APPENDIX IV – LAND USE PLANNING TOOLS AND TECHNIQUES

The following authorities have been granted by the Nevada State Legislature to govern the use of land. The Legislature has made it very clear that planning is a local issue and has granted substantial flexibility and discretion to local entities.

Legislative findings and declaration (NRS 321.640):

- It is in the public interest to place the primary authority for the planning process with the local governments, which are closest to the people;
- Unregulated growth and development of the state will result in harm to the public safety, health, comfort, convenience, resources and general welfare;
- The cities of the state have a responsibility for guiding the development of areas within their respective boundaries for the common good, and the counties have similar responsibilities with respect to their unincorporated areas;
- City, county, regional and other planning must be done in harmony to ensure the orderly growth and preservation of the state.

Community Planning

For the purpose of promoting health, safety, morals or the general welfare of the community, the *governing bodies* of cities and counties are authorized and empowered to regulate and restrict the improvement of land (NRS 278.020).

Authority for Zoning

The *governing body* may divide the city, county or region into zoning districts (NRS 278.250). The zoning regulations must be adopted in accordance with the master plan and should be designed to meet the following objectives, among others:

- To Preserve Air And Water Resources,
- Promote The Conservation Of Open Space,
- Provide For Recreational Needs,
- Protect Life And Property From Natural Hazards,

- Provide For Transportation, Public Facilities And Services,
- Promote Health And The General Welfare, And
- Encourage the Most Appropriate Use of Land.

In exercising the powers granted in this section, the *governing body* may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning.

All cities with a population of 25,000 or more and all counties with a population of 40,000 or more are required to create a *planning commission*. In cities and counties below the population threshold, the governing body may either create a planning commission or perform all the functions and have all of the powers which would otherwise be granted to and be performed by the planning commission (NRS 278.030).

The Planning Commission

- Shall prepare and adopt a comprehensive, long-term general plan for the physical development of the city, county or region. The "master plan" must be prepared so that all or portions of it may be adopted by the governing body (NRS 278.150).

- Shall promote public interest in and understanding of the plan, and consult and advise public officials and agencies, public utility companies, civic, educational, professional and other organizations, and with citizens generally in relation to carrying out the plan (NRS 278.185).

- Shall annually make recommendations to the governing body for implementation of the plan (NRS 278.185).

Controls Relating To Land Use Or Principles Of Zoning

A very strong property rights ethic exists in Nevada due, in part, to the fact that approximately 86 percent of all lands in the state are managed by federal agencies. Private property is relatively scarce and is, therefore, jealously guarded from what is perceived to be excessive regulation by local, state and federal agencies. In

order to meet statutory requirements while preserving property rights, local governments should take advantage of creative techniques and incentives for managing land use within their jurisdictions. Building flexibility into the zoning ordinance not only makes it less contentious, but also is also more likely to produce "the most appropriate use of land."

Density Bonus

A density bonus is an incentive granted to a developer in exchange for performance of certain functions considered desirable by the governing body. It is most commonly used to promote the development of affordable housing or senior housing in single-family or multi-family residential areas.

In a single-family residential zone with a minimum lot size of 10,000 square feet, maximum density would be equal to approximately 4 units per acre. A 10-acre development would normally contain 40 dwelling units. A density bonus could allow a 30% increase in the number of dwelling units if 20% of the total number of units were reserved for affordable housing:

40 dwelling units + 30% = 52 dwelling units
52 dwelling units x 20% = 10 "affordable" dwelling units
42 "market rate" dwelling units

In a multi-family residential zone with a maximum density of 15 units per acre, a 7-acre development would have 105 dwelling units. With the same 30% density bonus, there could be 136 dwelling units with 27 units (20%) reserved for affordable housing.

Senior housing has special requirements that might not be met without the incentive of a density bonus. Adjacent land uses should be free of health, safety or noise problems. The site needs to be fairly level to accommodate persons with limited mobility. It should also be in proximity to commercial development that provides for food shopping, drugstores, banks, medical and dental facilities, public transit and appropriate recreation facilities.

A density bonus might also be used in commercial areas to encourage the development of child care, amenities for seniors or recreational facilities.

Infill Development

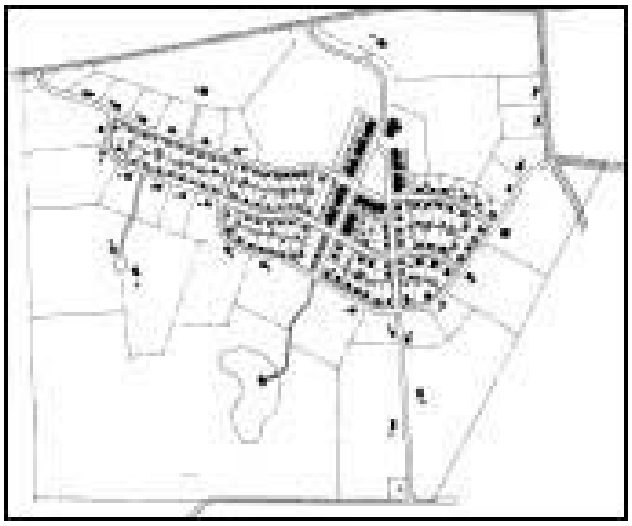
Infill development is the development of homes and businesses on vacant, underutilized or redeveloped land within the urbanized area. It reduces the need to convert agricultural or open space lands to residential or commercial uses, minimizes municipal expenditures for infrastructure, promotes restoration of historic properties, revitalizes neighborhoods and encourages people to move back into the "downtown." Demographic changes, including an aging population, smaller household size and an increasing number of single person households, create a potential market for infill development. The diversity of needs created by these demographics cannot be met by the traditional single-family home. Infill development encourages a variety of housing options, i.e., granny cottages, townhouses and studios as well as business opportunities. Incentives to encourage infill development include mixed-use zoning (residential and commercial uses within a district or on the same site), proximity to public amenities (parks, library, schools, senior center), density bonuses, flexibility in performance standards, reduction in fees and expedited permit processing.

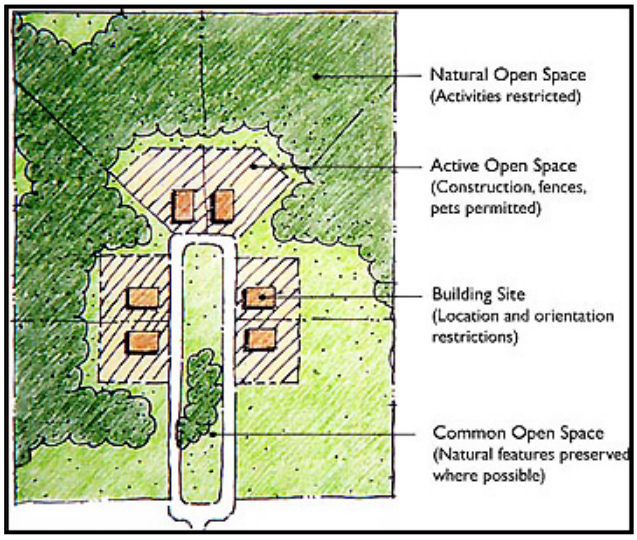
Cluster Development

Cluster development can be used to preserve the rural landscape, protect valuable agricultural land, minimize infrastructure costs and maintain density when confronted with development challenges such as steep slopes, flood plains, wetlands or other natural features which shouldn't be disturbed.

Traditional zoning specifies minimum lot size, maximum lot coverage, identical setbacks and uniform street rights-of way. The result is homes that are placed in the same location, on lots of the same size, regardless of the unique characteristics of the land. No remnant of the open space or natural features from which the subdivision was carved remains. Each of the lots in the subdivision is privately owned.

In contrast, given the same parcel of land, a cluster subdivision groups homes together on smaller individual lots. Each of these lots is individually owned, but each property owner also holds an undivided interest in the open space. Cluster development maintains density while it preserves natural features such as woodland areas, meadows, streams or wetlands. All property owners have access and enjoy the natural attributes of the land.





The closer proximity of homes in a cluster subdivision minimize infrastructure costs by reducing the length and, therefore, the costs of pipe and pavement—connection to public water and waste water systems and construction of roads. In an environment not served by public sewer and water, clustering homes together allows for community water and waste water treatment facilities rather than individual wells and septic tanks. Street maintenance costs are also lower for the local government.

As a practical matter, there are few, if any, subdivisions of this size in rural Nevada. Cluster development is, nevertheless, a valuable land use management tool. The following situation occurred in a rural Nevada community, and cluster development provided one possible solution.

> A property owner had a 40-acre parcel zoned for one dwelling unit per each five acres. Under that zoning designation, he would be entitled to create eight five-acre parcels, each supporting one dwelling unit. However, a substantial portion of the property was located in the flood plain. There were numerous springs, and the property was continuously wet. Approximately 75 percent, or 30 acres, was not developable. Using principles of cluster development, the property owner could construct eight

dwelling units on the ten dry acres with the remaining property held in common ownership by the eight subsequent property owners, usually in the form of a homeowners' association.

In this case, the property owner wished to construct eight dwellings, one of which he would own, and retain ownership of the 30 acres. To ensure that no additional future development would occur on the property, a conservation easement would be required (see discussion below). The conservation easement could be donated to a land trust or to a government entity. The property owner retained ownership of the land and the right to use it. It could not, however, be further developed. It must remain in its natural state.

Conservation Easements

The fundamental rights of property ownership—frequently referred to as a "bundle of rights"—include the right to possess, the right to exclude others, the right to dispose of and the right to make economically viable use of the property. An easement grants one or more of these rights to someone who does not own the land. Easements are commonly granted to provide certain rights to governments and utilities, or to provide access to adjoining property.

Conservation easements are intended to preserve natural or man-made features of the land and prevent residential or commercial development. The objects of such preservation include natural, scenic or open space land; agricultural and ranch land; forest; recreational land; and historic properties. Conservation easements may be donated or purchased and constitute legally binding covenants. The easement is publicly recorded and runs with the deed to the property. A conservation easement is usually granted in perpetuity unless the instrument creating it specifies otherwise or a court orders that the easement be terminated or modified. Under Nevada law, conservation easements may be held by a governmental body or a charitable corporation, association or trust (NRS 111.390—111.440).

The value of a conservation easement is dependent on which of the property rights are granted, which are retained and whether the easement covers a portion or the whole of a property. Each conservation easement is negotiated, and each is unique.

While the land trust or government entity has as its primary interest the preservation of natural values of the land, the property owner benefits from the easement as well. The easement can be written to meet the needs of the property owner while protecting the natural values.

The property owner may agree to prohibit the construction of any structures or roads, prohibit any subdivision of the land, restrict land disturbance and chemical application in a flood plain or prohibit fill or dredging in a wetland. He may grant or restrict public access. The property owner may retain the right to live on the property, use it, lease or sell it. He may agree to a specified use of the property, for example, agriculture or ranching. Donation of a conservation easement may qualify as a tax-deductible gift for purposes of federal income tax. A conservation easement is likely to reduce the market value of the property and result in lower estate and property taxes.

Purchase of Development Rights

The purchase of development rights can be used by a local jurisdiction or land trust to preserve agricultural or open space land or other natural resource values such as riparian areas. This is a purchase of one of the "bundle of rights," leaving all the remaining rights, in order to promote a public good. Local governments pay for these purchases through some sort of taxation which usually requires approval of the local electorate.

This is an option which can greatly benefit farmers and ranchers who are cash poor and land rich. Rather than selling land for development, property owners can sell their development rights and retain the right to use the land for agricultural production.

> Assume that a piece of land has an agricultural value of $2,000 per acre. On the other hand, a developer is willing to pay $5,000 an acre for the land. The development value is determined by subtracting the agricultural value from the fair market value. In this case, the development value would be $3,000 per acre.

Purchase of development rights is a voluntary program. If a land trust or government agency makes an offer to purchase land, the property owner always has the option of refusing or trying to negotiate a higher price. When and if an

agreement is reached, a permanent deed restriction is placed on the property often in the form of a conservation easement (see discussion above). No development may occur on the restricted land, however, the property owner retains all other rights to use the land, sell the land or exclude others from the land.

Impact Fees

An impact fee is a charge imposed by a local government on ***new development*** to finance the costs of a capital improvement or facility expansion ***necessitated by and attributable to the new development***. Capital improvements for which an impact fee may be charged are defined in NRS 278B.020 and include: drainage project, fire station project, park project, police station project, sanitary sewer project, storm sewer project, street project or water project. The costs which may be collected through the use of an impact fee are limited to: the estimated cost of actual construction, estimated fees for professional services, estimated cost to acquire the land, and fees paid for professional services for preparation or revision of a capital improvements plan.

Prior to imposing an impact fee, the local government must do the following:

- Establish by resolution a capital improvements advisory committee.
- Hold a public hearing to consider land use assumptions that will be used to develop the capital improvements plan.
- Approve or disapprove the land use assumptions within 30 days after the public hearing.
- Develop a capital improvements plan.
- Hold a public hearing to consider the adoption of the plan and the imposition of an impact fee.
- Consider the arguments and, by resolution or ordinance, pass upon the merits of each complaint, protest or objection.
- Approve or disapprove the adoption of the capital improvements plan and the imposition of an impact fee within 30 days after the public hearing.
- For additional requirements, see NRS Chapter 278B.

The impact fee per service unit must not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units.

Example: If, in order to provide water and sewer service to new development, the water and sewer mains must be extended, then an impact fee for the extension may be charged to the developer. Suppose the new development consists of 100 units, but the facility extension enables the local government to provide services in the future to a total of 500 units. The developer of the 100 units would be charged a proportional amount, in this case 20%, for extension of services to his development.

Alternatively, the developer may enter into an agreement with the local government to construct or finance the capital improvement or facility expansion. In that case, the costs incurred would be credited against the impact fee for the development, or the local government would reimburse the developer from impact fees paid from other developments using the capital improvement or facility expansion.

Residential Construction Tax

The purpose of the residential construction tax is to raise revenue to enable cities and counties to provide neighborhood parks and facilities for parks which are required by the residents of new apartment houses, mobile homes and residences. In order to impose a residential construction tax, the city council or board of county commissioners must have an adopted master plan and recreation plan which includes future or present sites for neighborhood parks. It may then, by ordinance, impose a residential construction tax. The tax is imposed on the privilege of constructing apartment houses, residential dwelling units and developing mobile home lots. The tax may not exceed one percent of the valuation of each building permit issued or $1,000 per residential dwelling unit. For additional requirements, see NRS 278.4983.

Tax for Improvement of Transportation

A board of county commissioners may by ordinance impose a tax for the improvement of transportation on the privilege of new residential, commercial, industrial and other development after having received the approval of a majority of the registered voters of the county or within the boundaries of a transportation district. Revenues from the tax must be used exclusively to pay the cost of projects related to the construction and maintenance of sidewalks, streets,

avenues, boulevards, highways and other public rights of way used primarily for vehicular traffic. The tax must not exceed $500 per single-family dwelling unit of new residential development or 50 cents per square foot on other new development. For further details, see NRS 278.710.