/Teton § 105-127(b).
[13] Shoshone/Kellogg § 8-1-4; Canyon/Greenleaf § 09-03-09.
[14] Jefferson/Rigby § 6(3); Bonneville/Idaho Falls § 6.
[15] Shoshone/Kellogg § 8-1-4; Teton/Victor § 7-3-4(B)(2).
[16] Valley/Cascade § 7-2-11.
[17] *See generally* 4 McQuillin Mun. Corp. § 13:4 (3d ed. 2012) ("Although a council has the power, unless restricted by charter, to enact an ordinance to take effect after the expiration of the terms of office of its members, it cannot, by ordinance, divest its successor of legislative power. . . .").
[18] See summary of case in case law chapter of this report.
[19] Canyon/Homedale at § 9-05-15.
[20] Ada/Boise § 9-3-1.B; Washington/Cambridge § 4-3-6.

Such a provision may be either permissive or restrictive in nature. Permissive language specifies that a city may annex any eligible land within the established AOI.[21] In contrast, restrictive language limits annexations by a city to only the AOI.[22] Some AOI Agreements that contain a restrictive provision on the city's authority to annex land go beyond statutory restrictions, which may allow the city and county to negotiate and agree to restrict a city's authority to annex in favor of cooperative planning between the county and city.[23]

Another type of annexation provision that a few agreements employ is a forced annexation provision. A forced annexation provision requires that an application for development in the AOI that meets certain criteria, such as a particular density or when development is adjacent to the city limits, must first request annexation to the city.[24] This provision may be less specific, stating only that land that may be annexed and which is proposed for development "should" be annexed and developed within the city limits.[25] Cities and counties may find such a provision to be useful to prevent any "forum shopping" by project applicants.

Application process. The AOI Agreement should clearly define the application process for projects that are within the area of city impact. Alternatively, if the county commission and city government do not want to determine the detailed aspects of implementing an application process for projects in the area of city impact, the AOI Agreement should clearly delegate to staff the ability to create rules or policies in accordance with the AOI Agreement. If the AOI Agreement does permit its staff to determine such rules, the AOI Agreement should state either that the proposed rules must be approved by the county commission and city council, or establish that the governmental entity—county or city—that will have final agency authority to create such rules.

An AOI Agreement with a well-documented application process is that of Teton County and the City of Driggs. This AOI Agreement details two separate application processes: one for reviewing zoning applications and one for reviewing subdivision applications.[26] While the entire zoning process appears in the AOI Agreement,[27] the

[21] Gem/Emmett § 1-7-3-4.
[22] Gem/Emmett § 1-7-3-4.
[23] *Coeur d'Alene Industrial Park Property Owners Association, Inc. v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985) (court of appeals ruling stating annexation not subject to Idaho Code section 67-6526).
[24] Valley/Cascade § 7-2-5 (conditions requiring application for annexation); Teton/Victor § 7-3-4.B.3 (application requesting higher density than county regulations allow requires request for annexation).
[25] Bonneville/Idaho Falls § 8.
[26] Teton / Driggs §§ 7-1-5-A-1-(c), (d).
[27] Teton / Driggs §§ 7-1-5-A-1-(c), (d).

subdivision process references an applicant to another code that needs to be followed in conjunction with the process listed in the AOI Agreement.[28]

Pre-application meetings. The AOI Agreement should consider establishing a mandatory pre-application meeting for project applicants in the area of city impact area. Because of the complicated approval process that is likely to occur in the area of city impact, it makes sense that a project applicant should be able to have a meeting before application to determine what applications must be filed and which agency—county or city—is the appropriate venue for filing the application. It is suggested that the pre-application meeting should be attended by both a county and city representative. A small fee for the pre-application meeting is advised to cover the implementation cost for those jurisdictions that handle significant application loads.

Decision-making on applications and permit issuance. The AOI Agreement should clearly state the roles of the county commission and the city council in deciding matters related to permit applications in the area of city impact. Most importantly, the AOI Agreement should state which of the two local governments has the authority to issue a final decision on an application in the area of city impact. The AOI Agreement may also wish to establish a consultative relationship between the county commission and city council, or the local governments' planning and zoning boards, in which one of the local governments act only in a consulting arrangement, or one in which both local governments must approve the application.[29] Regardless of the arrangement, it should be clearly stated in the AOI Agreement to avoid constitutional concerns over vagueness.

Roles of county and city staff in reviewing applications. County and city staff do valuable work in preparing project applications for review by county commissions and city councils. Much of this work is time-consuming and requirements a number of judgments that are not directly addressed by statute or ordinance. The AOI Agreement should consider provisions that determine which agency staff has final decision on discretionary matters not reserved for the county commission or city council. Further, the AOI Agreement should consider provisions that determine how to allocate the work of preparing an application for hearing. This term should be written in accordance with the fee provisions that are discussed below.

Time limits or estimates for review and comment. If the AOI Agreement calls for a back-and-forth process between city and county staff, or between the city council and county commission, the AOI Agreement may want to recommend—or require—time limits or estimates for periods of review. If such limits are imposed, remedies for failure to meet the time limits should also be provided.

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[28] Teton / Driggs §§ 7-1-5-A-1-(c), (d).

[29] Such an arrangement would need to be in accordance with case law requirements governing extra-territorial power of cities, which are discussed below.

Public comment. The statute requires public notice and comment on the adoption of the AOI Agreement, but interestingly does not require public notice and comment on decisions made pursuant to the AOI Agreement. It is likely that many such discretionary decisions would also be covered by other applicable state laws requiring public notice and comment.[30] However, the AOI Agreement may also wish to provide for additional public notice and comment provisions beyond those implicit in the nature of future decisions that would occur under the AOI Agreement. For instance, the city and county may want to issue a report as to project activity in the area of city impact. This would likely be most relevant to larger jurisdictions.

Appeals. Similar to application approval, the AOI Agreement should be clear on whether the city or county is the proper venue for an appeal of any decision made in the area of city impact. It is recommended that the agency that makes the final decision on an application should also accept any appeal of that decision. In review of the appeal, however, the input of the other local government entity, as relevant in the decision-making process on the application, should be replicated in any administrative appeal process.

Issuing permits. The AOI Agreement should state which agency is responsible for issuing permits in the area of city impact. If the city is the agency that issues permits in the area of city impact, it is suggested that it clearly be stated that the city does so as an agent of the county, or under some other such authority that would give the city power to issue permits in a location beyond its bounds.[31]

Fees. The AOI Agreement should state the fees that will be covered by the AOI Agreement. Further, the AOI Agreement should state what those fees will be, with an appropriate notation that they may be adjusted from time-to-time, and then indicate the process by which such adjustments may be made, such as on an inflationary basis or some other rubric.

The AOI Agreement should state to which entity a fee is paid. The AOI Agreement should then state how the fee will be allocated between the city and county, noting any differences in how the entities allocate their fee structure, such as charging an hourly rate against the fee, or any other mechanism that may complicate the allocation of the fee between the city and county.[32]

Procedure for 10-year review. The statute requires that the city and county decide every 10 years whether the AOI Agreement is still serving the needs of the citizenry. To

[30] *See* Idaho Open Meeting Law, I.C. §§ 67-2340, *et seq*.
[31] *See* case law summary below.
[32] Madison/Newdale § 105-95; Shoshone/Kellogg.

facilitate compliance, the AOI Agreement should be clear as to its effective date, which could be something simple (e.g., 30 days after the latest date on which both the city and county have both approved the AOI Agreement). Further, the AOI Agreement may want to consider a term that actively requires the city, county, or both entities to reconsider the AOI Agreement prior to the 10-year review window, and a remedy for failure of an entity not to comply. Given the difficulty and time associated with creating an AOI Agreement, it is suggested that any such review begin no later than one year prior to the 10-year review deadline.

Renegotiation. The statute provides a detailed method for renegotiating an AOI Agreement where negotiations have reached a stalemate.[33] However, both the city and county could presumably agree to another form of renegotiation through an AOI Agreement. If the city and county were to do so, they would seek to define what would be the elements that would require a renegotiation, which parties would be necessary for the renegotiation, how such a renegotiation would be handled in a timeline and what that procedure would be. Given the complexity of such an arrangement, defaulting to the statutory provisions may be the best solution for all but a few jurisdictions that can devote necessary resources to a more complicated renegotiation process.

In review of existing AOI Agreements, some simply state that renegotiation will follow the statutory procedures in Idaho Code section 67-6526.[34] Some expressly recite the statutory provisions that renegotiation may be triggered by either the city or county requesting such in writing and such renegotiation will commence within 30 days of the request.[35] Often the AOI Agreements that explain the renegotiation timeline and trigger will also specify that the agreement remains in full force until both local governments adopt new ordinances. [36] Other AOI Agreements provide for renegotiation more frequently than the statutory 10-year review.[37]

Enforcement and remedies against private party. The AOI Agreement should state which entity is responsible for enforcement if a private party fails to comply with the requirements of the AOI Agreement. The AOI Agreement should also state the penalties or remedies that the entity is able to enforce upon such private parties and the procedure necessary to enforce such a remedy.

Enforcement and remedy against party to an AOI Agreement. The AOI Agreement should also state the remedy for failure of one of the parties—a city or county—to

[33] I.C. § 67-6526(b).
[34] Bonneville/Idaho Falls § 10.
[35] Ada/Boise § 9-3-5.A .
[36] Ada/Boise § 9-3-5.B.
[37] Cassia/Albion § 7 (renegotiation to occur every 5 years); Owyhee/Homedale § 8-1-8 (renegotiation to occur every 5 years).

comply with the AOI Agreement. The AOI Agreement should also state the penalties or remedies that the other party is able to enforce on the other party and the procedure necessary to enforce such a remedy. Given the time and money associated with a formal judicial verdict, the city and county may wish to consider a form of arbitration. We do not know of arbitration being used in AOI Agreements at this time; however, it is becoming an increasingly common approach to complex environmental and land use issues nationally. For jurisdictions with contentious AOI Agreement issues, a sophisticated arbitration process may be an appropriate, and time-saving, remedy.

Effective Date. The AOI Agreement should state the date on which it becomes effective. This is complicated by the fact that the AOI Agreement contemplates two separate ordinances, which this report references as the Map Ordinance and the Plans Ordinance, both of which must be passed by both the city and county. One approach is to make the effective date of the Map Ordinance contingent upon passage of the Plans Ordinance in each jurisdiction. Then, the effective date of the Plans Ordinance could be defined as a certain number of days after both the city and county have adopted the Plans Ordinance.

Severability. AOI Agreements have not been highly litigated. However, it is always a good practice to contemplate a severability clause that would provide that any part of the AOI Agreement that is set aside upon judicial review would be severable and the rest of the agreement would thus stand. If parties do not intend for the AOI Agreement terms to be severable, they should also explicitly state that intent.

Amendments. Some cities and counties list the dates of all amendments of the AOI Agreement within the AOI Agreement itself. This practice is useful in determining applicability of the AOI Agreement in disputes that arise, both public and private. It constitutes an excellent practice in providing public notice of the history of the AOI Agreement.

Appendices. Review of AOI Agreements made clear that, for many jurisdictions, the AOI Agreement was a complicated document and there was often trouble within counties and cities determining applicable plans and ordinances, much less applicable versions of plan and ordinances. To facilitate staff compliance, it is suggested that copies of the applicable plans and ordinances cited in the AOI Agreements be attached as appendices to the agreements. While this could be cumbersome in the pre-digital era, it is much easier today. Creating one document with all plans and ordinances applicable to the AOI Agreement would facilitate helping staff know the applicable codes and procedures.

Map component of an AOI Agreement

Map Ordinance. The statute requires that the area of city impact be shown by a map that is passed by its own separate ordinance, which this report refers to as the Map Ordinance. For practical purposes previously outlined, this report suggests that the Map Ordinance be adopted first and that its effectiveness be contingent upon passage of the Plans Ordinance. The Map Ordinance would then be incorporated into the Plans Ordinance. Admittedly, this does not appear to be an approach followed by any Idaho jurisdiction at this time.

Map accessibility. Even if the Map Ordinance is not incorporated into the Plans Ordinance, it is recommended that the Map Ordinance be referenced as an appendix in the Plans Ordinance. A number of counties had difficulty locating the map associated with the Plans Ordinance component of the AOI Agreement. Some local governments that had entered into AOI Agreements appeared to have not yet adopted maps,[38] or a map was mentioned in the AOI Agreement as being "attached," yet no map could be found.[39] This indicates that, as is commonly the case with visual media such as maps, the Map Ordinance is often not easily located or indexed. Incorporating the Map Ordinance into the Plans Ordinance, or simply placing the Map Ordinance as an appendix to the Plans Ordinance. Furthermore, the map should be easily accessible to the public to provide notice to those property owners who are subject to the AOI Agreement.

Map clarity. The maps the Clinic reviewed ranged in quality from hand-drawn maps[40] to highly-detailed computer-generated GIS maps,[41] and every point between these extremes. Many of the Map Ordinances reviewed did not have basic information on the map that would make it easily legible. The area of city impact map should provide the following for purposes of clarity: a scale; a key or legend; a north arrow; and a boundary delineation of the area of city impact area of sufficient clarity to indicate which parcels are located within the area of city impact area.

A scale is a necessary feature of any map, but the clinic observed multiple maps that lacked any scale.[42] This issue becomes significant when the accompanying AOI Agreement lacks a legal description. The only way a map without scale could be comprehensible is by using the legal description, and without a scale or legal description, interpreting the map becomes extremely difficult.

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[38] Camas/Fairfield.
[39] Bear Lake/Georgetown § 3; Twin Falls/Buhl § F-2; Cassia/Oakley § 2.
[40] Canyon/Melba, Map.
[41] Ada/All Cities, Map; Valley/McCall, Map; Canyon/Caldwell, Map.
[42] Boise/Idaho City, Map; Bear Lake/St. Charles, Map.

AOI maps should also include a key or legend. The Clinic observed several maps that had legends,[43] and numerous maps that lacked legends.[44] Regardless, interpreting a map without a legend is difficult. An applicant can be left asking where the city limits end and area of impact boundaries begin without a legend,[45] and that applicant may waste time and resources applying to the wrong entity in such instances.

Most of the major urban areas in Idaho are now providing these map basics with the advent of geographic information system (GIS) mapping.[46] However, many mid-size and smaller jurisdictions in Idaho have not updated their AOI Agreements since GIS mapping became a reasonably-priced alternative and do not provide this information. As those mid-size and smaller communities contemplate updating their AOI Agreements, it is recommended that they also consider a GIS-based mapping program that could facilitate a more nuanced discussion of the area of city impact area and also provide greater notice to owners of parcels affected by the AOI Agreement.

A legal description in the AOI Agreement should match the AOI map, or the map may be unenforceable.

Map currentness. The review of AOI Agreements throughout the state indicated that not only were many AOI Agreement maps difficult for counties and cities to locate, the local governments often were not clear when the map itself was adopted. This is another practical reason why this report suggests that the Map Ordinance be adopted first and then incorporated into the Plan Ordinance, thus creating one operative document. Further, it is suggested that the maps also state the ordinance to which they are attached on the face of the map itself. This would facilitate the determination of the date of the map because the date of the ordinance would presumably be easier to track.

The statute requires that the city and county decide every 10 years whether the AOI Agreement is still serving the needs of the citizenry, and this includes the map. If the city and county have not made this determination within the last 10 years, the map is not current and is out of compliance with Idaho law. In order to ensure compliance with the statute, the adoption date, amendment dates, and the effective date should be included on the AOI map.[47] If the date is included on the map, it is readily apparent whether the map is out of date. Further, as was mentioned elsewhere in this report, a date the map was adopted or amended should also be included in the Plans Ordinance of the AOI Agreement. If the adoption date and amendment dates are included on the map, as well as in the Plans Ordinance of the AOI Agreement, an applicant can easily

[43] Ada/All Cities, Map; Valley/McCall, Map; Canyon/Caldwell, Map.
[44] Fremont/Newdale, Map; Kootenai/Hayden, Map; Boise/Idaho City, Map.
[45] Bannock/Chubbuck, Map.
[46] *See* ESRI, *What is GIS?* (accessed Dec. 10, 2012), *at* www.esri.com/what-is-gis.
[47] Valley/McCall, Map; Bear Lake/Bloomington, Map.

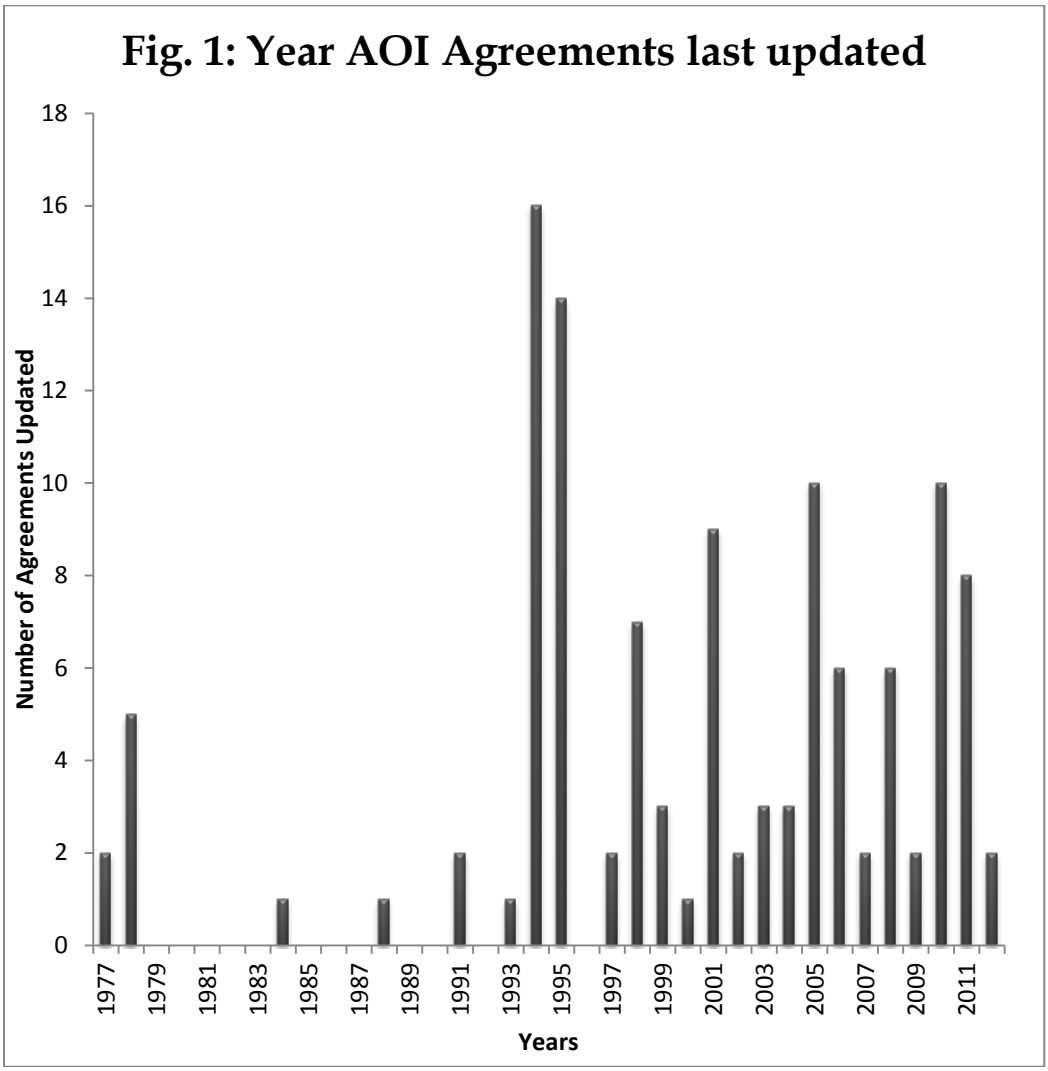
learn whether he or she using the most up-to-date materials or instead relying on materials which are no longer valid.

Legislative history

The Clinic obtained the legislative history related to the original passage of Idaho Code section 67-6526, which is attached in Appendix B. The legislative history does not provide substantial guidance in interpreting the area of city impact statute because the statute was a part of the larger Land Use Planning Act of 1975 ("LLUPA"). As a result, comments typically referred to LLUPA as a whole. Nonetheless, the legislative history is provided here in the interest of completeness.

Negotiation date analysis

The oldest AOI Agreements of those obtained for this report are from Clearwater County, both of which are from 1977. Several AOI Agreements were updated just this year, 2012, such as those of Twin Falls/Buhl and Blaine/Sun Valley. As shown in Figure 1 below, of the 125 AOI Agreements obtained for this report, the largest number of AOI Agreements, 30, were updated in the two-year period of 1994 and 1995. The next highest frequency was in 2001 (11 AOI Agreements) and the years of 2005 and 2010 (10 AOI Agreements each year). The Idaho Legislature amended the area of impact statute in 1993, a move that required cities and counties to update their agreements by November, 1995, which is likely responsible for the large number of AOI Agreements that were passed in 1994 and 1995.[48]

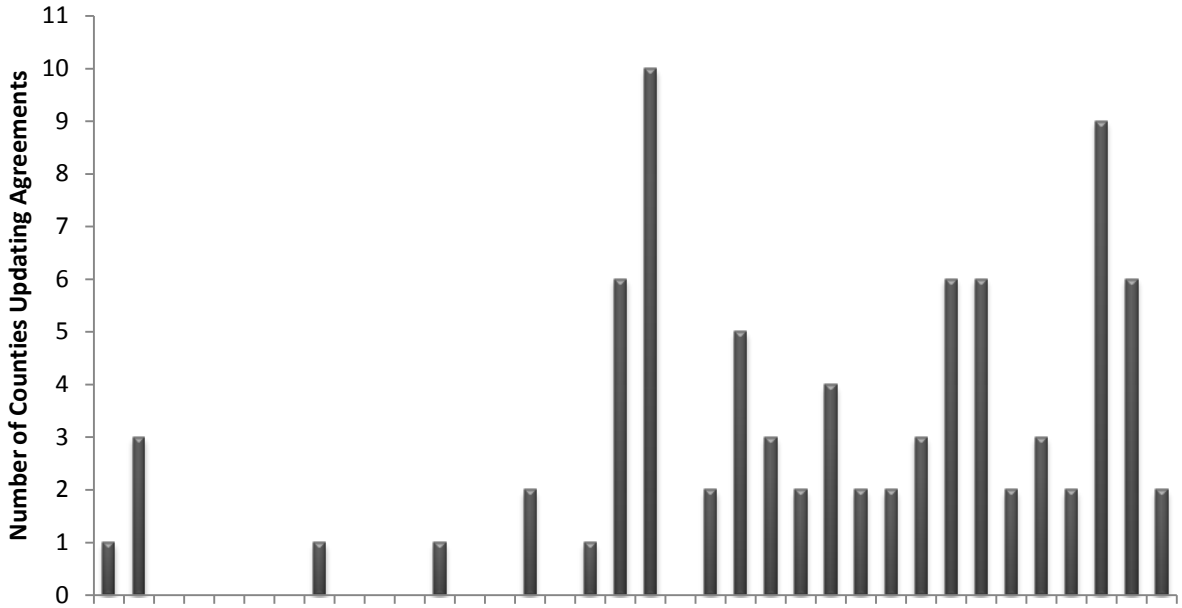


[48] S.L. 1993, ch. 55, § 1.

Some counties may have updated all their AOI Agreements in a single year. For instance, Figure 2 shows how many counties updated AOI Agreements for each year based upon the latest date of amendment. This data only reflects the most recent date of an amendment on any AOI Agreement; thus, a county could have updated an AOI Agreement in 1995 and again in 2005, but that AOI Agreement and that county would only be counted in 2005 for purposes of Figure 2.

Again, 1994 and 1995 had the highest number of counties updating their AOI Agreements. This means that it appears at least 17 counties have not renegotiated or adopted at least some new portion of an AOI Agreements since the mid-90s, almost twenty years ago, and several other counties have made no amendments for longer than that, as Figure 2 illustrates. The second highest frequency of amendments was in 2010, however, in which 9 counties updated AOI Agreements.

Fig. 2: Number of counties updating at least one AOI Agreement, by last year of any update



Case law summary

This section provides a brief overview of Idaho case law discussing AOI Agreements. Because the number of cases is few, the most relevant sections of prominent cases are quoted at length, as these cases provide what little judicial guidance there is in Idaho on AOI Agreements.

City of Garden City v. City of Boise, 104 Idaho 512, 660 P.2d 1355 (1983), was the first major case to review AOI Agreements, and the Idaho Supreme Court noted that the purpose of AOI Agreements "was to delineate areas of future contiguous growth in order to assure their orderly development and thereby reconcile potentially competing designs for boundary expansion with accepted land use planning principals." *Id*. at 514. The areas of city impact adopted by Boise, Garden City, and Eagle were in conflict because the cities' AOI Agreements with Ada County resulted in overlapping impact area boundaries. After renegotiation under the statutory procedures, Garden City objected to the changes to its impact area proposed by Ada County and brought this action. The Court upheld 1979 several procedural changes to Idaho Code section 67-6526 and denied a facial challenge the constitutionality of the entirety of the Local Planning Act of 1975, of which section 67-6526 is a part.

In *Coeur D'Alene Indus. Park Prop. Owners Ass'n, Inc. v. City of Coeur D'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985), the appellate court denied a writ of prohibition against annexation sought by a group of landowners and developers because the City of Coeur d'Alene had not negotiated with Kootenai County an "area of city impact" in which their property was located. The court noted that while the AOI Agreement statute was a part of the Local Planning Act, annexation authority flows from Idaho Code section 50–222, a statute antedating the Local Planning Act and:

> broadly authoriz[ing] a city to annex adjacent territory and by ordinance to declare the annexed area a part of the city. This statute was not amended when the Local Planning Act was passed, nor has it since been amended in light of the Act. In contrast, I.C. § 50–1306, a statute empowering cities to approve or to disapprove plats of subdivisions outside the city boundaries, has been amended to take account of I.C. § 67–6526. Conversely, the Local Planning Act contains no substantive limitation upon the power of annexation. It simply provides that annexation must be preceded by notice and hearing on "the proposed [comprehensive] plan and zoning ordinance changes for the unincorporated area." I.C. § 67–6525.
>
> . . .

> There is, to be sure, a tension between the notion of city-county cooperation in land use planning and a city's unilateral authority to annex adjacent land. Some, though not all, benefits of mutual planning may be lost when a city peremptorily extends its boundaries. Nevertheless, the allocation of powers between cities and counties is a legislative task. Our Legislature has chosen not to make negotiation with the county a compulsory prerequisite for annexation by a city. . . We decline to so hold.

Id. at 845-46.

In *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994), the appellate court held that a property owner that owned land located wholly within an area of city impact did not have standing to challenge the area of city impact where the property owner neither alleged nor presented evidence that it has been or would be injured in fact by the actions of the city and county. Instead, the property owner alleged it was an "affected person" on whom standing should be conferred solely because its land would fall within the agriculture preservation zone if the county were to rezone in compliance with the impact area agreement, a rezone that had not yet occurred. The court refused to grant standing on these facts, but did not rule out the possibility that a private party could have standing to challenge an area of city impact agreement on different facts. In *dicta*, the court noted several hypothetical situations that may confer standing. *Id*. at 827 fn. 3.

In *Blaha v. Eagle City Council*, 134 Idaho 768, 769, 9 P.3d 1234, 1235 (2000), the petitioners argue that a city council improperly granted final plat approval for a subdivision because the application did not conform to the design standards of the city code that were made applicable to subdivisions located within the area of city impact. The court held that the order of the City approving the subdivision plat application was not a final order but was an interlocutory order and, as an interlocutory order, the city's approval order was not directly appealable or subject to review except as part of a timely-filed appeal from the county commission's final decision on the subdivision plat and thus was not properly before the Court. In its analysis, however, the Court also provided useful insight into AOI Agreements, as follows:

> Under the statutory scheme found in Chapter 65, Title 67, Idaho Code, the governing board for an unincorporated area, including the area of impact, is the board of county commissioners. *Clyde Hess Distrib. Co. v. Bonneville County,* 69 Idaho 505, 210 P.2d 798 (1949). As provided by Article XII, § 2 of the Idaho Constitution, "any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." Therefore, a city has jurisdictional authority to make zoning decisions, including subdivision plat approvals, but only when the subdivision lies within the city limits.

Id. at 769-70.

Blaha v. Bd. of Ada County Com'rs, 134 Idaho 770, 772, 9 P.3d 1236, 1238 (2000), is a companion case to *Blaha v. Eagle City Council*, 134 Idaho 768, 9 P.3d 1234 (2000), and based upon the same underlying facts. Petitioners here, however, appealed the county commission's granting of variances related to road width, which the county did so on the basis of determinations that the proposed road width with the variance would still meet the city code's construction and design guidelines, as well as county code requirements for roads. With regard to the area of city impact issues, the Idaho Supreme Court announced its most substantive ruling on area of city impacts, and so the Court is quoted at length here:

> The Blahas [petitioners] argue that the approval conferred was not the approval required by the ordinances made applicable in the impact area. S*ee* Eagle City Code § 8–8–3:C; Ada County Code § 9–2–3:C. Under the Blahas' interpretation of the ordinances, the City and the County both had a duty to provide due process protections of notice and a hearing prior to approving the subdivision. They argue that in view of the City's acknowledged failure to provide notice and a hearing, the County's final plat approval that followed was rendered invalid.
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> The decision of the Eagle City County approving the final plat of the Buckwheat Acres Subdivision was reviewed by the district court. In an order dated September 16, 1998, the district court determined that the Area of City Impact Agreement mandates that subdivision applications be submitted to both the City and the County, although the agreement does not confer equal jurisdiction to the City and the County. In light of Article XII, § 2 of the Idaho Constitution limiting a city's power to the area within its boundaries, the district court held that the agreement should be read to provide only for a review of the application by the City. The district court held that the sole purpose of the City regarding subdivisions located outside the city limits is to make a recommendation to the County with respect to whether the application is in conformance with relevant city codes. Finding the City's role to be merely advisory and not governed by the Local Land Use Planning Act (LLUPA), the district court concluded that the City acted within its discretion in recommending approval of the final plat to the County, even though the subdivision did not meet the design requirements applicable to private roads and intersections.
>
> To address this issue, we begin with an examination of the action required by the City in approving a subdivision plat application of a subdivision located in the area of city impact. Pursuant to I.C. § 67–6526, the City and the County adopted ordinances providing for the identification of the area of city impact and for the application of plans and ordinances for the impact area. The mutually adopted

ordinances of the City and the County provide that all subdivision plats situated within the area of city impact shall be submitted to the City for approval, in addition to County approval, as provided in Idaho Code § 50–1306. *See* Eagle City Code § 8–8–3:C; Ada County Code § 9–2–3:C.

The text of I.C. § 50–1306, which is entitled Extraterritorial authority—Property within the area of city impact, reads in part as follows:

> All plats situate within an officially designated area of city impact as provided for in section 67–6526, Idaho Code, shall be administered in accordance with the provisions set forth in the adopted city or county zoning and subdivision ordinances having jurisdiction. In the situation where no area of city impact has been officially adopted, all plats situate within one (1) mile outside the limits of any incorporated city shall first be submitted to the said city, and approved by the council of said city before the same shall be recorded.... Such city approval shall be in addition to county approval. Within one (1) mile of the city, a city subdivision ordinance shall prevail over a county subdivision ordinance unless the city and county mutually agree upon any differences.

The statute, which does not specifically prescribe a dual approval process in an impact area as the Blahas contend, nevertheless attempts to define the respective jurisdictions of a city and a county that share contiguous boundaries but have not acted to create an area of impact, by outlining an approval procedure to be followed in the particular case where a subdivision is located within one mile of the city limits. Plats located in the area of city impact, under the statute, are to be administered in accordance with the city or county zoning and subdivision ordinances made applicable in the impact area. *See id.* Thus, the scope of the approval of the City of Eagle as regards a subdivision located within the Eagle Area of City Impact is not addressed by I.C. § 50–1306.

In addition to the Area of City Impact Agreement, the City and the County adopted a separate referral process whereby all county applications for planned subdivisions within the Eagle Area of City Impact are required to be sent to the City. *See* Eagle City Code § 8–8–4:A and B; Ada County Code § 9–2–4:A and B. The City and the County entered into a Referral Process Agreement in September 1987 specifying procedures and time frames to govern the processing of land use applications regarding the impact area.

Under Section 3.0 of the agreement[7] the Ada County Department of Development Services is required to send to the Eagle City Clerk all county applications for subdivisions within the Eagle Area of City Impact forty-five days prior to any county public hearing on such application, requiring the City

to make recommendations to the County no later than thirty days after the City has received such application. Accordingly, the procedural steps contemplated by the contracting parties include (1) an applicant making application to the County, (2) the County transmitting the application to the City, (3) the City providing its recommendations, and (4) the County conducting a public hearing on the application. Based upon our review of the record, the path of the Buckwheat Acres Subdivision application followed the above-described process. Taking the referral agreement and the implementing ordinances together, we conclude that the City reasonably interpreted the approval required by the ordinance to be in the nature of a recommendation prepared in the City's normal course of business. Such an interpretation assures input from the City, which has the expertise to review the subdivision application for conformance with its code provisions, in order to provide continuity in the event of city expansion into the designated impact area and to promote cooperation between the neighboring City and County.

Beyond the corporate limits of a city, the county has jurisdiction by statute to accept and approve subdivision plats. *See* I.C. § 50–1308. For the City of Eagle to be allowed to exercise co-equal jurisdiction with Ada County in the impact area lying beyond the city limits would not only be in conflict with the statute but also inconsistent with constitutional limitations placed on a city's powers. Article XII, § 2 of the Idaho Constitution provides that any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws. This Court has held that the power of cities and counties only exists within the sovereign boundaries of the cities and the counties respectively. *See Clyde Hess Distributing Co. v. Bonneville County,* 69 Idaho 505, 210 P.2d 798 (1949) (valid county regulation enforceable so far as territory embraced in county was concerned, exclusive of municipalities where the regulation was without force and effect); *Boise City v. Blaser,* 98 Idaho 789, 572 P.2d 892 (1977) (To give effect to a county permit within city limits would be to violate the separate sovereignty provisions of Idaho Const., art. XII, § 2.); *Hobbs v. Abrams,* 104 Idaho 205, 657 P.2d 1073 (1983) (ordinance or regulation must be confined to the limits of the governmental body enacting the same). Therefore, any reading of the implementing ordinances granting the City the power to restrict development in the impact area by denying approval of a subdivision application made to the County would be an extraterritorial exercise of jurisdiction by the City and an infringement on the constitutional right of the County.

We conclude that the power to approve a subdivision application in the impact area resides exclusively with the County. We hold that the City's action in reviewing the subdivision application is advisory only and is not a prerequisite to action by the County. Finally, we hold that the action of the City did not

> require that due process protections be afforded to the Blahas, who by their own admission were provided notice and an opportunity to be heard prior to the County granting final approval of the Buckwheat Acres Subdivision. Having been accorded due process at the County stage of the approval process, the Blahas cannot claim that the approval was granted in violation of the ordinances or upon unlawful procedure. We therefore affirm the Board's approval of the final plat of the Buckwheat Acres Subdivision.

Id. at 775-77.

In *Evans v. Teton County*, 139 Idaho 71, 79-80, 73 P.3d 84, 92-93 (2003), the Court held that third party appellants were "not entitled to seek enforcement of the [AOI] Agreement because they are not a party to the Agreement and not subject to it." This ruling may indicate that only the city and county that are parties to an AOI Agreement have standing to enforce such an agreement.

Reardon v. City of Burley, 140 Idaho 115, 116, 90 P.3d 340, 341 (2004) is an appeal of a district court decision that denied attorney fees to a private party that challenged, and won, a claim against a city's area of city impact. The attorney fees analysis in the case was subsequently overruled by *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012), which held that the appellate court had used the wrong standard of review. However, the case is still of use with regard to AOI Agreements because, in analyzing whether attorney fees should be granted, the court evaluated the reasoning of the city in its area of impact analysis. The *Reardon* court stated:

> In Idaho, any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws. Idaho Const. art. XII, § 2. A city's exercise of jurisdiction in an impact area lying beyond a city's limits is inconsistent with the constitutional limitations placed on a city's powers by Article XII, § 2 of the Idaho Constitution. *Blaha v. Bd. of Ada County Comm'ns,* 134 Idaho 770, 777, 9 P.3d 1236, 1243; *see also, Boise City v. Blaser,* 98 Idaho 789, 791, 572 P.2d 892, 894 (1977).
>
> City Ordinance No. 1112 allows the City to unilaterally enact and apply, without parallel County approval, as is required under I.C. § 67–6526(d), its comprehensive plan, subdivision ordinances, and zoning ordinances to the City's Area of Impact within the unincorporated area of the County. Because City Ordinance No. 1112 is not confined to the constitutional limits of Article XII, § 2 of the Idaho Constitution and because it conflicts with the requirements of I.C. § 67–6526(d), it is void. Additionally, the City's enactment of the subsequent Ordinance Nos. 1123, 1129, 1152, and City Resolution No. 3–01 are also void for the same reasons.

> County Ordinance No. 98–11–1 presents a different situation. A county, by ordinance, can adopt the terms of a city's ordinance. I.C. § 67–6526(a)(1); *see also* Idaho Op. Atty. Gen. No. 95–1, 129–31 (1995). However, the LLUPA "establishes explicit and express procedures to be followed by the governing boards or commissions when considering, enacting and amending zoning plans and ordinances." *Gumprecht v. City of Coeur d'Alene,* 104 Idaho 615, 617, 661 P.2d 1214,1216 (1983). Specifically, under I.C. § 67–6526(d) "areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate." I.C. § 67–6526(d).
>
> In this case, County Ordinance No. 98–11–1 adopted the terms of City Ordinance No. 1112 while reserving to the County the right to renegotiate only the Area of City Impact. The County's adoption of City Ordinance No. 1112 allowed the City to unilaterally enact, apply, and control, without renegotiation with the County, changes to the City's comprehensive plan, subdivision ordinances, zoning ordinances, and land use applications within the unincorporated area of the County, but within the City's Area of Impact. By its terms, County Ordinance No. 98–11–1 does not follow the explicit, express procedures of I.C. § 67–6526(d) because it authorizes the City to unilaterally act without parallel County action. As such, it is void because it violates the terms of I.C. § 67–6526(d) and the separate sovereignty provisions of Article XII, § 2 of the Idaho Constitution, as well as the careful avoidance of any county/city jurisdictional conflict or overlap which is safeguarded therein. *Boise City v. Blaser,* 98 Idaho 789, 791, 572 P.2d 892, 894 (1977) (citing *Clyde Hess Distrib. Co. v. Bonneville County,* 69 Idaho 505, 210 P.2d 798 (1949)).

Id. at 119.

In *Burns Holdings, LLC v. Teton County Bd. of Com'rs*, 152 Idaho 440, 272 P.3d 412 (2012), a case otherwise about variances and conditional use permits, the Court did provide, in a footnote, a brief summary of the power relationship between cities and counties with regard to area of city impact areas:

> A county cannot delegate to a city the power to make zoning decisions beyond the city's limits. *Reardon v. City of Burley*, 140 Idaho 115, 119, 90 P.3d 340, 344 (2004). The county and the city can agree that the city comprehensive plan and zoning ordinances will apply in the unincorporated area of the county that is within the city's area of city impact, but the county must adopt an ordinance providing for the application of the city plan and zoning ordinances in the area of city impact. I.C. § 67–6526.

Id. at 442 fn. 1.

Several other cases mention area of city impact areas in an ancillary fashion, but do not substantively contribute to the case law on AOI Agreements.[49]

[49] *See, e.g., Giltner Dairy, LLC v. Jerome County*, 150 Idaho 559, 561, 249 P.3d 358, 360 (2011) (noting availability of declaratory relief in area of city impact statute); *County of Twin Falls v. Hettinga*, 151 Idaho 209, 210 fn. 1, 254 P.3d 510, 511 (Ct. App. 2011) (discussing AOI Agreement relevant to case).