Land use controls in Montana: An analysis of factors affecting policy adoption of countywide zoning

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LAND USE CONTROLS IN MONTANA:
AN ANALYSIS OF FACTORS AFFECTING POLICY ADOPTION OF COUNTYWIDE ZONING

by
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presented in partial fulfillment of the requirements

for the degree of
Master of Arts
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Land Use Controls in Montana: An analysis of factors affecting policy adoption of countywide zoning.

Chairperson: Sarah Halvorson

Since 1990 thirty-five percent of the 56 counties in Montana have experienced an average 2% annual increase in population. Additional residents lead to an increase in land development. These counties are struggling with ways to both accommodate this growth and continue to foster the quality of life that so many Montanans associate with living in Montana. For over forty years, counties have been enabled by the state legislature to adopt countywide zoning as a land use control and growth management tool. Until 2005, no county had done so.

This thesis aims to find reasons why counties have not pursued adopting countywide zoning policies. Research suggests that such policies would provide counties the opportunity to identify areas appropriate for growth and areas appropriate for conservation. In addition, it would provide a more stable environment for officials and landowners in which to review new development proposals. This research was conducted by reviewing the current status of planning and zoning in ten of the fastest growing counties of Montana and interviewing policy makers and participants directly involved in the planning process of those counties. Findings of this analysis reveal that policy makers are strongly opposed to adopting new land use policy that is not driven by their constituents. Further, counties are lacking a foundation of planning on which to build a countywide zoning policy. Lastly, this research suggests that training and education of state laws could facilitate improvements in county-level planning.
First, I would like to thank my advisor Dr. Sarah Halvorson for all her positive support and guidance throughout my thesis writing experience. Secondly, I would like to thank my mentor and friend John Horwich for his candor and encouragement during my graduate studies and beyond.

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>LIST OF MAPS</th>
<th>vi</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF TABLES AND FIGURES</td>
<td>vii</td>
</tr>
</tbody>
</table>

Chapter

1. INTRODUCTION ................................................................. 1
   - Objectives and Research Questions ........................................ 5
   - Research Setting ........................................................................ 7
   - Significance of Research .......................................................... 11
   - Thesis Arrangement .................................................................... 14

2. THE HISTORY OF PLANNING IN MONTANA ........................................ 17
   - Early Land Use Regulatory Efforts ............................................. 18
     - A Brief History of Zoning ......................................................... 20
     - Countywide Zoning ................................................................. 22
   - Mid-Century Planning Efforts .................................................... 23
   - Recent Planning Efforts ............................................................. 28
   - Summary ..................................................................................... 32

3. THEORETICAL BACKGROUND ................................................. 33
   - The Economics of Planning ....................................................... 34
   - Land Use Decision Making ....................................................... 37
   - Growth Management ............................................................... 41
   - Summary ....................................................................................... 47

4. FRAMEWORK OF ANALYSIS ................................................. 48
   - The Policy Process ................................................................. 48
   - Formulation ................................................................................. 51
   - Adoption and Innovation .......................................................... 52
   - Implementation .......................................................................... 55
   - Summary ..................................................................................... 57
LIST OF MAPS

Map of Study Area ................................................................. 68
Map of Montana Topography .............................................. 69
LIST OF TABLES AND FIGURES

Counties of Study Area ........................................................................................... 9
The Policy Cycle ...................................................................................................... 49
CHAPTER 1
INTRODUCTION

If one journeys across the United States from the east coast to the west, one would see a repetitious pattern of development that radiates from a dense city core to less dense peripheries. This is not an unusual phenomenon – as populations increase so too does development of the built environment in areas previously undeveloped. What is perceived as a seemingly rapid expansion and development of land in the United States has happened in fits and starts across the country beginning with settlement of the east coast. For example, the island of Manhattan in New York north of what is now 14th Street was farmland in the mid-1800s. By the turn of the 20th century it was completely built up (Platt, 1996).

Montana, like many other Rocky Mountain States, is still largely a rural state with only 6.2 persons per square mile (U.S. Census Bureau, 2000), and over 36 million acres of public land (roughly one third of Montana's 145,552 square miles). The Continental Divide splits the state between the warmer, wetter, mountainous western region, and the colder, drier, plains to the east. As geography often shapes a people, there is a very different political and social life that exists on either side of the Divide. In a state where 23 out of 56 counties lost population in the last two decades the topic of land use controls is often viewed with some skepticism, for, without growth, there is no perceived need for land use controls. While the state as a whole is not considered a rapidly growing one,
some communities, particularly in the western half of the state, have been experiencing the pressures of community expansion — more houses, more people, more cars. Where there was once a sense of having “elbow room” and experiencing a truly rural landscape, there now exists a growing sense of encroachment by development. This is particularly true in areas peripheral to cities and towns adjacent to natural amenities such as national parks and forests.

The regulation and patterns of population growth and land development have been of particular concern to many citizens and policy makers. Land use controls are regulatory planning tools for controlling the development of land. Some of these tools include floodplain regulations, subdivision review (a process by which governing bodies approve or deny a proposed subdivision based on written, adopted criteria) and zoning.

Montana’s land use laws contain provisions for two general types of zoning regulations that local governments have been authorized by the legislature to adopt — county and municipal. The enabling legislation for county zoning is divided into two parts. The first allows for citizens to create their own districts outside of incorporated areas. This is commonly referred to as citizen-initiated zoning, or “Part 1 Zoning,” as described in the Montana Code Annotated (MCA), Title 76, Chapter 2, Part 1, adopted in 1953. This form of zoning is found in many parts of the state in unincorporated areas of a county. Even though this provision of law requires citizen initiation, it must still receive approval from the governing body and there must be some form of oversight — typically an agency or board assigned by the governing body to review and administer.
The other part of the zoning statute for counties is county-initiated zoning, or "Part 2 Zoning," as described in the MCA Title 76, Chapter 2, Part 2. A county has the authority to create zoning districts for all or part of the county. This enabling legislation was enacted in 1963, and allows for counties to employ land use controls in unincorporated areas. Countywide zoning would apply zoning regulations to the entire county. As a land use planning tool, countywide zoning affords counties the opportunity to address some of the growth pressures they are experiencing.

There are competing forces at work surrounding the issue of land use controls. One is the market, or social environment, with demands for land and resources, and the other is the very resources themselves, or the natural environment. This natural environment includes limited supplies of resources such as habitable land, fossil fuels, and some might say fresh, clean water and air. The force of the market is tangibly felt by many homeowners in counties that have experienced fast-paced community expansion through a steady increase in home prices and subsequently property taxes. As the scenery of the West attracts more residents, according to Rob Chaney (2001) of the Missoulian, the local newspaper in Missoula, the cost is transferred to the taxpayers:
“... [T]he state’s most lucrative tax revenue sources derive from its wide-open spaces, or the uses Montanans make of them. The state ranks No. 1 for income derived from gas sales taxes per person, and comes in second after Wyoming for the per capita income from hunting and fishing licenses. It also leverages its fourth-in-the-nation land size by applying the fourth-highest property tax burden, measured per person” (July 27, 2001).

Seventeen of Montana’s fifty-six counties experienced a greater than 10% population increase between 1990 and 2000, and of those, ten had total populations greater than 10,000. All but two (Big Horn and Yellowstone) were in the western part of the state. The communities that are expanding the most are in counties where the majority of public lands exist. With a limited amount of private land available for development, the rate of growth creates a sense of urgency for effective and efficient land use control as a part of land use planning. Indeed, it is a problem that has been identified by government officials, policy makers, local planners and residents alike.

The effect of development on natural resources is of particular significance in the western states due to the documented impacts on the limited water supply and water quality (University of Colorado, 2004; Clark Fork Coalition, 2005; Backus, 2006). Being west of the conspicuous 100th meridian, Rocky Mountain States receive on average less than 20 inches of rainfall annually. Conservation of such a necessary resource is vital to communities for the very means of self-preservation. In fact, some western cities, such as Boulder, Colorado, even publish tips on their websites’ home pages for ways to conserve water (City of Boulder, 2006). Counties in Montana can look to communities in many other
western states for strategies of incorporating elements of natural resource conservation into their planning policies and land use controls.

**Objectives and Research Questions**

This research presents an analysis of factors affecting the adoption of countywide zoning in Montana’s rapidly growing counties. The purpose of this research aims to assess the reasons why counties have been disinclined to adopt zoning on a countywide basis – a policy that could potentially have a significant impact on patterns of growth in Montana. The framework for conducting this research draws from theories about the policy adoption process, and land use planning policy and regulation. This analysis seeks to fulfill the objective of providing insight into factors that might help promote adoption of countywide zoning. Importantly, in order to apply zoning to the whole of their jurisdiction, counties must first plan for population growth within their jurisdictions. As the results of this research will indicate, the latter is proving to be a significant obstacle for many counties. What this research does not do is attempt to prescribe a unilateral solution to problems affecting policy adoption of land use regulation.

This research is a qualitative analysis and represents an attempt to understand and assess the perspectives of actors (i.e., planners and policy makers) involved in the context of adopting countywide zoning. The study employs a descriptive survey process and also entails an assessment of the current condition of land use planning in a sample of Montana counties. The
counties were selected on the basis of the following criteria: a population greater than 10,000, and a growth rate of 10% or greater between 1990 and 2000. Ten counties with these characteristics were selected for study, which are: Big Horn, Flathead, Gallatin, Jefferson, Lake, Lewis & Clark, Missoula, Ravalli, Sanders and Yellowstone (see Map on page 68). This county-scale analysis was designed to address three questions: 1) what is the level of awareness of the state law enabling counties to adopt countywide zoning regulation? 2) what are the perceived impacts of adopting a countywide zoning regulation? 3) what are the perceived obstacles to adopting a countywide zoning regulation?

In order to answer the preceding questions, this study was guided by three central objectives: 1) to ascertain the level of knowledge of decision makers regarding the decisions they make about land use planning; 2) the need to understand the perspectives of decision makers with respect to land use planning; and 3) to identify the factors influencing the adoption of planning policy at the county scale. The underlying assumption of this research rests in the idea that some form of zoning in those counties experiencing growth pressures would make official that which the counties visualize to be the manner and direction that community expansion will or should occur. In addition, zoning will serve to create some measure of predictability for landowners. This assumption stems from what appears to be a dilemma shared by the counties in the study area: that rapid population growth and land development places pressure on existing community systems and, to the existing residents appears to affect the intangible quality of life that attracted residents to the county initially. Achieving a workable
solution to this dilemma seems to be a monumental challenge to most of counties in the study area.

To date, three counties within the study area – Missoula, Flathead and Gallatin – have county-initiated zoning resolutions related to residential development for areas of their counties that are adjacent to the central city. Only one county – Lake – has adopted a resolution regulating residential density on a countywide basis. At the time this research was being conducted, Lake County was in the process of creating an overlay zone to control density for the entire county, though it does not fully comply with statutory requirements for county-initiated zoning districts. The commissioners adopted the resolution in the summer of 2005. The “density map” (see Appendix C) as it is called, attempts to direct growth along existing infrastructure corridors offering increased density (bonuses) to developers who develop within these areas. The overlay zone in Lake County does not technically regulate use of the land, but it does zone the entire county for residential density.

**Research Setting**

The U.S. Census Bureau estimates the 2005 population of Montana to be 935,670 with most of it concentrated in the western half of the state. Several interesting characteristics of Montana’s political and physical landscape contribute to the challenges of land use planning at the county level in Montana. Historically, people have settled in valleys and along river corridors – such is the case with each of the cities and towns that are within the counties of this study.
The communities that are experiencing a steady increase in population growth and resulting land development are, for the most part, all separated by mountain ranges, and five of them (Flathead, Lake, Missoula, Ravalli and Sanders) are situated within the same watershed – the Clark Fork Basin, which contains roughly one third of Montana's population (Clark Fork Coalition, 2005). More than half of the subject counties share the presence of a major interstate route dissecting them: I-90 crosses through Big Horn, Yellowstone, Gallatin, Jefferson and Missoula counties in an east-west direction; and I-15 crosses through Lewis and Clark County in the north-south direction. In most cases, population growth within the counties is occurring at a greater rate outside of incorporated areas than inside incorporated areas. (See Map on page 69)

Table 1 is a list of the counties in the study area, their most recent population estimates and the most recent population estimates of the largest cities within them. The table also shows the percentage of private lands within each county.
Another aspect of Montana's cultural environment is that the fast-growing communities do not fit a particular mold for land use policy analysis in terms of regional governance or in the context of large metropolitan areas. Each county has, by and large, only one primary city—a core from which most of the community expansion is emanating. Ravalli and Sanders counties are exceptions to this pattern with most of the growth consistently dispersed throughout the county. Other rapidly growing areas of the country have large metropolitan areas that encompass several local jurisdictions—the Denver metropolitan region; the Seattle metropolitan region; or the Portland metropolitan region, to name a few. This is not to diminish the growth pressures some of the smaller towns within the fast growing Montana counties are feeling in relation to their bigger cousins, but the growth and its related problems and opportunities in Montana counties is unique to Montana and, according to the responses

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2 Figures from the Montana State Library's Natural Resource Information System. Available at: http://maps2.nris.mt.gov/mapper/
received from the actors involved, will be addressed on the individual county’s terms and at the county’s own pace. However, in order to address the concerns frequently voiced by their citizenry, counties will have to be more proactive in their management of how and where their communities are expanding.

Finally, a feature of Montana that contributes to some of the challenges of land use planning in its growing counties pertains to its 90-day bi-annual state legislative session. This assembly provides a very dynamic setting in which participants, stakeholders (those with a vested interest in the outcome of decisions) and citizens attempt to shape how policy is made. Such a brief session to make laws that affect the citizens of the state is a testament to the predominant political sentiment of the state – that being “less government, is better government.” However, such a brief session also produces laws that perhaps are not the most coherent, or perhaps do not achieve in their final version the results that were sought on the legislative floor. One can quickly deduce the problems that are likely to arise between legislative sessions that might prompt amending particular provisions of the law by the time the next session is held. Continuous amendment of the statutes is persistent within the planning related legislation, and has a tendency to frustrate planning efforts at the county level where planning resources are limited. This approach poses a great challenge to many communities who have little staff to incorporate changes into their regulations between sessions, much less be able to implement those changes prior to modifications to the law in a new legislative session. While annual legislative sessions are not necessarily warranted, perhaps longer
sessions would provide opportunities for more thorough discussion of the consequences of some legislative actions.

**Significance of Research**

On much of the American landscape, the pattern of development has occurred largely in a horizontal, less dense suburban form as opposed to a more vertical, dense urban form. Jackson (1985) points out, however, that suburbs date back to antiquity. In Montana, where local economies cannot support costly extension of infrastructure (such as roads, water, sewer, emergency services and schools), and where property rights are highly valued, suburban development tends to provoke a spirited political debate typically involving property rights advocates and no-growth advocates. A review of commentary and editorials from January 1, 2006 through March 31, 2006 of the Missoulian, the largest newspaper in Western Montana, revealed at least twenty articles concerning population growth and land development and their impacts in Montana, particularly Missoula, Lake, Ravalli and Flathead Counties.

The suburban and exurban pattern of development, as opposed to a more integrated, compact pattern has come to be associated with the ills of an overly consumptive society, and raises doubt as to its long-term sustainability given the nature of the resources it consumes\(^3\). The popular planning position cites multiple factors as the cause of the emergence of this pattern: the boom in

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\(^3\) There is some debate as to how much land is consumed for housing versus how much land is actually needed for agriculture. The latest U.S. census states that approximately 95% of the United States is characterized as rural open space (U.S. Census Bureau, 2006).
population and economic activity following World War II, and later the creation and subsidization of the Federal Highway System (Diamond and Noonan, 1996). However, as Jackson (1985) and Dowall (1981) note, the members of society who have the means have long sought refuge from the noise, congestion, crime and pollution that is associated with central cities – long before the middle of the 20th century. Montana, among other western states, is the refuge being sought by many members of our society, according to recent articles in *High Country News*, a non-profit newspaper covering the West; and the notable *Atlas of the New West*, published by the Center of the American West at the University of Colorado at Boulder. The challenge that Montana faces is planning for the arrival of new residents.

According to professors at the School of Policy Planning and Development and Department of Economics at the University of Southern California, 86% of population growth has occurred in suburbs nationwide since the 1970’s (Gordon and Richardson, 2000). The psychological connection that people associate with the crowdedness of a city and the confining built up space is ameliorated in the suburbs where the accompanying space and use of the automobile gives the freedom of added mobility. It has also epitomized the proverbial American dream with close to 80% of American households – regardless of income or current form of residence – preferring to live in a single-family home (ibid). Indeed, while different parties of interest within a community have different objectives in supporting zoning in their communities, those objectives have generally coalesced around the separation of land uses and minimum lot sizes often found
in suburban zoning resolutions (Smith, 1993) which have formed the regulatory incentive for homogeneous neighborhood design and socioeconomic stratification.

Should counties adopt countywide zoning, not only would they achieve planned settlement patterns, they would also have the ability to evaluate particular areas of special consideration such as river corridors, forested areas and agriculture. Where actors and stakeholders in the planning process have expressed great frustration at how planning is currently being administered, there exist openings for the adoption of new policies or regulation. Be it to regulate density, use, or setbacks, a countywide zoning resolution would provide a level of predictability for current residents with respect to anticipated settlement patterns, and for the planners, landowners and developers during the review process. For example, in anticipation of an expanding city or town, counties could have concentric rings of zoning that allows higher density in areas adjacent to cities and decreasing density away from the city and its accompanying services. Without zoning, counties are not able to take advantage of other land use planning tools such as cluster development and transferable development rights (TDRs). These types of land use tools aim to meet several land use planning goals such as promoting homeownership, providing housing nearer public services, and conserving areas of significant natural resource.
Thesis Arrangement

The research presented here has been arranged into six chapters. Chapter I has prepared the reader with an introduction to the topic – its significance and objectives – and sets the backdrop for conducting the research. Chapter II provides some background on the history of land use planning and zoning. It describes the history of planning in Montana, with specific attention to statutory evolution. The chapter also provides a summary overview of national planning history. Connecting this context to Montana’s legislative activity helps to understand how some of the state’s planning history has taken shape. Inclusive to the national context is a discussion on the origins of zoning – the land use control that is the focus of this research – and a synopsis of countywide zoning and its applicability. The final section of Chapter II identifies recent planning activities in the state, which provide further insight into the reasons for conducting this research.

Chapter III reviews key elements of land use planning literature to provide an understanding of the primary considerations of planning professionals and elected officials. This chapter contains three components: the economics of planning, land-use decision-making, and growth management. All of these components are interrelated and establish the complexities of the nature of land use planning.

Chapter IV presents the framework employed to analyze why counties have been reluctant to adopt countywide zoning. The very act of planning both engages the efforts of numerous stakeholders, and aims to make policy. The
theoretical framework draws from the policy analysis literature with specific consideration of two models that explain why and how governments adopt policy: regional diffusion and internal determinants. These will frame the analysis of the data for evaluating the reasons that Montana counties have been hesitant to adopt countywide zoning. Both models contribute to understanding the process by which policies are formulated and adopted into a governing body's policy agenda for its jurisdiction.

Chapter V outlines the methodology employed in the research. For the theory to be grounded in local reality, an understanding of the perspectives of the decision makers is crucial. Perspectives were gleaned through personal interviews with county commissioners in the study area. Another group of participants in the decision making process – planning representatives – were interviewed to provide contrast and supplementary data. Both participant groups provide substantive commentary on the state of planning in their respective counties.

Chapter VI presents the results of the interviews conducted with the county commissioners and planning representatives. The responses highlight common elements among the interviewees as well as some starkly contrasting perspectives, not only between counties, but also among members of the same county commission. Drawing on the theoretical framework outlined in Chapter III, a close examination of the interview results leads to the identification of the factors contributing to the reluctance of counties to adopt countywide zoning as a
land-use planning tool in Chapter VI with some concluding remarks regarding the implications of this research.
This chapter provides background on the status of planning in Montana – from its origins to its current place on the agenda of state and local policy makers. Understanding this background is an important element of the focus of this thesis, which will analyze factors affecting the adoption of countywide zoning. Several issues have shaped how land use planning and its regulatory tools have entered into Montana's policy platform, these include: its geography; population and settlement patterns; and its political history (including the formation of counties). In addition, planning as a practice and policy in Montana, as in many other states, grew out of, and was affected by national movements of land use planning and economic development.

Planning as a professional practice is not quite a hundred years old, and the concern about how communities are growing has been a common theme in literature dating back to the 1930s. Campbell and Fainstein (1996b) identify three basic periods of the historical roots of planning. The first they characterize as the formative years of the late 1800s to circa 1910, whereby certain professionals possessing an architectural background did not identify themselves as planners and yet were instrumental in their ideas for city planning. During this time architects and planners were considered visionaries in whose trust city officials placed their jurisdictions' future development potential. The second period of early planning history is identified as the period of institutionalization
whereby the planning profession formed. This self-recognition coalesced with the rise of regional and federal planning efforts between 1910 and 1945. The third historical planning period is identified as the *postwar era of standardization*, a period of crisis and diversification that arose from separate movements at the turn of the 20th century – the Garden City, City Beautiful, and public health reforms – that were characterized by the advocacy for American cities to become more civilized, pleasant places (Campbell and Fainstein, 1996b). The early evolution of Montana land-use and planning laws can be tracked in the context of these historical roots.

**Early Land Use Regulatory Efforts**

Montana became a state in 1889. Its population has largely been concentrated in areas of rich natural resources to support extractive economies such as mining and logging. Settlements were also established subsequent to the expansion of the railroad.

Since 1895 Montana statutes have contained provisions related to the governance of land. Prior to 1929 Montana laws relevant to early efforts in planning were specific to surveys of parcels of land, recordation of those surveys, and notification of interested parties. The 1895 Codes and Statutes of Montana contained a section titled “Townsites of Unincorporated Lands” that authorized a county judge to coordinate the census and platting of a townsite in any unincorporated area of the county. In addition to identifying the names of the
occupants of each parcel, the platting was to show all roads, lanes, alleys, churches, school lots, parks, cemeteries and commons which were to be dedicated to the public upon filing of the plat. This was reflective of similar policies adopted throughout the 1800s in the United States to assure the adequacy of engineering data; the accurate recording of plats; and later the requirement of new streets to tie into existing ones and be dedicated to the public (National Commission on Urban Problems, 1974).

The language from the 1895 laws was expanded upon in the early Montana legislative sessions of the 1900s, which provided guidelines on how to make additions to cities or towns. The legislature granted cities in 1907 the

“[P]ower by ordinance to compel owners of these additions to lay out streets, avenues and alleys, so as to have the same correspond in width and direction and be continuations of streets, avenues and alleys in the city or town, or in the addition thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless terms of and conditions of ordinance are complied with and plat thereof has been submitted to and approved by the mayor and council, and such approval endorsed thereon” (RCM:933).

Plats and additions make a permanent record of the subdivision of land. Regulation of land subdivisions started to become widely considered as a means of guiding urban growth by the 1920s. In 1928, the U.S. Department of Commerce issued the Standard City Planning Enabling Act, a model act that made subdivision regulation one of the tools of comprehensive planning. The act placed major responsibility for administering subdivision regulations in local planning boards (National Commission on Urban Problems, 1974). Montana was
one of many states that adopted statutes bearing resemblance to the national act, in concert with the U.S. Standard Zoning Enabling Act (1926). Together, these two land use controls – subdivision regulation and zoning – would become the basis of planning efforts and growth in Montana.

A Brief History Of Zoning

Land use controls are a means to attaining a certain level of predictability and expectation on the landscape and geography of a place. They fall under the domain of protecting public health and safety and promoting the general welfare of a community. Zoning, one form of land use control, and historically the most predominant, is a highly artificial construct (Dawson, 1982). While some see its origins as having been conceived with innocuous objectives of allocating land uses to prevent friction between incompatible demands on urban space (Mandelker, 1974); others regard its origins to be born of fairly discriminatory motives (Dowall, 1981; de Neufville, 1981) on the part of property owners as a means to prevent unwanted change in their neighborhood (National Commission on Urban Problems, 1974). Indeed, Fischel (1985) views zoning and the restrictions that accompany it as a community property right, not a personal property right.

Traditional zoning provides for the geographical segregation of very distinct and seemingly incompatible uses (Platt, 1996; Diamond & Noonan, 1996). Broadly, these have been characterized rather crudely as industrial, commercial and residential. For example, typically, uses such as a
manufacturing plant and single-family homes are not permitted in the same zone. Other subjects such as bulk, height and housing density are also regulated as part of a zoning code.

While several large east coast cities had adopted ordinances placing restrictions on lot coverage and building height during the late 1800s and early part of the 20th century, it was not until the mid-1920's that municipal zoning became widespread (National Commission on Urban Problems, 1974). Since that time most metropolitan areas in the United States have adopted zoning in some form or another. The most predominant and prolific form was the direct result of the court case Village of Euclid v. Ambler Realty Co., which has come to be known as Euclidian, or traditional zoning.

"The Euclid Case firmly established the constitutionality of comprehensive zoning. It determined that the main features of the orthodox type of zoning ordinance – the division of the community into districts, the restriction of the use of private land in such districts, and the exclusion of certain industrial, commercial and residential uses from certain residential districts – were within the reach of the police power. In addition, the Euclid decision tipped the judicial scales so heavily in favor of approval of this kind of land use control that the courts of all the states finally approved it (National Commission on Urban Problems, 1974:5).

In 1929 Montana (like many states did following the United States promulgation of the above-mentioned acts) passed legislation authorizing cities to adopt zoning for their jurisdiction. Cities were also granted the power to form zoning commissions and appoint boards of adjustment. The law further stated

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4 Village of Euclid v. Ambler Realty Co. U.S. Supreme Court decision (272 U.S., at 368) in 1926 that the U.S. Commerce Department utilized to enact the Standard Zoning Enabling Act of 1926 and the Standard Planning Enabling Act of 1928 which encouraged states to empower cities, towns and counties to prepare comprehensive plans to adopt zoning, subdivision regulations, and other land use measures.
that any zoning a city or town adopted must be in accordance with a comprehensive plan and public hearings must be held (MCA, 1929).

**Countwide Zoning**

As previously mentioned zoning is one of several land-use planning tools. Many local governments employ planning strategies without employing zoning. One of the most famous is the City of Houston, Texas – the largest unzoned municipality in the country. As it is a government action, adopting or not adopting countywide zoning embodies the realm of politics. Depending on a state’s position, statutes, and role in land use planning, a county will either be mandated to adopt zoning resolutions, or a county will follow a process of public approval between a planning board and/or commission and the county commissioners or officers. Though county populations include city populations, residents living outside established towns, in rural areas, tend to do so purposefully. It is those residents that are one of the largest stakeholder groups for the county decision-making process.

At least fifteen states are identified in which county-level zoning resolutions have been adopted (Cyburbia, 2006). Over 40 of California’s 58 counties have zoning resolutions. Fifty-two of North Carolina’s 100 counties are entirely zoned, another 18 are partially zoned, and the remaining 30 (of which 22 have population densities under 75 persons per square mile) are unzoned (University of North Carolina School of Government). These two examples have historically had larger populations (both urban and rural) and subsequently longer
histories with planning and zoning than do many communities in Montana. In Montana counties had no authority to adopt and regulate zoning until 1953. Even though countywide zoning may not be employed across the states, it is important to note that in many areas of the United States, there typically exists another layer of government between the municipality and the county – the township – that usually has its own set of zoning regulations. Therefore, even if a county does not have zoning regulations, unincorporated areas are bound by the zoning regulations of the township. For counties with urban centers and higher populations, attempts have been made to consolidate planning departments to maintain consistency particularly in unincorporated jurisdictions adjacent to cities. For instance, in Montana, Billings and its parent county, Yellowstone, plan jointly for the geographic jurisdiction, as do the City and County of Missoula; and Helena and Lewis and Clark County. This is a common practice in other states where there are regional planning agencies that plan for the effects that growth in a number of communities have on one another.

Mid-Century Planning Efforts

In 1935 a piece of legislation was born out of what was probably a growing interest in the management of public lands in the western states as well as a new climate for land use planning and community and economic development. To position themselves within the national dialogue, the Montana legislature created a state planning board stating that it was:
"[In the interest of public] welfare, convenience and necessity to require the conservation and development of Montana’s land, water, mineral, timber, coal, oil and other natural resources for social and economic advancement of the people of the state in accordance with a comprehensive plan to be developed concurrently with regional and national plans now being formulated by national planning bodies in cooperation with several states" (RCM:447).

The above legislation was repealed in 1967 and the state planning board was abolished, at a time when other states, such as Hawaii and Oregon were beginning to consider a more active role for the state with regards to land use planning.

In 1953, counties were authorized to create planning and zoning districts and commissions but only upon petition of 60% of the freeholders in a specified area not less than 40 acres (RCM:732). This was the first instance of what is now called Part 1 Zoning, or citizen-initiated zoning. In 1957 the state authorized the creation of city-county planning boards and granted them authority to propose policies for subdivision plats (RCM:1049). Planning boards, in many areas of the state do much of the planning for their jurisdictional areas, and make recommendations to the governing bodies for particular action or policy.

It was not until 1963 that the same enabling legislation available to cities in 1929 was adopted for counties, as was the national trend. This law allowed counties to zone all or part of their jurisdictional areas. However, any zoning the county adopted was not required to be compatible with zoning of municipalities in their jurisdiction – this requirement would come more than 30 years later.
To replace the state planning board that lasted from 1935 to 1967, the Montana legislature created the Planning and Economic Development Commission to “foster planning, growth and diversification of industry and commerce” (RCM, 1977:371). The commission was a product of “The Montana Planning and Economic Development Act of 1967”, the purpose of which was to promote the state’s industry development and resources which required “cognizance be taken of the continuing migration of people to urban areas” and leading Montana to make a “needed transition to a diversified economy” (ibid). The primary function of the commission was state planning, which was identified as the development and adoption of a comprehensive plan for the physical development of the state. The commission was assigned the task of locating and maintaining information on prime sites for all land use development; advocating for the formation of local and district planning bodies with people from several communities; and putting a plan in place (ibid). The Department of Commerce was the designated agency responsible for fulfilling these duties, though its involvement and funding has been scaled back since then with most of their efforts spent on Community Block Grant Programs and the state's Treasure State Endowment Program, which provides funding to communities interested in developing their infrastructure.

Also enacted in 1967 was a provision defining a subdivision as a parcel of 20 acres in size or less, where previously it was defined as a parcel of 10 acres or less; and a provision stipulating that subdivisions could not be filed with the county's clerk and recorder until they passed a sanitary review by the Health
Department (RCM, 1977:655-657). This latter provision was significant as it attempted to safeguard against the failure of septic systems and wells due to soil suitability or nitrate contamination.

The early 1970's saw a flurry of activity regulating subdivisions. In 1973 Montana adopted the Subdivision and Platting Act that required all counties, cities and towns to adopt subdivision regulations to “reasonably provide for the orderly development of its jurisdiction” (RCM, 1977:647). These subdivision regulations were required to be reviewed by the state’s then Division of Planning and Economic Development in the Department of Community Affairs. Local governments could, if they chose to [emphasis added], require the subdivisions to consider the community’s comprehensive plan. In addition, landowners proposing certain subdivisions were required to conduct environmental assessments.

Over the next twenty years the statutes received various additions (such as a provision requiring legal and physical access to all created parcels); and subtractions (such as a provision establishing a basis of need to subdivide property). Some Montana planners consider 1993 to be a “watershed year” for Montana Planning history. That year, the size of parcel subject to subdivision review was increased from 20 to 160 acres or less, which meant local governments were able to have more control and a much greater understanding of what was happening with land development in their jurisdictional areas. Land use planners with a history of professional experience in Montana indicate that
prior to the effective date for the 1993 changes there was a rush on subdivisions of parcels larger than 20 acres in order to avoid the impending regulation.

There also exists in the State of Montana a curious regulatory control of land use that is the result of an administrative decision by the Department of Environmental Quality. The DEQ is charged with protecting the state’s water quality and supply. It is not a body enabled to authorize zoning, and yet the administrative standard created a minimum lot size of one acre for parcels lacking municipal wastewater facilities. This rule has allowed for a pattern of land use to develop that is inefficient – consuming a great deal of land quickly.

While an important component in land use controls, subdivision regulations are a fairly limited tool. They do not provide the authority to regulate how property owners may use land, only the subdivision of legally described parcels of land. Many communities that have limited zoning tools try to exercise power through a very bureaucratic subdivision process. While an individual trying to subdivide her/his property must demonstrate compliance with the regulation, the burden of proof rests with the governing body and its designated agents for recommending approval or denial of the proposal. The governing body must provide written findings of fact to deny a subdivision request and may not deny based on sentiment or opinion. Therefore, if a community does not have performance standards, or has not engaged in empirical research with regard to impacts of development (on wildlife, waterways, etc.), the laws make it difficult for a governing body to deny a subdivision without the threat of a lawsuit. The statutory framework of Montana specifically protects the rights of the
landowners and protects to some degree a development proposal from “nimbyism” – a euphemism used by land use planners and developers to refer to a sentiment – Not In My Backyard – commonly expressed by citizens and neighbors of a proposed development. Therefore, just because the public or neighbors do not like a proposed subdivision the governing body is not justified in denying the request unless there is substantial evidence that the development would be adverse to the health, welfare and public safety of the citizens.

**Recent Planning Efforts in Montana**

There are numerous actors and stakeholders involved in planning in Montana including: the Montana Smart Growth Coalition, the Montana Building Industry Association (MBIA), the Montana Association of Realtors (MAR), the Montana Association of Counties (MACO), the Montana League of Cities and Towns, and the Montana Association of Planners (MAP). Together these groups work towards changing policy, each with their own set of goals – though many overlap. The in-migration occurring through the 1990s predominantly in the western part of the state and the resulting development was the impetus for the formation of the Montana Growth Policy Forum in 2000. Although now a defunct group, its purpose had been to “foster an informed dialogue about land use and growth in Montana” (Montana Growth Policy Forum Newsletter, 2001:4). An important provision added to the statutes as a result of the Forum’s lobbying efforts now authorizes local governments to adopt subdivision regulations that promote cluster development and preservation of open space (MCA, 2001).
One of the most significant pieces of recent planning legislation affecting all communities is that related to the laws governing growth policies. By October 1, 2006 all communities must update their growth policies to address particular elements. However, the extent to which a community addresses those elements is discretionary. In other words, communities may adopt a growth policy that only minimally addresses the elements and does not provide concrete plans to address the impacts of community expansion. Elements specified in the statute that must be addressed include: existing and projected trends; maps; strategies for infrastructure planning and maintenance; jurisdictional cooperation; means for evaluation of criteria established to review subdivisions; and a description of the zoning regulations that will be implemented to address those criteria (MCA, 2003). Without a growth policy, a community cannot take advantage of the enabling legislation and cannot adopt and implement new planning and zoning regulations.

In January 2001, the American Planning Association (APA) published A Critical Analysis of Planning and Land-Use Laws in Montana. The report was commissioned by the Montana Smart Growth Coalition, a group consisting of several organizations (many of which were listed previously), and individuals from around the state that have a vested interest in the expansion of their communities. The APA report results from a review of statutes and a survey of a cross-section of individuals in the planning and development fields from around

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5 A growth policy (formerly known as a comprehensive plan) is a planning document by which a local government is subject to guide the growth that occurs in its community taking into account numerous aspects of life such as transportation, recreation, housing, health care, access to emergency services, water, sewer, roads, etc., and social welfare.
the state. The report recommended several changes to the language of state law related to planning for growth; managing and paying for growth, and administrative review. In the three legislative sessions since the report was published some of the recommended changes have been adopted. The changes in the legislation are indicative that legislators are listening to the stakeholders about the problems associated with existing statutes and with development pressures. However, the APA’s recommendations concerning an enhanced state role have not been adopted. Montana is a state where 72% of voters polled in a survey were very concerned about private property rights and 43% approved of general growth in their local area (Trenk, 2001). Therefore, a state-initiated growth program such as that found in Oregon, Colorado, Utah or North Carolina, is not likely to be slated in the near future. In addition, the newly elected governor Brian Schweitzer has publicly told the planning community and the local governments that planning will remain a local affair and therefore the state will not be an entity to turn to or an entity from which to await direction (Schweitzer, 2004, 2005).

The last four legislative sessions have seen a flurry of activity related to land-use planning law. The actors mentioned earlier: the Montana Smart Growth Coalition, MBIA, MAR, MACO and MAP have pushed for legislative changes, succeeding in many areas. However, the Montana Association of Planners – the group comprised of individuals intimately involved with the day-to-day administration and oversight of changes – has called for a respite from major changes (McGill, 2005). This request is largely due to the lack of resources to
implement the changes. For more than twenty years Montana funded the Community Technical Assistance Program (CTAP), operating under the Department of Commerce, that assisted local communities with community development and planning needs. The program ended in 2003 leaving many communities foundering with little or no resources for information or assistance with regulatory revisions and interpretations. Without an agency to assist them both financially and technically, many local communities are finding it difficult to come into compliance with the changes from the last two sessions. Currently there is another interim working group brought together by the 2005 Senate Joint Resolution 11 to examine the regulations and make suggestions for the next session’s anticipated changes.

While there has been some valuable input from the state level of government, the Montana legislature largely remains hands-off as a governing body when it comes to growth management and land use controls, and will likely continue with that approach for some time given the previously mentioned expressions from the governor. Several plausible reasons might help explain this trend. One is the historically independent character of the state that has sought to not be heavy-handed in its governance. Another reason is possibly due to the fact that the state has a small population and overall an unalarming growth rate on a statewide basis. Populations in the eastern Montana counties have been in decline over the last several decades (U.S. Census, 2000). Planning in these areas largely constitutes efforts in economic development and incentives for
growth, not for ways to control it. Montana’s and its citizens’ history in the field of planning continues to be quite dynamic.

Summary

This chapter has provided an historical overview of planning in Montana which helps to shape the context for understanding how planning has evolved in the state. It further described some of the obstacles and challenges facing the growing counties of Montana with respect to a lack of coordination and facilitation at the state level. The next chapter will present the theoretical background of land-use planning and land-use controls for an understanding of the policy and practices related to them.
CHAPTER III
THEORETICAL BACKGROUND

This chapter presents the land use planning theories and practices relevant to understanding the nature of the research. This body of literature includes the following issues: the economics of planning, land-use decision-making, and growth management. Planning theory is fairly difficult to define, and is often regarded as a messy and contentious field. The modern idea of planning is linked to the concepts of democracy and progress. It centers on the challenge of finding ways in which citizens, through acting together, can manage their collective concerns with respect to the sharing of space and time. By applying scientific knowledge and reason to human affairs it is conceivably possible to build a better world in which the sum of human happiness and welfare would be increased (Healey, 1996).

Within the literature there can be three identifiable themes that provide pertinent background to understanding land-use planning and land-use controls. These themes are: the economics of planning; land use decision-making; and growth management. Campbell and Fainstein (1996a) consider the questions concerning planning belong to a much broader inquiry regarding the role of the state in social and spatial transformation. While not a formal discipline, planning overlaps with other fields of the social sciences such as economics and sociology giving it an amorphous quality. The very nature of planning theory means that practitioners often disregard it, for it is “a practical field of endeavor” (ibid).
However, planning differs from other professional fields in its claim to “be able to predict the consequences of its actions” (ibid:2). In other words, planning theory represents an accumulation of professional knowledge, but is considered informal by social and physical science disciplines (ibid).

The Economics of Planning

In a broad context, planning is an act of intervention with the intention to alter the existing course of events, whereby the existing course of events is interpreted to mean the free market. By intervening into a situation with a logical plan, the “chaos of the market” will be successfully controlled (ibid). In contrast, however, is the belief that the logic of the market should replace the chaos left by planning (Hayek, 1944). Examples of these contrasting perspectives are evident in 20th century history whereby the Great Depression seems to validate the belief that planning can provide for market failures, while the collapse of the Eastern European state socialism validates the theory that the market will fill in the gaps left by the control of state planning. How much should the government intrude? This duality between planning and the market is the defining framework of planning theory. The debate between the argument for the highest and best use of land versus the argument that more development devalues property is an economic debate. Economics affect location of uses. The land requirements for residences, commercial developments, and highways are often most inexpensively met by converting to these urban uses that land which is also best adapted to produce food (Ervin, 1977). The question becomes: what role can
planning play in developing a community within the constraints of a capitalist political economy and a democratic political system?

For capitalism to survive, Boyer (1981) submits, profits must expand or capital must accumulate. New markets, new investment opportunities, and cheaper sources of raw materials and labor are the forces behind economic growth. In this pursuit of profits, many social and economic needs cannot be met. Hence, capitalism unfolds in an uneven and contradictory manner, demonstrating pockets of extreme poverty within periods of superabundance and periodic crises, slumps, and recessions. In turn these contradictions provide the impetus for basic reforms of the economic and social structures of capitalism. Thus, it is not any conceptual weakness of land use planning or an administrative failure to implement an efficient allocation of land uses, but the nature of economic and social problems in a capitalist economy that shapes its land use policy (Boyer, 1981). For example, many communities face the problem of a lack of affordable housing for its citizens – an economic and a social issue. To address it, many communities have adopted specific land use policies, such as inclusionary zoning, whereby new developments must provide a certain number of homes at cost or reduced rates. Boyer’s (1981) point is further illustrated in the following position:

“Regulations ... do not build cities. Among the many public and private decisions that produce urban growth and decay, regulatory decisions play a relatively minor part. When governments at all levels build and spend and tax, they shape cities directly, and they set in motion market forces that regulations cannot fundamentally alter.” (National Commission on Urban Problems, 1974:19)
Stein (1993) posits that the New World Economy with its economic restructuring and sectoral shifts (technology vs. production) is a contributing factor to uneven spatial growth. He further postulates that the competitive world economy “dictates that U.S. communities will no longer afford the option of separating physical from functional planning” and “economic development must become a more prevalent element to growth management” (Stein, 1993:219).

Given this mixed economy there are many constraints on planning power. Planners do not have a monopoly on power or expertise over their object of work unlike some other professions (Campbell & Fainstein, 1996a). Planners work within the constraints of the capitalist political economy and their urban visions compete with those of developers, consumers, and other more powerful groups. When they call for a type of development to occur, they cannot command the resources to make it happen. Instead, they must rely on either private investment or a commitment from political leaders [emphasis added]. Planners also work within the constraints of democracy and of the bureaucracy of government. Their goals, however, are commonly assigned a lower priority within the overall political agenda (ibid), becoming subordinate to issues such as health care, education and crime. Despite the planning ideal of a holistic, proactive vision, planners are frequently restricted to playing reactive, regulatory roles.
Land Use Decision-Making

The purported beneficiary of land use planning is the public interest. However, who represents the public interest, and is the public's interest truly being served, are questions that Campbell and Fainstein (1996b) pose to policy makers and planners. They point to the need for "comprehensiveness" as the historical justification for planning, presuming to be representative of the common public interest. Campbell and Fainstein (1996b) note, much like Lindblom (1995), that attempts to be comprehensive are prone to failure because to be comprehensive requires a high degree of dependency on an extraordinary level of knowledge and technological capability.

There exists intense controversy over whether regulations should substantially limit the autonomy of landowners. Disputes over land use policy are intense and emotional because the decisions have pervasive effects on the allocation of wealth and power (de Neufville, 1981). Political decisions involve the distribution of rewards and deprivations (i.e., winners and losers), whereby those affected can allocate credit or blame and reward or punish the decision-maker (Ervin, 1977). Land use decisions are political, creating windfalls for some and imposing direct and tangible costs to others, either individuals or groups. Land use decisions have immediate and personal consequences for individuals such as changing the value of their homes or the character of their neighborhoods. At the same time land use decisions can contain very ideological and symbolic meanings from designating a wilderness area to approving a zoning variance.
Land and property ownership have long been associated in American thought with ideas about individualism, democracy, and freedom. Conflicts over specific land uses or regulation strategies evolve into battles over the most basic values in American society. As a result, the belief in a collective responsibility is pitted against the protection of individual choice – the public interest versus private property rights. With an increased value placed on elements such as clean air and water, open space and wilderness, and preservation of agricultural lands, two sets of highly regarded values come in direct conflict: 1) the liberty and security associated with real property; and 2) the right of and need for economic expansion (Ervin, 1977). With the debate over land use decisions occurring at several levels with different actors possessing different sets of questions and goals, many participants and observers may have difficulty interpreting the other’s positions, which can lead to frustration with the process. In Montana the different actors include representatives from numerous grassroots organizations such as CALM – Citizens Advocating for a Livable Missoula, and Bitterrooters for Planning; as well as the Montana Association of Realtors, the Montana Building Industry Association, the Montana Association of Planners, the Montana Association of Counties, farm and ranch groups, and conservation groups. Each of the above mentioned actors brings a different individual belief system associated with land use related issues to the debate, complicating matters even further as belief systems bear no simple relationship to one’s professional training or to one’s views of what is practical in a particular situation. In addition, there may be competing simultaneous disputes wherein
sides can frequently “shift” and the views of one individual often cannot remain consistent (ibid).

De Neufville (1981) identifies three primary components of a land use policy. One component defines the settlement patterns (sprawling or compact development; mixed or homogeneous areas; short or long distances between homes and work places; protection of ecologically fragile lands or of unique scenic areas). Both de Neufville (1981) and Dowal (1981) point out that these patterns and land use controls themselves are used instrumentally as means to other ends in achieving non-land use objectives such as to reduce air pollution and energy consumption, foster economic development, and preserve the status quo. A second component is the public interest in land use patterns – an interest that reflects citizens’ concerns with economic development, life styles, and opportunity or environmental management. And the final component is the preservation of social arrangements (public/private markets for some choices, collective decision making for others, courts for still others). For example, the federal and state policies related to borrowing and taxing provide well-known examples of government action to support home ownership. These policies provide unmatched opportunity for persons with moderate incomes to acquire an asset that appreciates in value while retiring their indebtedness with less valuable dollars. Any policies that might reduce the value or security of a person’s property and associated rights meet severe opposition because of the importance of real property and its widespread ownership (Ervin, 1977).
The decision-making process is generally undertaken with the intent of producing an outcome that is an improvement over the current situation. Ervin (1977) suggests a measure of efficiency and equity for defining the goals of a land use policy for which there are three objectives: 1) reducing certain negative external effects which result from interdependencies among land uses; 2) provision of the optimal level of public goods; and 3) reducing the costs of providing certain public services. To choose a preferred outcome, the stakeholders decide that situation B is preferred over situation A when: 1) everyone is better off in B than in A; or 2) at least one person is better off in B and no one is made worse off by moving from A to B; or 3) those who gain by moving from A to B can, out of their gains, compensate those who lose and still be left with a positive net gain (ibid).

Of the many actors involved in land use decision-making, ordinary citizens can play a critical role in shaping the outcome of a decision. However, which citizens chose to participate in the political arena in which land use decisions are made is worthy of discussion. Ervin (1977) sees three major groups of citizens that participate in land use policy formation: 1) individuals who profit from increased development, including builders, banking institutions, local retail establishments and realtors; 2) individuals who organize at the neighborhood level on an ad hoc basis to contest a pending decision; 3) individuals who highly value mitigation of the impacts to the environment often associated with development. With respect to the second group Ervin (1977) suggests that a citizen’s decision to participate varies with the degree to which they expect their
participation to be useful. He further posits that a person’s decision of whether to participate in a particular decision is related to a person’s socioeconomic status. Those with a higher socioeconomic status perceive themselves to be more effective, and those perceptions lead to particular expectations. In addition, persons of higher socioeconomic status may have more time and resources; they are likely able to absorb costs easier; to get information; and mobilize others with similar interests (ibid). All of which leads to an inequality of political influence. This is the vocal minority syndrome. As participants change so do the values, but current land use control policies did not arise from happenstance. They persist because they serve the interests of politically active citizens.

Another element of the land-use decision-making process deals with certainty. The participants value the certainty of the outcome. Therefore, as mentioned previously, policy develops incrementally – “new” policies tend to be only marginal changes from previous policies. The politically influential participants are assured by incremental changes for necessary reasons: it is less dangerous to their interests; and they can receive feedback on effects before proceeding further. The perceived certainty of an outcome is equal to its political acceptability only to the degree that it deviates from existing policies (Ervin, 1977).

**Growth Management**

There are several paths that planning theory has taken, but the most heavily traveled in the last thirty years is that of the theory of growth
management. Growth management is a planning practice that attempts to limit growth; by affecting its timing, channeling it or managing its impacts. Growth management planning, in all its varied forms, aims, through the use of government regulatory powers, in a comprehensive, rational, coordinated manner to meet public objectives for balancing economic growth with the protection and preservation of our natural and man-made systems. It involves an ideological commitment on the part of government to create and strengthen institutional mechanisms for effectively using tax, expenditure, and regulatory powers to systematically influence a community’s spatial distribution of activities (Stein, 1993). DeGrove (1993) advocates for communities to adopt growth management strategies whether they are experiencing strong population and economic growth pressures or are experiencing unwanted decline and need a growth strategy to revive a weak economy.

Growth management is a combination of tools and techniques that Smith (1993) has divided into four categories: Regulatory, Public Service Location, Revenue Sources and Government Expenditures. Zoning, unsurprisingly, falls into Regulatory. Some communities have implemented Public Service Location and Revenue Sources, but Government Expenditures is more likely to be initiated at the state level for tools such as land banking and tax incentives – something Montana is not likely to implement soon. Smith also identifies problems associated with implementation, for example when a community is dedicated to the idea of growth management but support for specific controls is
not as popular. In addition, the effectiveness of the regulations depends on the extent of public support and the quality of enforcement (Smith, 1993).

Implicit to growth management is the role of government, which for many planners translates to the state’s role; however, the national government has been an advocate of growth management policies in the past. With the exception of some new theories and practical tools, little appears to have changed in the planning literature since the first half of the 20th century with respect to a concern about how and where growth is occurring on the American landscape. In 1970 Congress renewed the Housing and Urban Development Act, which expressed the need for a national growth policy:

“The Congress finds that the rapid growth of urban population and uneven expansion of urban development in the United States together with a decline in farm population, slower growth in rural areas, and migration to the cities, has created an imbalance between the Nation’s needs and seriously threatens our physical environment, and that the economic and social development of the Nation, the proper conservation of our natural resources and the achievement of satisfactory living standards depend upon the sound, orderly, and more balanced development of all areas of the Nation” (Housing and Urban Development Act of 1970).

This nationalistic sound of alarm from the federal government has since waned and given way to more state control of land use policymaking. However, land use planning policies can be identified at the federal level in legislation such as the Clean Air and Water Acts, National Environmental Protection Act (NEPA), and the Resource Conservation and Recovery Act (RCRA) for placing hazardous waste facilities. In addition, the Smart Growth movement that began in the early
1990s had been lauded during that time at the national administrative level, though no legislative actions resulted.

Land use decisions, for the most part, have been conducted at the local level, be it municipality, county or township, though state level planning occurs in approximately 15 states with varying degrees of administration, oversight and comprehensiveness. State-level planning is largely considered the “quiet revolution” in planning practice in the latter half of the 20th century and represents a shift in practice that offered to provide some degree of state or regional participation in the major decisions affecting the use of land (Mushkatel & Judd, 1981). Where local governments had previously not been held accountable for zoning regulations they enacted, there grew a sense of the need to coordinate planning policies. Though controversial, states began mandating a consistent set of goals and standards for local land use plans, and several adopted statewide comprehensive growth management legislation (Carruthers, 2002). In contrast, the Montana statute requiring a growth policy in order for a community to adopt zoning does not identify how sufficiently a growth policy should address criteria.

Carruthers (2002) assesses the success of these programs, noting that without them the division of authority among many local governments – political fragmentation – undermines the overall ability of land use planning to shape growth. He defines growth management as “a combination of policies that are implemented within an existing institutional setting, measured as the degree of fragmentation among local land-use authorities” (ibid:1965). Furthermore,
Dawkins and Nelson (2003) argue that centralized regional planning (city-county, multi-county, multi-state, or statewide) can effectively increase the local political benefits by providing a forum for cooperating to resolve regional problems, address extra-local issues such as environmental degradation and inter-jurisdictional fiscal disparities, and can override anti-planning or anti-growth sentiments.

The key to direct state involvement in land use planning is multiple consistency requirements: vertical, horizontal and internal (Carruthers, 2002; DeGrove, 1993). According to DeGrove (1993), where state growth management systems have been enacted,

“...local governments discover that home rule powers are strengthened in three important ways: (a) protection from a neighboring government’s spillover impacts through the horizontal consistency requirement; (b) protection from state agencies who may not, except in carefully defined circumstances, carry out programs that are inconsistent with local plans; and (c) direct state support for the plan adoption and plan implementation system” (ibid:13).

Vertical consistency requires local plans to be consistent with state and regionally defined policy objectives; horizontal consistency requires local plans to be consistent with one another and among local governments; and internal consistency (which is Montana’s mandate – that regulations be consistent with growth policies) requires consistency between local plans and development regulations – especially the zoning resolution [emphasis added] (ibid). Ideally, all three requirements of consistency would be present, and a set of sanctions or incentives would be in place. Without enforcement and compliance mechanisms
the state plan can falter and further contribute to the problems related to growth (ibid).

Growth management tools and land use controls are adopted to achieve several objectives. Zoning, again, as the predominant tool, is used to control negative externalities, such as noise and pollution, primarily through the separation of incompatible land uses. It is made manifest through the protection of public health, safety and welfare clause of most ordinances (Smith, 1993). Another objective of zoning as argued by Mills (1979) is the prevention of resource misallocation by unregulated private markets because of external economies or diseconomies, monopoly power, or some other factor. The final objective is to achieve homogeneity in a community. Zoning can readily be defined as the result of the self-interest of existing residents of a community, whereby existing residents benefit at the expense of potential residents. Self-interest also implies the use of controls as a means to increase property values. The separation of land uses, large lots, and other characteristics of zoning as generally implemented are consistent with the objectives of both residents concerned with property values and local governments concerned with the fiscal consequences of growth. Thus a consensus emerges on the desirability and form of a zoning resolution in a community. A zoning resolution is politically sustainable within the community because of this consensus (Smith, 1993). However, there are potential costs associated with zoning. The first is the cost of planning, administering and implementing zoning; and the second is the increased cost of development due to the restrictiveness of zoning regulations.
Consequently, zoning influences the cost of housing – by controlling the amount of land and the minimum area of lots, supply and price are affected. In addition, it has been suggested that efforts to control growth and influence patterns of development in the United States have been marginal (Richardson and Gordon, 2004).

**Summary**

Land use planning draws from a broad body of resources. In practice, land use planning is subject to constant critique and analysis. The literature presented above provides the background for understanding the key issues concerning land-use planning and land-use controls. The following chapter presents the body of literature that will be used to analyze the data from this research.
Land-use planning as a multi-disciplinary practice is intimately entrenched in the public process. As we have seen in the previous section, engaging in the public process is how land-use decisions are made. Land-use decisions result in land-use policies. This chapter presents the policy-making process – elements of which constitute the framework of analysis for this research. While policy analysis theory typically focuses on state and national policies, the processes are applicable at the county-level of governance and will be applied as such for the purpose of this research.

The Policy Process

Before the policy-making process can begin, there must be salient identification of an issue. Cobb (1995) defines an issue as a conflict between two or more identifiable groups over procedural or substantive matters relating to the distribution of positions or resources. As such, issues are created in one of four ways. They can be: 1) manufactured by a party who perceives there are unfavorable biases in a particular area; 2) created through an exploitative manner to advance a particular cause; 3) created as a result of unanticipated events; or 4) initiated on behalf of the public interest. Once an issue is established, the policy process is engaged.
There are several stages of the policy process that are commonly agreed upon in the policy analysis literature (Cobb, 1995; Gupta, 2001; Theodoulou, 1995). The stages can be identified as part of a cycle beginning with setting an agenda as illustrated in Figure 1. Given the questions posed in this research, the analysis will focus on the first three stages.

Figure 1. The Policy Cycle (Gupta, 2001).

Agenda setting is the narrowing of the set of issues that the actors involved in the policy process will focus on and address (Theodoulou, 1995). The policy analysis literature identifies two kinds of agendas: 1) those on which government or institutions act – governmental or institutional agendas; and 2) those on which government or institutions delay action – systemic or non-institutional agendas. Further defined, systemic agendas “percolate in society waiting to be elevated to an active agenda;” (Gupta, 2001:47) and institutional
agendas consist of problems which public officials feel obliged to take appropriate measures to address.

There are a handful of ways that institutional agendas are set. There is an elitist model that suggests a top down approach in which lawmakers select issues that serve their own interest, where interest is defined to mean the economic interest of their constituents with consideration of winning re-election (Gupta, 2001). The sub-governmental model assigns the task of agenda setting to legislative aides, whereby lawmakers only see issues that are presented to them by their staff (Gupta, 2001). The dominant model of agenda setting, however, is the pluralist model as explained by Roger Cobb in the 1970s. This model states that political power rests with citizen activist groups, which may include formal and informal players, brought together by a set of core values to advocate for an issue (Cobb, 1995). Further, issues supported by these loose coalitions can attain institutional status and be noticed by the political elite if they possess several characteristics. These characteristics are: specificity, social significance, temporal relevance, simplicity, and categorical precedence, as defined below (Gupta, 2001).

The first characteristic – specificity – refers to how well an issue attracts wide public support (e.g., clean air and clean water), of particular consideration when continued funding is of concern. The second characteristic – social significance – refers to how well the advocates of an issue frame its complexities so that they make sense to other citizens (e.g., gun control). The temporal relevance of an issue refers to whether it possesses short-term or enduring
implications (e.g., immigration). For an issue to possess categorical precedence, the fourth characteristic, it must be a matter of routine legislative action rather than one that is far from routine (e.g., military procurement vs. some environmental policies). Lastly, for an issue to possess simplicity it must be framed in a straightforward manner (Gupta, 2001). Once the policy agenda is set, the task of formulating the policy can begin. During this stage objectives must be specified, alternatives must be identified, the goals must be deemed attainable, and the effectiveness of the proposed solution to the problem must be determined (Gupta, 2001).

**Formulation**

According to Lindblom (1995) the formulation phase of the policy process is achieved by one of two methods: the “rational-comprehensive” method, or the “successive limited comparisons” method. The rational comprehensive model is a decision-making process in which every important relevant factor is taken into account; theory is heavily relied upon; and there is a means-ends analysis in which the ends are selected, then the means to achieve them are sought (Lindblom, 1995). The successive limited comparisons method is a process that is not so neatly packaged, where means and ends are not distinct and the selection of goals and analysis of the needed action are closely intertwined (ibid). For complex problems, the rational-comprehensive method, though commonly prescribed, is not practical and therefore not typically practiced by public administrators (ibid). The successive limited comparisons method is what
Lindblom (1995) calls, the “science of muddling through” where policy is formulated step by step and by small degrees with almost no reliance on theory. The above approach to policy formulation is inimitably applicable to the focus of this research whereby counties are incrementally finding their way to the table of discussing land-use policies that might address the population growth and land development pressures that they are experiencing.

The third stage in the policy process cycle is the policy adoption phase, which will be the basis of analysis for the research presented here.

**Adoption and Innovation**

The policy adoption phase requires several considerations. To assess and influence the political feasibility of a policy one must identify the relevant actors (i.e., those likely to take a position on an issue). There are two, usually overlapping, sets of actors that need to be identified: those with a substantive interest in the issue and those with official standing in the decision arena (Weimer and Vining, 1992). Once the actors are identified, their motivations and beliefs need to be understood by other actors involved. When motivations and beliefs are not apparent providing additional information may influence the actors’ positions on a particular issue (ibid). Finally, while understanding actors’ beliefs and motivations, it is also important to assess the resources available to them, which could be votes, professional opinions, membership, or financial backing. With all of these considerations, the policy adoption phase is initiated and the process of working out the details can begin. Such details may include
compromising on positions, whereby substantive modifications of policy proposals are made in order to make them more politically acceptable (Weimer and Vining, 1992).

A government's action of adopting policy inherently means that the policy did not exist as part of the governance of lawmaker's jurisdictions. However, policies are less frequently conceived (i.e., wholly new) by a government than they are simply new to the government adopting it. In this sense, the process of adoption is characterized as innovation (Berry and Berry, 1999). While most actions by a government are incremental, in that programs and practices are marginally modified over time, as we saw in the previous section, "every government program can be traced back to some non-incremental innovation" (Berry and Berry, 1999:169). When it comes to adopting new policies, governments can typically be characterized by one of three major models: internal determinants, regional diffusion, or national interaction, the first two of which are discussed below.

The model of internal determinants presumes that the "factors leading a jurisdiction to innovate are political, economic, or social characteristics internal to the [jurisdiction]" (ibid), and require a dependent variable – the probability that a state is eligible to adopt a particular program (ibid). In addition, internal determinants preclude the effects of diffusion in that once a policy is adopted by one government it is extremely unlikely that another government's adoption of the policy would be completely independent of the previous adoption (Berry and Berry, 1999). These authors also restate what the literature purports to reflect as
being the factors motivating decision makers to innovate. One factor is the
degree to which elected officials feel secure in their re-election. If officials feel
insecure they are more likely to adopt new policies that are popular with the
electorate and less likely to adopt new policies that are widely unpopular, or at
least sufficiently unpopular with a group of constituents regarded as controversial
(Berry and Berry, 1999). The other factor is the amount of time until the elected
official's next election, the reasoning being similar to the above whereby a
proximate election will warrant endorsement of a popular proposal, but not one
that is controversial.

In contrast, the diffusion model builds on the influence of neighboring
governments, whereby policies adopted in one jurisdiction are emulated in
another (e.g., fluoridation in water or state lotteries). Diffusion models are
considered regional in nature because governments that share borders “can
more easily analogize to proximate [governments], which share economic and
social problems, and which have environments similar enough so that policy
actions may have similar effects” (Berry and Berry, 1999:175). These authors
also argue, with respect to the diffusion model of policy adoption, that
governments emulate each other for one of three basic reasons: 1) borrowing as
a decision-making shortcut (e.g. adopting another government’s regulations that
meet the identified goals of the first government); 2) competition and pressure to
conform to national or regional standards (e.g. policies that come out of the
Western Governor's Conference); and 3) public pressure from citizens. More
specifically, the regional diffusion model, or neighbor model, sets up the
hypothesis that governments are influenced primarily by those governments with which they share a border and that a government's probability for adoption of a policy is directly related to the percentage of governments within its region that have already adopted such a policy (ibid).

Berry and Berry (1999) argue that the models of regional diffusion and internal determinants are not mutually exclusive and in fact, work simultaneously. While perhaps not an inventor of land use policy, through the diffusion process, the state of Montana and its counties may adopt planning “innovations” developed elsewhere. Because none of the counties in the study area have completely adopted the policy in question – countywide zoning – testing these models with the available theories is difficult. However, in the context of this research, both models offer valid frameworks. If we consider the county as the unit of analysis, the diffusion model is applicable whereby counties emulate one another by borrowing policies, receiving pressure from citizens, or receiving pressure to conform to national or regional standards. The internal determinants model is likewise appropriate to this study given two factors: 1) that counties are the body of government that would be adopting countywide zoning regulations; and 2) the current variability of political, economic and social characteristics between Montana counties.

Implementation

The implementation phase of the policy process “begins with the adoption of the policy and continues as long as the policy remains in effect [emphasis
"(Weimer and Vining, 1992:312). Building on the phases of the policy process Sabatier and Mazmanian (1995) present an outline of the variables involved in the policy implementation process. For the purposes of this research those variables will be applied to the process of adoption, since without adoption, implementation is moot, but the process is quite similar. The authors identify four key variables that can be utilized to measure how manageable a problem is that a policy addresses in terms of stated jurisdictional objectives. These variables are: 1) the availability of valid technical theory; 2) the diversity of target-group behavior; 3) the target group as percentage of population; and 4) the extent of behavioral change required (ibid).

Almost any new policy poses some costs to the taxpayers, largely in the form of program administration. To the extent that these costs can be justified by measurable improvements in the problem being addressed by the policy, support for the policy will wax or wane accordingly. Secondly, the more diverse the behavior of the group that is to be impacted by the policy, the more difficult it becomes to frame clear regulations. This aspect can be seen in the processes of environmental policy making or Forest Management Plan revisions. In contrast to what Gupta (1995) relays, Sabatier and Mazmanian (1995) posit that the smaller and more definable the target group whose behavior will be regulated by the new policy, the more likely that political support can be mobilized in favor of the program. Finally, an issue can be more easily addressed with a new policy if the amount of behavioral change is modest (Sabatier and Mazmanian, 1995).
Summary

This chapter has described the policy process and the elements employed to analyze the data compiled in this research. The elements of the policy process applicable to this study are primarily those of policy adoption and policy implementation. Together these two phases offer a context for understanding the problem of the reluctance of Montana counties to adopt countywide zoning. The next chapter explains the methods employed to achieve the goals of this research.
CHAPTER V
METHODOLOGY

This chapter presents the methodology employed to carry out this research. The study area included ten of the fastest growing counties in Montana: Big Horn, Flathead, Gallatin, Jefferson, Lake, Lewis & Clark, Missoula, Ravalli, Sanders and Yellowstone. Two types of data and analyses were used. The first was an examination of the counties in the study area. This examination included a review of current planning policies, the actors involved in planning-related policy, population, land-ownership distribution, and geography. The second form of analysis consisted of personal interviews with two sets of actors in county planning related activities: commissioners and representatives of the planning profession.

To effectively evaluate the process involved in policy adoption with respect to countywide zoning in Montana, direct access to the actors was imperative. For the purpose of this thesis, those actors included two groups. The first were county commissioners. Three commissioners elected for six-year terms represent the county level of government in the state of Montana. Commissioners receive recommendations from agency staff, committees and boards, and make the final decisions of whether to adopt a particular policy. The second group consisted of individuals employed as professional planners in the study area who possess professional opinions and make recommendations to the governing body.
A critical component of policy adoption is the motivations of the actors, or stakeholders. Different actors possess different perspectives based on their motivations and the resources available to them. This research is a qualitative analysis and represents an attempt to understand and assess those perspectives in the context of adopting countywide zoning through the descriptive survey process. Because the commissioners, as an elected body, make the policy decisions, it was determined that all three were necessary to interview. Ten planning professionals representing each of the 10 counties were also interviewed. This number was determined to be sufficient to facilitate an assessment of any differences that may exist between the actors in the particular setting of their county.

Between November 2004 and September 2005 each of the three commissioners and a planning professional from the ten counties in the study area were contacted via telephone and/or e-mail. In total, thirty-seven interviews were conducted over the telephone with all counties in the study area represented by at least two commissioners. Commissioners and planning representatives were interviewed using a structured interview protocol. The questions included background questions related to the interviewee's professional tenure and occupancy of the county; closed and open-ended questions related to the interviewee's perspectives of current planning practices in their county; and closed and open-ended questions about the interviewee's perspectives on the specifics of countywide zoning. Questions were designed to capture general and specific land use planning perceptions without using leading
information. For instance, the question related to national and regional standards was intended to elicit opinions as to what those standards might be. Interviews were typically completed within 15 to 20 minutes. The interview protocol appears in Appendix B.

As previously mentioned, the two criteria for selecting counties was a population growth rate greater than 10% between 1990 and 2000, and a population equal to or greater than 10,000 based on the 2000 Census (see Appendix A). The criteria offer a benchmark and manageable data set. Half of the ten counties (Flathead, Gallatin, Jefferson, Lake and Ravalli) experienced population growth rates greater than 25%. Noteworthy is the fact that seven other Montana counties experienced population growth rates of 10% or greater during the same time period but had populations less than 10,000. These counties may not have sufficient population densities for the problems typically associated with rapid population growth and community expansion to be a major concern at this time.

The average number of years living in their respective counties for all the commissioners is 39 years, with the average length of time serving as commissioner being 8 years. Three of the commissioners interviewed were newly elected in 2004. Commissioner Barbara Evans of Missoula County is the longest serving county commissioner in the United States at 27 years. Of the planning representatives, only one did not live in the county in which she/he worked, and one was new to both the county and the position. The average number of years living in their respective counties for the remaining 8 planning
representatives was 10 years, with the average length of time in their professional positions being almost 5 years. Four of the planning representatives moved to their county for their position. The remainder lived in their county an average of 10 years before entering their current position. In contrast, commissioners lived in their county an average of 32 years prior to being elected. The differences in residency and tenure are plausible contributors to the motivations of the actors involved in policy adoption and their endorsement of countywide zoning.

The Study Area – A Brief Overview

Big Horn County is located in southeast Montana adjacent to Wyoming. Within its borders are the Little Big Horn Battlefield, the Big Horn Canyon National Recreation Area and the Crow Indian Reservation, as well as part of the Northern Cheyenne Indian Reservation. Arid and significantly less mountainous (unlike most of the remaining 9 counties in the study area), Big Horn County experienced the least amount of population growth of the subject counties between 1990 and 2000, at 12%, and has the third smallest population at 12,700 people. With half of the county held in tribal lands Big Horn County faces many challenges in coordinating efforts not just for planning, but all aspects of policy adoption.

Flathead County is in the northwestern part of the state, bordering Canada. It was created in 1893 and is flanked in the northeast by Glacier National Park. The Bob Marshall Wilderness spans its eastern boundary.
Flathead County contains the least percentage of privately developable land of the subject counties; the majority of land in its boundaries being comprised of state or national forestland and Flathead Lake. Its once agrarian-dominated valley floor has, like many areas, been converted to housing and commercial development to support the growing community. The county used to be part of the Flathead Regional Development Office, a now defunct group that was comprised of the three main cities (Columbia Falls, Kalispell and Whitefish) and the county, and whose goals were focused on a coordinated planning effort to address community expansion in the county. Flathead County is in the process of revising their growth policy, and has been for a number of years. A 2002 unofficial draft described the county’s position on growth as one promoting diverse dispersed development. Such language reflects the philosophy that community expansion should not be controlled. The county has had county-initiated zoning districts since 1993. The county also has several citizen-initiated zoning districts as well as many neighborhood plans. It is described as an “ala carte” system, whereby many citizen districts have chosen to adopt one of the county’s existing districts.

Gallatin County was one of the original nine counties created in February 1865 by the Territorial Legislature (Cheney, 1971). It is located in the south central part of the state and has experienced a dramatic change in its landscape. With the quaint western town of Bozeman (home to the main Montana State University campus) as the urban core, and its prime location north of Yellowstone National Park, Gallatin County has been a popular destination. Within its borders
are the headwaters of the Missouri River, emanating from the convergence of the Jefferson, Gallatin and Madison rivers at Three Forks. From 1970 to 1997, the population of Gallatin County grew by 88%. However, since 1970 the population in the rural areas of Gallatin County has seen a 138% increase, while the urban population only had a 64% increase (Gallatin County Open Lands Board). Correspondingly, between 1978 and 1992, 295 square miles of farm and ranch land in Gallatin County were converted to non-agricultural production – approximately one-fifth of the privately owned lands (ibid.).

Jefferson County is located just east of the Continental Divide in the southwestern part of the state. It too was one of the original counties of 1865. It is flanked by the Boulder Mountains on its western border, and the Elkhorn Mountains and Boulder River on its eastern border. Helena, the state capitol, is just across its northern border in Lewis and Clark County – accessible from I-15. The easy distance to Helena has facilitated growth in Jefferson County, as has the land market, which has affected the decision of many ranchers to sell their land.

Lake County is directly north of Missoula County having been created from both Flathead and Missoula counties in 1923. Located in the western part of the state Lake County is noted for the numerous lakes that lie within its boundary, including the southern half of Flathead Lake. The awe-inspiring Mission Mountain Range extends northward in the eastern third of the county, physically segregating the county’s residents. At the far eastern border is access to the one million acres of the Bob Marshall Wilderness. These natural amenities
make Lake County a resort destination and location for many second-home buyers. In addition, 30% of the county is within tribal lands of the Flathead Indian Reservation, which makes for very interesting and sometimes complicated land use planning – a situation not dissimilar to that of Big Horn County. Since this research began Lake County adopted a “density map” in October 2005 that affects the whole of the county. With an accompanying regulatory document that’s stated intention is to “influence the density of new parcels ... not to prescribe land use” the density map represents an innovative approach to growth management in Montana. Interviews were conducted prior to Lake County’s adoption of this policy.

Lewis and Clark County, one of the original nine Montana counties, is in the northwestern part of the state. It is the home of the state capitol, Helena, residing at its southern border. The Sun River marks its northern border and the majestic Rocky Mountain Front extends along its western border. Lewis and Clark County experienced a population increase of more than 17% between 1990 and 2000.

Missoula County was originally established as a county in Washington Territory before Montana Territory was established. It later became one of the original nine Territory Counties created by the legislature in 1865. Located in the northwestern part of the state, Missoula County is home to the University of Montana, and is known as the liberal hub to the rest of the more conservative state. The Blackfoot, Bitterroot and Clark Fork rivers converge in the Missoula Valley, which is virtually surrounded by mountains. Missoula County has a
consolidated planning office and a long history of planning. It adopted zoning in
the 1970s, though not countywide. Zoning districts are ex-urban and extend
predominantly from the western edge of the Missoula city limits. In 1975
Missoula adopted a Comprehensive Plan with an accompanying Land Use
Designation Map. In 1998 the City of Missoula and the County adopted an
Urban Growth Boundary, outside of which the land use designation is for a
density of one dwelling unit per forty acres.

Ravalli County is directly south of Missoula, in the extreme western part of
the state. It was formed from Missoula County in 1893. Ravalli County is flanked
by the Selway-Bitterroot Wilderness and Idaho-Montana border on the western
edge; and the Garnet Range in the east. Between 8,000 and 10,000 commuters
tavel from Ravalli County to Missoula everyday along the one corridor that
connects them, U.S. Highway 93. Parts of the highway have recently been
expanded from two lanes to four in some areas with additional sections widening
in the near future. This has eased some congestion issues, while at the same
time facilitating additional development. Ravalli County is frequently referred to
simply as "the Bitterroot" – a long north-south running valley through which the
Bitterroot River flows north to the join the Clark Fork in Missoula County. Small
towns dot the highway down to the Idaho border, with Hamilton hosting the
largest population at more than 4,000 residents (U.S. Census, 2004). Once a
valley of large agricultural tracts of orchards and ranches it has become a rapidly
growing community of ranchettes and small tracts of land equally dispersed
throughout the county. Of all the subject counties, Ravalli County experienced
the greatest population increase between 1990 and 2000 at forty-four percent. In the last year it has allocated new funds to hire six new planners to keep up with the workload of subdivision review.

Sanders County, also in the northwest, was organized in 1905 from part of Missoula County and is named for U.S. Senator W.F. Sanders (relative of the first territorial governor of Montana). Sanders was characterized as a pioneer, vigilante, and statesman – features that embody the personality of the county today. The county contains very little private land within its jurisdiction. The Flathead Indian Reservation frames the eastern part of the county, the Kootenai National Forest frames the west, and the National Bison Range is located in the middle. The Clark Fork River, on its journey out of the state, slices through the county after being augmented by its confluence with the Flathead River in the southern portion of the county. Thompson Falls is its largest town at just over 1,300 people. Sanders County is the least populated county in the study area, and while it had a planner on staff at one time, it no longer supports a planning office. Indeed, its citizens voted to abolish the planning board over three years ago. Without a planning board the county cannot adopt a growth policy, and therefore cannot adopt any regulatory policies. The only powers of land use control by the county consist of reviewing subdivisions for legal and physical access to the proposed lots; and adequate water and septic facilities as required by the Department of Environmental Quality.

Yellowstone County, organized in 1883, is in the eastern part of the state and is home to the largest city in Montana – Billings. It also contains part of the
Crow Indian Reservation within its borders, and the Yellowstone River slices across it on its journey to the Missouri River in the east. It has the most private lands of all the counties in the study area and, like Big Horn County, is considerably less mountainous than the rest of the study area in the central and western part of the state. Because it has fewer topographical constraints, the growth in Yellowstone County has been particularly expansive.

**Summary**

This chapter has presented the methodology for conducting the research of this thesis, which includes a summary of the study area, a review of current planning policies in the study area, and personal interviews with actors involved in the policy adoption process with an emphasis on planning policy. The next chapter will present the findings and analysis of the interviews for the county commissioners and planning representatives.
Map of Montana Topography

Source: Montana State Library Natural Resources Information System. Available at: http://nris.state.mt.us/gis/gisdatalib/mtmaps.aspx
CHAPTER VI
FINDINGS

This chapter analyzes the responses from the interviews with county commissioners (i.e., the policy makers), and the representatives of the planning profession. The responses from the interviewees fell into several broad categories and were coded as such in the respective sections for commissioners and planners. Several themes surfaced from the data analysis as they relate to land-use planning efforts in the subject counties. Following is an examination of the relationship between the interview comments and theoretical framework presented in this research. Distillation of the comments delivers to the reader an understanding of counties’ disinclination to adopt countywide zoning as a planning tool. It is also useful to compare the responses of the two groups to identify similarities and differences in perspectives on land use planning in their respective counties. Additionally, this chapter provides insight into how each actor might view their roles: commissioners as policy makers for their jurisdiction; and planners as representatives of their profession.

County Commissioner Perspective

As the decision makers for the county level government, county commissioners consider a broad array of factors when making policy. Their jurisdictional areas are frequently comprised of dramatically varying settings with
different planning needs. In addition, issues relating to land use, while numerous, are only a handful of the concerns commissioners must tend to in their daily work. A sample of available commissioner meeting minutes from 2004 show that planning related items (i.e., subdivision reviews or zoning change requests) appeared on their agendas at least twice a month. It was evident from the responses that issues pertaining to land use and planning were at the forefront of most commissioners' agendas.

Three main themes emerged from the responses given by the twenty-seven commissioners. These themes can be characterized as: 1) a sense of a lack of planning in one’s county; 2) general concern with the state’s role and laws related to planning; and 3) the citizens directly affect policy adoption. Prior to addressing these three themes, a summary of general land use planning perspectives is presented.

Benefits

All the county commissioners identified several familiar benefits to land use planning, as exemplified in the following statements:

*First, for the overall environment, if growth is unrestrained and unregulated, there will be ruination to communities, total chaos to water and air. Secondly, for infrastructure and services counties are strapped for cash.* (Lake County Commissioner)

*Planning principles are applicable to all aspects of life – ‘if you fail to plan; you plan to fail’; few things in life are unplanned – marriage, school, family, house, retirement, career.* (Flathead County Commissioner)

*Yes, a fast-growing county should be driven not by growth, but planning. It should be in place to help development not hinder it. Then [you’re] in a
good position to move forward with good planning. (Flathead County Commissioner)

As we experience growth pressure, the built environment, if not managed properly, can be detracting for people who are drawn to the amenities in the area such as open space, water and natural resources. We can achieve good planning through incentives and policy. We’ve passed Open Space bonds, but it’s driving up [housing] prices. (Gallatin County Commissioner)

It prevents the county from becoming a junkyard; and makes it appealing to incoming public. To preserve for the future we need to do intelligent planning. (Ravalli County Commissioner)

Absolutely, without a plan you have sprawl development – it’s that simple. (Lewis & Clark Commissioner)

Statements such as those above reveal a perception that planning is important and necessary for the long-term health of the community. In fact, the majority of commissioners (21 of 27) believed that all members of the community experience the benefits of land use planning equally; though several affirmative responses were qualified with phrases like: “in the long run”; “overall”; “if everyone is participating that wants to”; or “if it is a good plan”. Nonetheless, these statements exhibit a great optimism and idealism among the decision-makers. However, several commissioners responded with the understanding that political decisions almost always result in winners and losers as suggested by Ervin (1977). These views, particularly about land use decisions, support the observations de Neufville (1981) iterated with respect to the allocation of wealth and power. The following comments illustrate this point of consideration from the commissioners, in response to the question of whether all members of the community benefit equally from land use planning:
We strive for the greatest benefit to the greatest number of people without too much impact on the individual. (Ravalli Commissioner)

It is impossible for government to implement regulations without some losers. (Lake County Commissioner)

People don't want sprawl, but they don't want high density either. (Missoula County Commissioner)

Ultimately, yes, initially, no. Depending on which parts of the plan we do first. (Lewis & Clark Commissioner)

**Frustration**

When asked about the inadequacies in their current planning policies, commissioners from eight of the ten counties expressed dissatisfaction with the current state of planning and land-use policies in their counties. This sense of frustration is illustrated in the following responses to the question of whether the commissioner perceived any inadequacies in their current planning policies:

*We go thru [the] gyrations [of planning]. Planning is very staff-oriented and they are not always well versed in public participation and open meeting laws. They try to have closed meetings; use the process inconsistently; and possess a lack of knowledge.* (Gallatin County Commissioner)

*The lack of [planning]. The commissioners could develop a zoning policy. In the past we were open to citizen-initiated zones.* (Jefferson County Commissioner)

*There are many problems. We are reactive with planning for its entire history.* (Ravalli County Commissioner)

*Yes, it is non-existing. There is no follow-up. It is difficult to make the plan work. The legislature took out the teeth of growth policies in the last session. We need to encourage homes closer to existing development. We need to take a look at how the county can better do planning – more focused.* (Missoula Commissioner)
We are not allowed to have a planning board because we have no comp plan. There was an initiative on the ballot to remove it. There is no consistency. We are sued constantly. (Sanders County Commissioner)

We have no countywide zoning. The commission frowns on subdivisions in unzoned areas. There is no certainty for people in those areas. If you try to have land use regulations as a politician in Montana you don’t get re-elected. (Gallatin Commissioner)

Two factors seemed to underlie the sense of frustration commissioners felt about the current state of planning in their counties.

The first factor pertains to cross-jurisdictional challenges, as expressed in the following statements:

We don’t do a lot of planning. Only ¼ of the county is off the reservation. (Big Horn Commissioner)

There’s a need for more comprehensive planning in cross-jurisdictional areas. (Big Horn Commissioner)

The challenge of our geographic location. We have multiple governments with tribes, county, Polson and Swan Lake. (Lake County Commissioner)

The second factor underlying the frustration pertains to the growth the county is experiencing:

We revised our growth policy two years ago. We have to look at it again to re-think if there can be more control. (Jefferson County Commissioner)

The inability to communicate to all affected parties the benefits of long-term planning and zoning; the inability to preserve green space; the inability to concentrate population growth in non-irrigated agricultural areas. (Yellowstone County Commissioner)

Those counties facing rapid growth need to work together to come up with policy that would work across the state. But it is challenging when you get blank looks from commissioners in counties with depleting populations. (Missoula Commissioner)
We have no growth policy. We are operating with the 1986 Comp Plan – no businesses are likely using a plan that old. (Flathead Commissioner)

We need to address and get ahead of growth. The last real growth policy with teeth was in 1996 – it is past time to get it done. (Jefferson County Commissioner)

State Laws

Comments such as the above convey a strong message that commissioners clearly perceive they are not doing enough to address how counties are growing. This sense of frustration was further elaborated in the context of the state’s role in land-use planning and the laws that are available to decision-makers under whose authority new policies could be adopted. The following statements were in response to the same question as above about perceived inadequacies in the county’s planning policies:

Working within the confines of the state regulations and policies. (Big Horn Commissioner)

Given what is allowed under state law, we have the tools we need, but we may need to modify those tools. The state has allowed [these] shortcomings in two ways. One, there is nothing to ensure the needed infrastructure is in place at the time of development. We can’t require a stoplight that we feel necessary at the time the subdivision goes in. We just have to hope it will follow. Secondly, there is no capability to consider cumulative impacts. A developer can say his/her development will not have adverse effects on wildlife, water quality and infrastructure, but sooner or later a developer won’t be able to make that argument. (Gallatin Commissioner)

No, mostly it’s our own state regulations that we deal with. The statute does not give local communities enough leverage. (Jefferson Commissioner)

The growing counties are struggling right now. What are we passing on to our future generations? Things aren’t thought out; statute requirements are not necessarily best for Jefferson County. (Jefferson Commissioner)
Standards

With an overwhelming sense of needing to produce something better than what is currently in place, the commissioners are poised to engage in a land-use decision-making process to adopt new tools and policies. Indeed, at least two counties (Lewis and Clark and Missoula) appear to be considering the idea of adopting development or building permits as a way to keep tabs on growth. However, nearly half of the commissioners felt pressure from their citizenry to both adopt new land use regulations and not adopt new land use regulations. Several commissioners responded with statements addressing the objectives that Ervin (1977) classifies as those required to define the goals of a land use policy if it is to be measured in terms of efficiency and equity. If we recall, those objectives were: reducing negative external effects of particular land uses; providing the optimal level of public goods; and reducing the costs of providing some public services. The statements below illustrate that some commissioners relate the process of land-use decision-making in terms of these objectives. The question of whether commissioners felt pressure to adopt national or regional standards of land use planning policy generated the following comments:

*Growth in government. The county needs to show a reduction of taxes and savings. Building permits offer no savings.* (Gallatin County Commissioner)

*There are costs and benefits on both sides; balance is the key for efficiency for residents.* (Jefferson County Commissioner)

*We are somewhat resistant to pressure [of national or regional standards] and give local consideration. We are not inclined to [listen to] the feds with their broad brush.* (Ravalli County Commissioner)
No, I feel a mandate to have the best product possible for the citizens. (Flathead County Commissioner)

[We] must do planning so that quality of life issues are the most important. (Flathead County Commissioner)

Constituents

In contrast to the sentiment of needing more and better state laws, many commissioners felt very strongly about adopting new policies without the full support of their constituents. The following statements demonstrate the prevailing presence of this perspective. Several of these responses resulted from the last questions of the interview related to whether the county would adopt countywide zoning:

Public opinion is not supportive in some areas. It is not our job to be keeper or mother. I hate to see government officials acting that way even if it is for the greater good of the entire whole. You can’t forget who voted you in. (Missoula Commissioner)

We have discussed it. Commissioners and the public have not indicated they want it. It is not likely – unless people want specific areas zoned, they don’t typically want government in their business. (Yellowstone Commissioner)

There’s some talk about it. But I would like the people to drive the process – so it is a citizen-process. (Jefferson County Commissioner)

People are reactive to uses that are proposed when no zoning exists. Areas closer to urban areas are more pro-active in wanting planning. (Gallatin County Commissioner)

The best policies come from people who live in the area. (Flathead Commissioner)

People say, ‘If I wanted city rules I’d live in the city’. (Yellowstone Commissioner)

In northwest Montana it is a lot better to plan by regulation than by litigation. (Lake County Commissioner)
The Western spirit – 'I live in a rural area – please leave me alone'. It is difficult to have consensus or language to address sparsely populated areas and bedroom communities of metropolitan areas; the extremes of the county population = 1 per 10 miles or many to 1 mile. (Yellowstone County Commissioner)

**Actors and Participants**

Responses such as those above demonstrate why many commissioners were very clear in their perspectives of who participates in land-use decision-making. Planning boards, as the agents with the task of making recommendations to the commissioners about land-use planning decisions, are a valuable step in the process. The majority of commissioners responded affirmatively to the role the planning board played in making recommendations for land-use decisions. Commissioners largely perceived disagreement with the planning board's recommendations to occur only occasionally. Again, Ervin (1977) identified three major groups of citizens that participate: individuals who profit from continued development; individuals who organize to contest a pending decision; and individuals who value mitigation of the impacts to the environment. The comments below reveal an understanding on the part of the commissioners of the power of the vocal minority. The question of whether commissioners felt pressure to adopt or not adopt new land use planning policies generated the following comments:

*There is a minority of radical environmentalists that promote no growth in the county. It stops the process and hinders anything reasonable. A growth policy should be 15 pages, and that's stretching it. Ours is 3 volumes. We've already been notified that we'll be sued because of our subdivision regulations. We received a letter from the District Attorney that what we're doing is illegal.* (Lewis & Clark Commissioner)
Mostly it is incoming residents that do not want regulations. (Sanders County Commissioner)

There is a large contingent of property rights proponents. The Militia of Montana has strong voices against planning. (Sanders County Commissioner)

Our population varies from save every blade and twig to property rights and everything in between. Bozeman has not set a good example. They are heavy-handed which has affected people’s perception of zoning. (Gallatin County Commissioner)

The enviros think they know everything and will tell you what’s good for everybody. They have a built in legitimacy; they are entrenched (e.g. APA). (Lewis & Clark County Commissioner)

In the arena of regulatory standards, the “enviro” faction thinks they should be the standard. (Lewis & Clark Commissioner)

We hit a roadblock – the majority thinks it is a good tool, but property rights pushers are vocal minority. (Missoula County Commissioner)

Staff seems to be strong-arming for more than what’s required. They are almost emotional to the point of losing sight of being “here to work with the public”. They are very passionate and dedicated. (Yellowstone County Commissioner)

There are pockets of groups, but it depends on a hot issue. Developers/owners come out when changes are presented – when someone’s ox is gored. (Yellowstone County Commissioner)

Both, some want really stringent regulations. Others think it’s not right for Ravalli. (Ravalli Commissioner)

I feel pressure from both sides; some developers are more understanding than others. (Missoula County Commissioner)

Not so much, but when people find out a subdivision is going in next door they don’t know the process and the system. Anything can happen. (Missoula County Commissioner)

Adoption

While some commissioners looked to other states for planning policy ideas, most were cautious about doing so citing the Montana statutes as a
limiting factor for pursing other alternatives that might be available. Some commissioners did use other Montana counties as a reference for policies. Additionally, most commissioners felt no pressure to conform to national or regional standards, and instead were adamant about the need for land-use planning to be a local affair as indicated in previous responses. The following comments are examples of some of these sentiments:

*No, other [Montana] jurisdictions are not doing much. I have looked to Montgomery County, Maryland regarding Transferable Development Rights research and Routt County, Colorado. (Gallatin County Commissioner)*

*Most counties look to Gallatin. The staff are good at their research. They cast about for good ideas and models. Colorado and Idaho are ahead 10-20 years. (Gallatin County Commissioner)*

*We are starting to – what they did right and what mistakes were made in other counties such as Missoula and Gallatin. I don’t look outside because Montana law is so different. (Ravalli County Commissioner)*

*No, my personal perspective is that we should go beyond those standards. (Gallatin County Commissioner)*

The county commissioners expressed modest interest in the idea of countywide zoning. Of the fifteen that responded affirmatively when asked if they would adopt countywide zoning, seven were by and large only supportive of adopting it if there was public support. Surprisingly, two commissioners were unaware of the state enabling legislation authorizing counties to zone the entirety of the land within their borders. Responses to whether commissioners were considering countywide zoning were quite varied, even among commissioners in the same county; with most stating they had not considered it. Commissioners from Lewis and Clark, Ravalli and Missoula counties all seemed to be
contemplating it as a growth management tool, particularly Ravalli County, which experienced the greatest increase in population growth. Curiously, one of the commissioners interviewed for Flathead County said the county was “doing it,” (i.e., countywide zoning), while the other said they had not even considered it. Also curious were the responses from Gallatin County commissioners – in a county that other counties looked to as an innovator of policy, none of them were considering it as a tool, rather, they questioned, as Campbell and Fainstein (1996a) suggest, whether the public’s interest would truly be served by it. The following are responses to questions about adopting countywide zoning:

Not if it’s against the public wishes. (Missoula County Commissioner)

If I thought it would be beneficial. (Missoula County Commissioner)

You better have running shoes on if you mention zoning. It has been discussed, but not seriously. (Missoula County Commissioner)

I would love to. (Jefferson County Commissioner)

I would attempt but only with the public vote. (Jefferson County Commissioner)

We have made an attempt at a rudimentary countywide ordinance. It was met with opposition so we backed off. It got to the point of planning board recommendation, but we did not adopt it. (Lewis & Clark Commissioner)

The changing factors of the county. Zoning would be limiting in a short amount of time. (Jefferson County Commissioner)

We will. After the growth policy is implemented. We will identify residential and commercial areas appropriate and restrict negative business. (Ravalli County Commissioner)

No, we need to think out of the box. Euclidean zoning is obsolete. I am intrigued by performance zoning. We love TDRs too. (Gallatin County Commissioner)

It is not a perfect tool. There is more bad zoning than good, which memorializes what we’re trying to avoid. (Gallatin County Commissioner)
Commissioners from Gallatin County related the possibility of countywide zoning to their experience with the citizen-initiated districts (Part 1 zoning) in the following statements:

_We have 17 citizen-initiated districts. It feels that an initial “door-opening” ballot for incremental county zoning would pass. We are becoming a confederation of zoning districts. The undesirable aspects get shoved to peripheral areas._ (Gallatin County Commissioner)

_[The citizen] districts leave very little unzoned so it is almost de facto countywide zoning._ (Gallatin County Commissioner)

As indicated in the earlier responses, most commissioners identified public support as a resource to be considered in the decision of whether to adopt or not adopt countywide zoning. Perceived problems associated with implementing countywide zoning were consistently identified as staff time, education and enforcement; though some felt there would be a cost savings:

_Regulations are difficult to regulate._ (Yellowstone Commissioner)

_Not additional. We have staff in place. There will be a cost savings – it takes away the ambiguities in subdivision review._ (Lake County Commissioner)

_There are more benefits [to land-use planning] than costs. It’s not a taking. Ridge top [restrictions] and setbacks don’t impact the cost of land._ (Lewis & Clark Commissioner)

Many respondents indicated that if countywide zoning were adopted, however, the county would find a way to implement it. Several commissioners also anticipated litigation to be an obstacle to policy implementation; while others simply felt strongly about not involving government any further in citizens’ lives.
Repeatedly, responses from the county commissioners expressed their hesitation about making changes until they “heard from the citizens” as indicated previously. This behavior reflects what Smith (1993) suggests, in that one of the problems associated with adopting new land use policies occurs when a community appears to be dedicated to the idea of growth management, but support for specific controls is less popular.
Planning Representative Perspective

With the exception of local planning department directors, for most planners in the study area a majority of their work is comprised of subdivision review. This entails reviewing applications (which include plans, drawings, and descriptive narrative) to subdivide a parcel of land for compliance with the subdivision regulations, and subsequently preparing a report of their findings to present to the commissioners. Additionally, for those few counties that have county-initiated zoning districts, some of the work of professional planners involves reviewing requests for zoning changes.

Responses from the ten planning representatives followed the same themes as those of the commissioners, though there was less emphasis on the state’s role in land-use planning and more emphasis on promoting the best planning practices and standards. The former is somewhat surprising given the expectation generated by other land use planners in the state that planning professionals desired more state involvement (see Chapter II). Another theme that was heard from the planning professionals was the need for consistency with their land use policies and within state laws.

Benefits

Overall, representatives of the planning profession were much more explicit about their expectations of planning and zoning in their responses than were the commissioners. As practitioners in the field, the planning professionals,
unsurprisingly, espoused numerous benefits to land use planning. The following is an example of this perspective:

> [Land use planning] can help the community collectively from painting itself into architectural corners. In advance of specific projects you can balance competing goals of the public; and assess how individual property owners can make contribution. It must be in the public interest, and protect groups of people who are vulnerable. (Missoula Planning Professional)

Only half (5 of 10) of the professional planners felt the community members benefited equally from such planning:

> Some lose, some win; those that live now versus those that live in the future. [Benefits] are in the eye of the beholder. (Gallatin Planning Professional)

By its very nature, some members of a community may benefit more or less than others under a land use regulatory system. A good example is the current situation in New Jersey where eminent domain is being used to revitalize blighted areas by condemning ocean front residential land, rezoning it and converting it to commercial use and open space. The individual who is being forced out of an ocean front home will benefit far less than the individual who buys, builds and/or owns/operates the new commercial facilities bordering public lands and the ocean, but perhaps may benefit more (financially) than the general public which now has access to formerly private open spaces and ocean front parcels but certainly receives no financial gain. (Ravalli Planning Professional)

**Inadequacies**

The question of whether planning professionals perceived inadequacies in their county’s current land use regulations generated the following responses:

> With two reservations in the county it would be nice to see consistent land use regulations for all. (Big Horn County Planning Professional)

> We do not clearly describe how to reconcile the differences in our regulations. It leaves the county vulnerable to conflict that the elected
officials find difficult to manage. The regulations and policies are not clear and forceful enough. (Missoula County Planning Professional)

We need better plans for communication to promote the idea of planning as public process. (Lake County Planning Professional)

We only recently adopted a growth policy. It may need to be revised by the time it gets implemented. We take a different approach to zoning. (Lewis & Clark Planning Professional)

Most of the county is unzoned — that is the fault of the commissioners. They approach the actions of the governing body differently than the city council by trying to micromanage. They have time to pore over the project as opposed to the council who relies more on staff input & research. The special zoning districts — they are trying to exclude mobile homes (they were taken to court and lost). It leaves people disenfranchised. (Yellowstone Planning Professional)

I wish the county did. Even though we have a city/county planning board there’s not a lot of coordination with rural and urban areas. We need to compel the county to do land use planning at the edge of the city. (Yellowstone Planning Professional)

I would like countywide zoning, and the state to reverse the donut bill. Having no authority to issue building permits in transitional areas is a handicap for good planning. (Yellowstone Planning Professional)

Some planners expressed their frustration over these inadequacies in terms of specific challenges such as the county’s reactionary approach or a lack of community vision and long-range planning. The following comments demonstrate these concerns:

They tend to be reactive rather than proactive. We are always behind; we are growing so quickly with people from other places wanting more regulation. The county is either too late or too quick. (Gallatin County Planning Professional)

Currently, we do not have any long-range policies in place. (Ravalli County Planning Professional)

The county voted to disband the planning board. We have no growth policy. A radical, anti-regulatory group misled people as to what a growth
policy is – they equated a planning board with zoning and did not realize any benefits. (Sanders Planning Professional)

The 1987 Master Plan is woefully out-of-date. The zoning and subdivision regulations are dated and not consistent with state statute; the community vision from 1987 has likely changed. (Flathead Planning Representative)

It seems like we are always behind. Things change constantly. (Jefferson County Planning Professional)

State Laws and Standards

As indicated in Chapter II, state law sets some limits on the powers of counties. The laws that enable and govern counties’ capacity to plan for and regulate land use undergo frequent modifications, based on stakeholder activity. A few planning professionals expressed their frustration with the state laws.

We are hindered by changes in state law. (Missoula Planning Professional)

Montana state statute is flawed – there are no tools to do things in a manner that is best for everyone. People can dictate future without regard for other areas. The good of the whole gets lost in the fray, and private property ownership rights detract from good planning efforts. (Gallatin Planning Professional)

Planning representatives tended to associate national or regional standards with best practices and felt there was a need for their county to adopt such standards (e.g. stream setbacks). Many also noted the difficulty in applying some of those standards in some counties with each county being unique in population and geography. The question of whether planning professionals felt pressure to conform to national or regional standards generated the following responses:
[Feel pressure to conform] to best practices; however each area is unique. The framework of “Dylan’s rule” leaves counties disadvantaged for not being able to charter. (Flathead Planning Professional)

We try, as professionals, to follow best practices. The more progressive elected officials are also versed in those; and attend conferences. We look to ULI (Urban Land Institute) and conservation practices. The challenge is in translating what works well in other areas to the local level. (Missoula Planning Professional)

The basic concepts could be useful, but a lot of areas are unique and need flexibility, particularly with the differences between the east and west. (Lewis & Clark County Planning Professional)

Adoption

Planning professionals are the initial drafters of new policies and as such those interviewed readily reviewed planning policies from other counties for ideas, but like the commissioners, were wary of looking to other states because of the differences between states’ laws.

It would be wise to follow land use regulations that work and have been successful. Fortunately, we are one of the few remaining states that aren’t bursting at the seams with population. We can save ourselves if we look to other states and see what benefits are to be had; to incorporate land use planning tools. (Gallatin Planning Professional)

We do not want to re-invent the wheel. We look at concepts in other states, but not necessarily how they were accomplished. We have different enabling legislation in Montana. (Ravalli County Planning Professional)

I have looked at what other counties have done and tailored to specific policies, but it is very much a local/community issue. Other states have different enabling legislation. It’s not relevant to Sanders County. (Sanders County Planning Professional)

Personally, yes and to areas that seem to do a good job with development (Ft. Collins, Eugene, Albuquerque). The governing bodies caution ‘we’re not Bozeman’ – more elitist, more roadblocks in terms of development – more regulations. (Yellowstone Planning Professional)
I've been to the Sonoran Institute programs and picked up some good ideas with regard to similar areas experiencing similar pressures. What gets adopted depends on legislature though. (Lewis & Clark Planning Professional)

Like several of the commissioners, some planning professionals perceived more costs to be associated with the manner in which they were planning for land use currently than there would be if they adopted countywide zoning.

Some, though there are more costs with the way we are doing it now. (Gallatin County Planning Professional)

Countywide zoning would make life easier. (Gallatin County Planning Professional)

Somewhat surprisingly, many representatives seemed very skeptical about promoting countywide zoning fearing a less-than-likely chance that their commissioners would adopt it. The following statements are responses to the questions about supporting countywide zoning:

There would be less support if the county as opposed to the citizens adopted it. (Jefferson County Planning Professional)

Countywide zoning is currently being pursued. The commissioners are trying to determine which uses to regulate first and where in order to pass the required protest period. (Ravalli County Planning Professional)

No. The administrative aspects are overwhelming; how do you administer it fairly? It is not appropriate for a lot of the county, and would not accomplish the desired results. It could protect evolving neighborhoods where there is a feel for what people want. Perhaps density requirements would be appropriate. Right now all people must comply with is the Subdivision and Platting Act because they can't sell without a septic permit. (Sanders Planning Professional)

Yes, but I was told, 'don't waste your breath – we have no interest in doing it' (Yellowstone Planning Professional)
We are marching down the path now towards pushing for countywide zoning. We are in a testing period; building trust with the public. They are fearful of the heavy hand of government. (Gallatin County Planning Professional)

It would never happen (Big Horn County Planning Professional)

I would promote adopting the density map, but not use-based zoning. (Lake County Planning Professional)

With respect to implementation obstacles, responses were very similar to those of the commissioners: staff time, litigation, education and enforcement. Again, as Smith (1993) and Gupta (2001) noted, the effectiveness of a regulation depends on the extent of public support. The following statements express some of these concerns:

The risk of failure is a limiting factor to adoption. It rests on public education. If we’re talking land use, the barrier is in the protest if the public doesn’t see the need. (Missoula Planning Professional)

The bureaucracy – simply having a code doesn’t mean it is enforced. The planning office is the first place people call for problems. (Ravalli Planning Professional)

Summary

Responses from the interviewees did not reveal discerning differences between the two sets of actors. Perceptions differed only in degree, whereby the planning professionals, more versed in the language of their profession, appear to have a better understanding of what types of planning policies would be effective. Conversely, the commissioners, as elected officials, appear to be acutely aware of the active constituents’ perspectives, and are more hesitant to
adopt new land use policies, even if they would be effective in addressing patterns of population growth and land development in their counties.

Based on the analysis of planning in the ten subject counties and the interviews conducted, the primary factors that appear to be affecting the adoption of countywide zoning are: 1) the lack of planning; and 2) political will; and 3) perceived inadequacies of state law. The lack of planning leads to a reactive approach to new development at the time that it is presented to the county. Such an approach serves neither the landowner, developer nor county. Deficiencies in planning generate a two-fold problem. Many counties do not appear to have satisfactory growth policies that address a community vision or plan for its implementation. However, even if they did possess such a plan, growth policies alone are non-regulatory, leaving the counties with few options to adequately provide themselves with the relative predictability and stability that countywide zoning offers.

The second factor – political will – is gleaned from commentary that directly acknowledged the very diverse participants in the process. With differing perceptions and values, the stakeholders and constituents that let their opinions be heard affect the policy makers’ (i.e. commissioners’) decisions, as is the nature of virtually all policy making. The challenges that the counties are facing with respect to rapid growth, which brings new perceptions and values to the table, manifest themselves at the ballot box. Ten of the commissioners interviewed were still in their first term, and three were newly elected. How these commissioners handle the issues of growth their counties are facing may be one
of the most important topics their constituents consider the next time they are up for re-election.

The third factor that appears to be affecting county’s adoption of countywide zoning is the insufficiencies in state laws. A number of stakeholders, both commissioners and planners, expressed disappointment in the laws that enable counties to govern land use. This is rather unexpected given the culture of less government is better government, particularly if it is top down, such as from the state. There were few suggestions for improvements to state law so it is unclear as to what the stakeholders perceive is missing, particularly when the statutes are in fact fairly flexible, and are not dissimilar from statutes in other states that do not have state-mandated planning programs. Perhaps if counties were directed by the state to zone it would be a way for policy makers to adopt regulations without taking the brunt of the controversy. Regardless, there appears to be an opening for a return of state involvement in land use.
CHAPTER VII
CONCLUSION

This study has sought to identify and analyze some of the key factors that affect the adoption of countywide zoning in ten of the fastest growing counties of Montana: Big Horn, Flathead, Gallatin, Jefferson, Lake, Lewis & Clark, Missoula, Ravalli, Sanders and Yellowstone. Those factors have emerged to be understood as general inadequacies in planning policy both at the county and state level, and a high regard on the part of the commissioners for not proposing policies (particularly land use regulations) that are not a direct result of citizen initiation. This research captures temporal perceptions and illustrates how these factors influence the context of planning at the county level in several ways.

First, it suggests that the effects of development rather than anticipation and promotion of development in a planned manner largely characterize land use planning in Montana. Second, it demonstrates that decision-makers possess a modest degree of knowledge about the land use planning decisions they make. While many commissioners have sought to educate themselves on how other jurisdictions are operating in an effort to improve upon their own system, many others lack an understanding of what tools are available to them and how they can apply those tools. Third, this study shows that the idea of adopting countywide zoning, while potentially controversial, holds the interest of many commissioners. The existence of Montana’s Part 1 zoning, in addition to being a means to limit the powers of the county, also seems to recognize the difficulty
that counties might face, particularly those with large rural populations, in the adoption and enforcement of zoning regulations. This enabling legislation further reinforces a fundamental philosophy of private control of land use. If counties adopted Part 2 zoning on a countywide basis, there would clearly be an opportunity for a more streamlined review of proposed development. However, adoption of countywide zoning means that citizens would have to relinquish some of their control in exchange for the predictability and preservation that zoning rights offer.

One of the major findings of this research pertains to the state's role in land use planning. The state has very extensive legislation governing the regulation of land subdivision. In fact, a portion of the statutes governing subdivision incorporates elements normally handled in zoning regulations, because counties have been so reluctant to zone. The enabling legislation that authorizes counties to zone (Part 2 Zoning) is somewhat narrow, specifying that should counties adopt zoning regulations those regulations must include provisions addressing bulk, height, setbacks and other traditional zoning elements. It is reasonable to conclude that these requirements may be viewed as onerous by the counties who might just want to adopt regulations governing use or density. Given the number of comments on how the state laws are inadequate and hindering to local planning efforts, there seems to be a clear need for planning-related training and education for commissioners by the state and perhaps modification of the law to allow more flexibility in the adoption of zoning by counties.
The primary themes of the responses – an acknowledgement of inadequate planning; the perceived limitations of state law; and a citizen-driven process – are of the nature that defines the saliency of the issue, and accentuate the complexity of the problem. However, neither the regional diffusion model nor the internal determinants model as described by Berry and Berry (1999) is wholly applicable on its own, but taken together the models have provided an appropriate framework to analyze the policy-making process in counties included in this thesis. Borrowing policy as a decision-making shortcut corresponds to one of the three basic reasons that governments emulate each other in the diffusion model of policy adoption as posited by Berry and Berry (1999).

However, the behavior of the counties in the study area does not yet support these authors’ (ibid) hypothesis which states that the relationship between the probability of a government adopting a policy is directly related to the percentage of governments which share a border that have already adopted such a policy. Now that Lake County has adopted countywide zoning in the form of residential density subsequent research would reveal whether counties in a particular region influence each other in this way, such as Ravalli, Lake, Missoula and Flathead.

Recalling the variables that Sabatier and Mazmanian (1995) propose should be used to measure how significantly a policy is able to address a particular problem (as identified in Chapter IV), their model is applicable in three of the four variables: 1) valid technical theories relating to land use planning, specifically, countywide zoning, are readily available, and countywide zoning has been available to the counties as a planning tool for forty years; 2) there is a
diversity of behavior in terms of adopting land use controls across the target group – the ten counties – whereby some counties have been more willing to try different policies than others; and 3) counties of the study area, or target group, are eligible to adopt countywide zoning and constitute approximately 30% of the counties in Montana. The fourth variable, which would measure the extent of behavioral change necessary for adoption and implementation of countywide zoning, is fairly significant. With a significant degree of behavior change required, the manageability of the problem is lowered (Sabatier and Mazmanian, 1995). For counties to adopt countywide zoning requires an increase in regulation and oversight and a shift in philosophy and operations in the subject counties. Respondents indicated that there was pressure from all kinds of citizen groups to both adopt new regulations, and not adopt new regulations. This supports the idea that the more diverse the behavior of the group that is impacted, the more difficult it becomes to frame clear regulations as proposed by Sabatier and Mazmanian (1995).

Of the three reasons that governments emulate each other, according to Berry and Berry (1999), the one most applicable to the study area is that of borrowing as a decision-making shortcut. None of the respondents were interested in “re-inventing the wheel,” but rather identifying policies that worked in other counties or states and creating their own in accordance with state laws and local context. With the exception of Gallatin County commissioners, commissioners from the remaining nine counties generally looked to other counties for land-use related policies.
Several broad implications might be ascertained from this study. First, since the issue of countywide zoning does not appear to have popular support, if we apply the factors that the policy literature purports motivates decision makers to innovate (Berry and Berry, 1999), then most of the commissioners would not feel secure enough in their re-election to support an unpopular issue such as countywide zoning. This indicates that county commissioners are not necessarily leaders of their counties, but in fact followers of constituent recommendations and advice. Second, from the responses in the preceding chapter, we can conclude that adoption of countywide zoning might occur in some counties if there is an intensive public education campaign and legitimate public involvement. Other counties, however, appear to be nowhere near being able to have a public discussion about countywide zoning. Third, the research implies that the reluctance of counties to adopt countywide zoning in the face of increasing development pressures is directly related to the fact that these counties have not yet reached a "critical mass" to warrant adoption of countywide zoning. What some characterize as political will is simply a game of numbers – the stakeholders that stay involved in the process will be heard the most. Those citizens who are active in the debate currently are interested in preserving their options and resent government intervention. As new residents move into these counties they bring with them different perspectives on the government’s role in land-use planning and will participate in the debate according to how they perceive the outcome will serve them.
The initial thrust for this research stemmed from a traditional planning perspective that more regulation was the key to better land use planning — that there exists a host of problems "out there — on the ground" to which sound land use planning could help remedy. There is, however, a vast body of literature that suggests that may not necessarily be true; that patterns of development should emerge gradually and organically (Alexander, 1977). In fact, what has been revealed through the course of this research is that there is no one path, no silver bullet that will fix the perceived problems. A solution for one perceived problem invariably creates other problems. For example, creating an urban growth boundary only within which all new housing can be built creates a fixed supply of land, which increases costs and therefore decreases affordability. Granted, one might counter that there are other tools such as inclusionary zoning to offset the imbalance. This approach, however, reduces a developer’s potential, while forcing a particular housing type onto a potential homebuyer, and essentially redistributing the ability to own a home to the upper and lower class, leaving middle income purchasers with nothing to buy.

While this research did not attempt to distill "best zoning practices" several of those interviewed appeared to have some ideas that a complete Euclidean/traditional zoning package for land use control was not necessarily the desired result. Most of suburban development has been a direct consequence of zoning principles and practices, operating at the local level, where the intent was to achieve low-density development. There appears to remain a sense among many commissioners, that zoning is only about minimum lot size, height, bulk
and setbacks, though there were several who saw an opportunity for expanding the role of zoning from such a traditional focus of external effects to a more intrinsic value-oriented focus to preserve farmland, open space, river corridors, and other resources. Indeed, two counties not in the study area, Powell and Cascade have agricultural zoning districts. Flathead County also contains some agricultural districts. However, they receive many requests from property owners who want the opportunity to develop their land, to change those zoning districts to residential zoning.

Planners and policy makers are faced with the arduous task of needing to balance different and sometimes competing, human needs and values. The population growth that some Montana counties are experiencing has a far-reaching effect on all aspects of community life. Economically, the number of jobs that are stimulated by community expansion are too numerous to count, but a few examples are: builders, electricians, plumbers, concrete layers, roofers, landscapers, horticulturalists, lighting specialists, furniture sellers, land use planners, realtors, bankers, painters, architects, engineers, surveyors; along with any administrative and manual staff to support all of the above. And those are just the first tier of jobs that are touched by community expansion. Increased population means increased demand for a host of commercial services such as coffee shops, laundromats, bookstores, grocery stores, pet suppliers and delis; in addition to the services provided by the professionals listed above. All of this economic activity has contributed to Montana’s 6.3 percent growth in personal

Historically, there has been a strong anti-urban tradition in the U.S., both in thought and public action. The culture that embodies city life or the advanced technologies it can produce have not been highly valued in American thought or policy. The cities of the West and Midwest were built not with government planning, but wherever the railroad builders sited them. The prevailing image of urban life was found to be alienating without social controls on behavior, or community structure. The nineteenth century city was viewed as evil and ugly, “harboring discontented revolutionary urban masses” (Jackson, 1985:69). This view has never been fully replaced with an attractive twentieth-century substitute, though the trend of New Urbanist developments is being successfully marketed in some areas of the country. Furthermore, the life that seemed possible to pursue in the city was not one that the nation sought for its citizen (Dowall, 1981). Instead, the Jeffersonian notion of a nation of yeoman farmers remained dominant. The philosophy was this: where an individual owned his own home and land – enough to be self-sufficient – she/he would have a stake in the country thereby creating a nation of responsible politically independent citizens. A nation made of such people could not be taken over by arrogant governments or large-scale landowners. Regrettably, for many, events haven’t quite worked out that way – the yeoman farmer either went into land speculation or could not pay her/his debts and became a tenant (Dowal, 1981). But the myth remained,
and translated into modern terms, the yeoman farmer became the suburban homeowner on her/his quarter-acre.

Because of the ingenuity of the citizens of this country, the United States has increasingly improved the quality of life for its citizens, for whom the freedom to make choices is a self-actuating principle. The rapidly growing counties of Montana are at a pivotal moment in the history of planning in the state with many opportunities for innovation as they move steadily into the arena of land use controls.
Appendix A

Montana Counties - Population Change
1990 to 2000

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<th>County</th>
<th>% Change from 1990 to 2000*</th>
<th>2000 Population**</th>
<th>County</th>
<th>% Change from 1990 to 2000*</th>
<th>2000 Population**</th>
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* rounded to nearest .5
** rounded to nearest 100

Source Data: U.S. Census Bureau
Appendix B
Interview Questions

EXPLANATION OF RESEARCH / VERBAL CONSENT / INTERVIEW QUESTIONS
(Part A)

Commissioner: ________________________________

County: ______________________________________

Greetings, my name is Kristin Smith. I am a graduate student at the University of Montana majoring in Geography with an emphasis on Community Planning and would like to interview you for my graduate thesis project. I am trying to learn more about the regulatory process of land use planning in Montana.

As a decision maker for the county you are being asked to take part in this research study to assess the factors related to adopting countywide zoning in growing Montana counties. __________ county meets the criteria of a growth rate greater than 10% during the last decade and a current population greater than 10,000.

May I continue?

I am solely responsible for this project and will answer any questions you have about it. The study will take place over the telephone and last approximately 20 minutes.

You will not receive any benefits from participating. Your decision to take part in this research study is entirely voluntary and you have the option of not answering any question. However, your participation will add to the knowledge about planning practices in the growing counties of Montana.

I will be taking notes during the interview. Do I have your permission to quote you in my research? ______

Would you like to be contacted if I am going to quote you? ________

Would you like to see the final draft before it is presented? _________

Do I have your verbal consent to continue with the telephone interview? ______

***

Thank you for participating in this study. I hope the results of this survey will be useful to future planners in the state as a resource in their long-range planning and regulatory toolbox of land use controls.

Section 1: Background
1. How long have you lived in your county?
2. How long have you been in your current position of ________________________?

Section 2: General Land Use Planning
3. Are there benefits to land use planning and regulations?
   a. If yes, what might those be?
   b. Do all members of the community benefit equally?
4. Do you perceive any inadequacies in the current planning policies in your county?  
   a. If yes, what might those be?  
5. Do you look to other counties within Montana with respect to emulating land use regulations? Counties within other states?  
6. Do you feel any pressure to conform to national or regional standards of land use regulation?  
   a. If yes, in what ways?  
7. Do you feel any pressure from the citizenry to adopt land use regulations?  
8. Do you feel any pressure from the citizenry not to adopt land use regulations?  
9. Does ____________ county have a planning board?  
10. Do you feel their decisions effectively represent the community?  
11. How often do the commissioners disagree with the planning board recommendations?  

Section 3: Countywide Zoning  
12. Does your county currently have any county-initiated zoning ordinances?  
   a. If yes, what is the nature of the ordinance and how much of the county does it affect?  
   b. Were there obstacles to adopting it? And can you explain what those were?  
   c. Is your county considering other ordinances that would affect the whole or part of the county?  
13. Are you aware of the enabling legislation that authorizes the county to adopt countywide zoning?  
14. Have you considered adopting countywide zoning as a planning and growth management tool?  
   a. If yes, was a process initiated to pursue it?  
   b. To what point did the process progress?  
   c. If no, what are the reasons?  
15. Do you perceive there to be costs associated with adopting a countywide zoning ordinance?  
   a. If yes, what might those be?  
16. Are there other potential limiting factors to adopting a countywide zoning ordinance?  
   a. If yes, what might those be?  
17. If sufficient resources were at your disposal would you adopt a countywide zoning ordinance?  
18. Do you foresee any problems with implementing countywide zoning if it were adopted?  
   a. If yes, what might those be?  

That concludes the interview. I want to thank you again for participating in this study. The information you provided is very important and I appreciate your time. Should you have any questions please feel free to call me at: 406.240.1494
Greetings, my name is Kristin Smith. I am a graduate student at the University of Montana majoring in Geography with an emphasis on Community Planning and would like to interview you for my graduate thesis project. I am trying to learn more about the regulatory process of land use planning in Montana.

As a planner or representative of planning related interests you are being asked to take part in this research study to assess the factors related to adopting countywide zoning in growing Montana counties. ___________ county meets the criteria of a growth rate greater than 10% during the last decade and a current population greater than 10,000.

May I continue?

I am solely responsible for this project and will answer any questions you have about it. The study will take place over the telephone and last approximately 20 minutes.

You will not receive any benefits from participating. Your decision to take part in this research study is entirely voluntary and you have the option of not answering any question. However, your participation will add to the knowledge about planning practices in the growing counties of Montana.

I will be taking notes during the interview. Any information you provide me will be strictly confidential and you will not be identified in the research by name. The information you provide will remain in a locked file cabinet in the Department of Geography at The University of Montana and only myself and my advisor will have access to material from this interview.

Do I have your verbal consent to continue with the telephone interview? _______

***

Thank you for participating in this study. I hope the results of this survey will be useful to future planners in the state as a resource in their long-range planning and regulatory toolbox of land use controls.

Section 1: Background
1. How long have you lived in your county?
2. How long have you been in your current position of _________________?

Section 2: General Land Use Planning
3. Are there benefits to land use planning and regulations?
   a. If yes, what might those be?
   b. Do all members of the community benefit equally?
4. Do you perceive any inadequacies in the current planning policies in your county?
   a. If yes, what might those be?
5. Do you look to other counties within Montana with respect to emulating land use regulations? Counties within other states?
6. Do you feel your county should conform to national or regional standards of land use regulation?
   a. If yes, in what ways?
7. Would you like to see your county adopt new land use regulations?
8. Does ____________ county have a planning board?
9. Do you feel their decisions effectively represent the community?

Section 3: Countywide Zoning
10. Does your county currently have any county-initiated zoning ordinances?
    a. If yes, what is the nature of the ordinance and how much of the county does it affect?
    b. Were there obstacles to adopting it? And can you explain what those were?
    c. Is your county considering other ordinances that would affect the whole or part of the county?
11. Are you aware of the enabling legislation that authorizes the county to adopt countywide zoning?
12. Have you considered advocating for the adoption of countywide zoning as a planning and growth management tool?
    a. If yes, was a process initiated to pursue it?
    b. To what point did the process progress?
    c. If no, what are the reasons?
13. Do you perceive there to be costs associated with adopting a countywide zoning ordinance?
    a. If yes, what might those be?
14. Are there other potential limiting factors to adopting a countywide zoning ordinance?
    a. If yes, what might those be?
15. If sufficient resources were at your disposal would you adopt a countywide zoning ordinance?
16. Do you foresee any problems with implementing countywide zoning if it were adopted?
    a. If yes, what might those be?

That concludes the interview. I want to thank you again for participating in this study. The information you provided is very important and I appreciate your time. Should you have any questions please feel free to call me at: 406.240.1494.
REFERENCES


Codes of the State of Montana (1895) Part IV, Title III, Chapter VIII, Article II.


Revised Codes of Montana 1947, Volume 1, Part 4, Title 3, Chapter 3, Article 11, Section 3213.

Revised Codes of Montana 1947, Volume 1, Chapter 37.

Revised Codes of Montana 1947, Volume 2, Part 1, Title 16, Chapter 41 & 47.

Revised Codes of Montana 1947, 1977 Cumulative Supplement, Volume 5, Part 1, Title 82, Chapter 37.


Revised Codes of Montana 1947, 1977 Cumulative Supplement, Volume 1, Part 2, Title 11, Chapter 38.


Additional Resources:

American Planning Association – http://www.planning.org/growingsmart/States/

California Environmental Resources –
http://www.ceres.ca.gov/planning/zoning/county.html

Center for the Rocky Mountain West. Regional Economics Assessment Database System. Available at: http://crmw.org/read/

Headwaters News – http://www.headwatersnews.org/

Land Trust Alliance – http://www.lta.org/

Missoulian – http://www.missoulian.com/

Montana Department of Environmental Quality –

Montana Smart Growth Coalition – www.mtsmartgrowth.org


PlannersWeb – http://www.plannersweb.com/

Sonoran Institute – http://www.sonoran.org/

U.S. Census Bureau – http://quickfacts.census.gov/qfd/