

County Energy Facility Siting

Wind Energy and Natural Gas Exploration

Local Land Use Planning Act (LLUPA)

- Purpose (Idaho Code § 67-6502)
 - Promote the health, safety, and general welfare of the people of the state of Idaho, which includes:
 - Protect property rights
 - Protection of state and local economies
 - Protection of environment
 - Protection of prime agricultural land, forestry and mining lands, and production land (food, fiber, and minerals)
 - Ensure development is commensurate with physical characteristics of land
 - Protect life and property in areas of natural hazards
 - Protect fish, wildlife, and recreational resources
 - Avoid water and air pollution

Comprehensive Planning Process

- LLUPA requires local governments to conduct comprehensive planning that satisfies the requirements of LLUPA.
 - An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction. (Idaho Code § 67-6508)

Local Zoning Ordinances

- Counties are authorized to establish zoning ordinances that include (Idaho Code § 67-6511):
 - 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
 - Location and use of buildings and structures

Special Use Permits

- County governments may grant special use permits that attach special conditions or requirements to particular deployments
 - Often the case when zoning ordinance(s) do not cover a specific development or land use
 - Special conditions may relate to specific social, economic, health and safety, or environmental impact of the proposed use
 - Subject to public notice and hearing requirements

Wind Energy Siting Standards in Neighboring States

- Montana, Nevada, and Utah allow local jurisdictions to make siting decision
- Nevada law prohibits local governing boards from prohibiting or unreasonably restricting the use of systems for obtaining wind energy
- In Oregon and Washington large energy facility siting decisions, including some wind facilities, are made by energy site evaluation committees sanctioned by the state
 - Include local governing body representation
 - Local governing body retains siting authority for small scale alternative energy facilities

- Wyoming is the only neighboring state with statutory wind energy siting standards (Title 18-5-504)
 - Base of tower must be sited at a distance of at least 110% of height of tower from any property line or public road right-of-way
 - Towers cannot be constructed within 1000 feet or five and one-half (5.5) times the height of the tower from any platted subdivision, residential dwelling, or occupied structure
 - Towers cannot be constructed within one-half (1/2) mile from the limits of a city or town

County Wind Energy Ordinances

- Eight counties in Idaho have enacted wind energy facility setback ordinances:
 - Bannock (1-3 times total height of turbine)
 - Blaine (1.1 times total height of turbine)
 - Bonneville (1 times total height of turbine + 10 feet)
 - Cassia (1.5 times the total height of turbine)
 - Fremont (1 times the total height of turbine)
 - Jefferson (1 times the height of turbine)
 - Madison (1 mile and 2-3 time total height of turbine)
 - Power (1.2 times the total height of turbine)
 - Bingham County is currently in the process of enacting a county wide wind energy siting ordinance

Counties with Restricted Development

- Blaine (mountain overlay and scenic byways)
- Bonneville (only permitted in overlay district)
- Cassia (historical preservation and outdoor recreation areas, only permitted on zoned ag or multiple use)
- Fremont (only residential turbines are permitted, not within 2 miles of scenic byway or registers of historic places)
- Jefferson (only permitted on zoned ag land in excess of 40 acres)
- Madison (not permitted within 1 mile of inhabited structures)

Counties with Noise Standards

- Bannock (45dbs)
- Bonneville (45dbs, estimate at least 1,800' setback, actual setback of development was 3,900')
- 45dbs is no louder than a quiet office setting

Counties without Wind Energy Ordinances

- Wind energy projects have been sited in counties that do not have wind energy ordinances (Bingham, Elmore, and Twin Falls)
- In counties without designated wind energy ordinances, developers must apply for a special or conditional use permit and follow the established special/conditional land use ordinance, including public notice and hearing

IAC Energy Facility Siting Philosophy

- Land use decisions and environmental protection have a direct impact on the quality of life of local residents and their economy.
- IAC believes that land use decisions and environmental policies made at the federal, state, and local levels must be clearly explained, and that local residents have a voice in these decisions as they will bear the greatest burden of the costs.
- IAC believes strategies that encourage and facilitate local participation should be incorporated in policy and plan development and other administrative procedures.
- IAC supports procedures for energy facility and transmission permitting that respect federal and state responsibilities, regional impacts, and local concerns, and maintain siting authority at the local level.

IAC Recommendations

- IAC recommends preserving alternative energy facility siting authority at the local level
- If requested, the State may serve in an advisory role for counties requesting assistance in siting wind energy facilities
 - CAFO site advisory team model has helped counties needing assistance in siting CAFO's
 - A similar model could be used in conjunction with either DEQ or OER in providing wind energy facility siting assistance

Oil and Gas Exploration in Idaho

- Natural gas exploration is ongoing in Canyon, Gem, Payette, and Washington Counties
- Exploration in Idaho likely to expand due to increased demand and advancements in detection technology
- Active wells are in place in Payette County
- Currently no county in Idaho has adopted oil & gas exploration or facility siting ordinances
- Washington County has drafted an ordinance, but it has yet to be adopted

Oil & Gas Exploration in other States

- Colorado
 - Allows for local jurisdictions to enact ordinances
 - In some instances, state law preempts local ordinance
 - State preemption litigation in courts (Gunnison v. BDS International, La Plata v. Bowen/Edwards)
 - Siting/Drilling standards are set through state rulemaking
 - Counties have consultation authority

- Wyoming
 - Siting/Drilling standards are set through state rulemaking
 - Oil & Gas Conservation Commission
- Montana
 - Like Idaho, is currently in the midst of updating its rules on oil and gas exploration, including rules governing fracking

Idaho Law

- Oil & Gas Conservation Commission authority
 - Jurisdiction over all persons and property, public or private
 - Make and enforce rules, regulations, and orders
- Commission regulation authority (Idaho Code § 47-315):
 - Drilling and plugging of wells
 - Shooting and treatment of wells
 - Operations to increase ultimate recovery
 - Disposal of oil field waste

Preemption of Local Ordinances

- Idaho Code is generally clear in expressly preempting specific county ordinance authority
 - Regulation of firearms (Idaho Code § 18-3302J)
 - Exhibition of material or live conduct which is obscene (Idaho Code § 18-4113)
 - Regulation of pseudoephedrine products (Idaho Code § 37-330)
 - Noise standards for outdoor sport shooting ranges (Idaho Code § 55-2605)
 - Under certain circumstances PUC can preempt local land use decisions pertaining to energy transmission facilities in national interest electric transmission corridors (Idaho Code § 61-1703)

- Chapter 3, Title 47 does not expressly preempt local land use planning authority
- If ordinances made under LLUPA impose higher standards than are required by any other statute or local ordinance, the provisions of ordinances made pursuant to LLUPA shall govern (Idaho Code § 67-6518)
- State agencies are directed to comply with LLUPA plans and ordinances unless otherwise provided by law (Idaho Code § 67-6525)
- Lack of preemption language confusing to local officials
 - State regulates drilling and plugging of wells, treatment of wells, spacing of wells, etc.
 - Counties may regulate the manner of construction, location, and operation of oil and gas wells as set forth in LLUP
- Potential for conflict if local ordinances are enacted

IAC Recommendations

- IAC has yet to adopt a formal policy regarding oil and gas development
- IAC members have varying opinions regarding oil and gas development
- IAC believes each alternative for the development of new energy resources has advantages and disadvantages affecting resource depletion, alternative uses, visual impact, pollution, and cost.
- IAC believes that planning and flexibility in project development promote optimum solutions that reduce overall impact and make best use of all resources.
- IAC recommends including local elected officials in the rule making process and providing a mechanism for locale elected officials to participate in the siting of oil and gas related development including wells, pipelines, refineries, and other related facilities

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