THE IMPACT ON COMMUNITIES AND LEGAL PROBLEMS OF MAJOR ENERGY DEVELOPMENTS IN THE UNITED STATES

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Much of the world's industrial development during the last two decades has taken place in sparsely populated areas. Natural resource projects, in particular, have sprung up in locales little touched by previous development. These developments have provided wealth and diversity of employment opportunity and encouraged the building of modern communities. Unfortunately, the rapidity of development has caused some less attractive aspects of boom-town development — environmental pollution, community disruption, and social instability.

This paper examines the boom-town phenomenon in a portion of the western United States. Our focus will be on the mountain, high plains, and desert areas east of the Pacific coast states and west of the rich agricultural great plains area. We first examine the adverse consequences of boom-town developments in these states. We then examine the existing legal structure in which attempts to mitigate the adverse consequences of too rapid development take place. We conclude that some aspects of the American legal structure are poorly suited to controlling boom-towns. The third section examines recent innovative legal approaches that have been used to control adverse boom-town impacts. We conclude that governments have considerable ability to control boom-town impacts within existing law and through modifications of existing law. The brief concluding section of the paper suggests lessons from the western American boom-town experience that may apply to other parts of the world.

The Western American Boom-Town

The area of our study covers the states of Montana, Idaho, Utah, Colorado, Arizona, New Mexico, Nevada and Wyoming. For convenience we will refer to it collectively as the Inland West. In popular view this

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is the land of desert and mountain and vast open spaces. It contains some of the most spectacular natural wonders of the world, including the Grand Canyon, Yellowstone National Park, Zion National Park and Glacier National Park. The region is also rich in mineral resources. Coal, oil, natural gas, uranium and non-fuel minerals are present in some of the largest deposits in the United States. Most of the states in the region are among the least populated of the United States. Several have less than one million citizens. Despite the small overall populations of the states, they are among the most urbanized in the country when the population of the urban areas is compared to the total state population. Cities like Denver, Phoenix, Albuquerque and Salt Lake City contain much of the population of their states. A few other communities exist, as do rural ranches and some farms, but the pattern is unlike the eastern and midwestern United States and Western Europe, where counties may have dozens of discrete villages and towns and one is never far from a populated area.

The region is also marked by the significant presence of the national government. The land within the Inland West was acquired by the national government through conquest in the 1848 war with Mexico or through the purchase of the Louisiana Territory from France in 1803. As these federal territories advanced toward statehood in the late 19th and early 20th century, federal ownership in areas gave way to private ownership and to ownership by the states and Indian tribes. Nonetheless, today over 80% of the land in Nevada and over 65% of the land in Utah remain in federal ownership with the substantial federal control that implies. In most of the other states, the federal government owns at least a significant minority of the land. By contrast, federal land ownership in eastern and midwestern states rarely exceeds 5%. The federal land ownership is not uniform. Federal land may refer to a military installation, air base, or gunnery range under the control of the Department of Defence, a national park under the control of the Department of the Interior, or a national forest administered by the Department of Agriculture. The largest portion of federal land is administered by the Bureau of Land Management within the Department of the Interior.

While the federal presence is often vigorously resented by natives of the Inland West, it must be remembered that federal incentives were essential to the growth of the region. Gifts of land to homesteaders and the railroads opened the area to settlement. Federal financial subsidies of water projects built the dams and irrigation canals that make the region livable. Government defence programs provided the economic base to develop the region.

The development of the Inland West has been a history of "boom" and "bust". Discoveries of gold, silver, copper and lead in the 19th century created instant population centres that faded and died as the mineral

wealth was extracted. The past three decades of the twentieth century have seen a recurrence of the boom-town phenomenon in the region. Communities have been erected to support mineral extraction and processing, the construction of major hydro-electric dams and water projects and the construction of facilities generating electricity. Although the location of mines is necessarily determined by the site of mineral deposits, and water projects must be built on available rivers, other projects like refineries and generating-plants will depend on the specific attractions of a region. The decision to locate a plant may take into consideration labour costs, costs of land acquisition, state and local attitudes toward industrial development, and laws controlling the pollution of the natural environment. Most of the major electricity-generating plants in New Mexico, Arizona, and Utah have been built to supply large amounts of power to southern California, an area where existing pollution levels, high land costs and governmental attitudes toward development have discouraged plant construction. New electricity-generating plants to serve the western population centres are being built at the mine-mouth of western coal mines.

Two additional factors have made the Inland West a favoured energy- and minerals-production centre. First, the Arab oil embargo of 1973-74 and skyrocketing oil prices fueled a concern for energy self-sufficiency within the United States. Second, the world political situation has resulted in a perceived need for self-sufficiency, to the extent possible, in strategic minerals. These minerals have been found primarily in the western United States.

These factors have resulted in new mines, processing plants, dams and power-plants. These in turn have brought construction workers, miners, operators and their families, as well as a support community to care for the construction workers or operators. In the sparsely populated areas of the West where the development is occurring, that means boom-towns.

Western films depicting the boom-towns of the 1800's play up the glamour and the high-rolling atmosphere of Virginia City, Nevada during the silver boom and San Francisco during the California goldrush. The films generally don't show the tent cities, the dirt, the mud, the smoke, the human suffering, and the broken lives that were the hallmarks of those early boom-towns. Boom-towns have not progressed much in 100 years. Tent cities have been largely replaced by trailer-parks and there are wives and children in those trailers, but otherwise much is the same. As Gilmore concluded after studying the boom areas of Rock Springs and Green River, Wyoming: "The energy boom-town in the western United States is apt to be a bad place to live. It's apt to be a bad place to do business."[1]

1. Gilmore, 'Boom Towns May Hinder Energy Development' (1976) 191 *Science* 535, 535.

In order to understand the problems raised by boom-growth it is necessary to understand what a boom-town looks like. A typical community that is fated to "boom" will be a rural town of one to two thousand people, primarily dependent on agriculture. The town will have a main street, several bars, a few churches, a cafe, a movie-theatre, a feed-store, an agricultural-implements dealer and a rodeo-ground.[2] There will be no town within 100 miles that has as many as 10-15,000 people and there may be more than 200 miles to the nearest metropolitan center.[3] The people will know one another and the bar will often be a social centre where news is exchanged and business transacted.

With the announcement of a new mine or power plant this abruptly changes. The population of the town may double or triple. Suddenly, the "outsiders" outnumber the pre-boom residents. Schools, hospitals and public services are strained to breaking-point. The quality of life deteriorates rapidly for both residents and newcomers and the existing social structure breaks down.[4]

If to the number of construction workers and the time needed to build a particular facility one adds the complexities of wives, children and the people needed to operate additional support facilities such as grocery stores, then the magnitude of the problem becomes readily apparent.[5]

A large urban community could add these people without much of a strain on existing social structures, since most communities can absorb an annual population growth rate of 5%.[6] However, research has shown that a growth rate of 15% or more results in a severe breakdown in municipal services, education, housing availability, and other aspects of the community.[7] As a community's growth rate approaches 10%, severe institutional malfunctioning has already begun.[8] A typical western boom-community shows a population growth rate of 25% or more.[9]

Boom-town problems fall into two main categories: economic and social. Generally the immediate concern of most communities, planners,

2. K Ross Toole, *The Rape of the Great Plains* (1976) 93
3. Gilmore supra n 1 at 536.
4. Gilmore supra n.1.
5. For a table illustrating the time and number of workers needed to build a particular facility, see (HUD-CPD-140) *Rapid Growth from Energy Projects* (April, 1976) 3
6. J. Gilmore and M. Duff, *Boom Town Growth Management A Case Study of Rock Springs-Green River, Wyoming* (1975) See also Little "Social Consequences of Boom Towns" (1977) 53 *North Dakota Law Review* 401, 402
7. Gilmore supra n 1 at 536.
8. Little supra n.6 at 402
9. Gilmore supra n.1 at 536. As an example, Gillette, Wyoming grew from a cattle-farm town of 2,191 people in 1950, to a town with a population of 3,580 in 1960, 7,194 in 1970, and more than 25,000 in 1974
   Gillette had the mixed blessing of being the centre of both an oil-boom and a coal-boom simultaneously. Toole supra n 2 at 95

and environmental impact statement writers[10] is with the economic factors, the need for services and facilities. Economic problems and benefits are immediately apparent and are quantifiable, while social impacts often are not recognized until after the influx of new residents and are never easily quantifiable.[11]

The economic impacts, generally the need for government services, usually fall most heavily on the education system.[12] Other services significantly strained include police and fire protection, water supplies and sewerage, solid-waste disposal, healthcare facilities, recreation facilities and transportation systems. If the number of people that will move into a community can be projected with any accuracy, the costs for increased public services can be quantified.[13]

Projecting what services must be increased to meet the influx of workers and their families may be relatively easy. The question of how to pay for these services is not. Money is needed early in the boom to build the needed facilities or add the required personnel. Taxes do not provide the answer. Although tax revenues do eventually catch up with the costs of providing additional facilities, the time between the start of construction and the beginning of development operations, when tax revenues[14] increase dramatically, is relatively long. The burden of carrying improvement costs must therefore fall elsewhere.

Bonding has been suggested as a solution. However, Gold has found that there is an extreme reluctance on the part of "oldtimers" to bond to provide services for those they perceive as newcomers and transients.[15] In addition, experience has shown that bond-issues to finance necessary improvements may outlive the "boom" phase of the incoming industry and leave exorbitant taxes on property of the stable members of the community.[16]

10. National Environmental Policy Act of 1969, Pub. L. No 91-190 102(2)(c), 83 Stat. 852, 853 (codified in 42 U S.C 4332(2)(c) (1970), provides that before any major federal action which would significantly alter the quality of the human environment can be taken, an environmental impact statement must be written, discussing.
    (i) the environmental impacts of the proposed action,
    (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
    (iii) alternatives to the proposed action,
    (iv) the relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity, and
    (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
11. Little supra n.6 at 405.
12. Watson "Measuring and Mitigating Socio-Economic Environmental Impacts of Constructing Energy Projects An Emerging Regulatory Issue" (1977) *10 Nat Res Law* 393, 400.
13. Little supra n.6 at 404-407
14. Little supra n.6 at 405-406 See also U S Dept. of Housing and Urban Development (HUD) *Rapid Growth From Energy Projects· Ideas for State and Local Action A Program Guide* (1976).
15. Raymond L Gold *A Comparative Case Study of the Impact of Coal Development on the Way of Life of People in the Coal Areas of Eastern Montana and Northwestern Wyoming* (1974) See also Gold "How Southeastern Montanans View the Coal Development Issue" (1975) 1 *Western Wildlands* 16.
16. Smith, Hogg and Regan "Economic Development: Panacea or Perplexity for Rural Areas?" (1971) 35 *Rural Soc* 173

An additional problem is created when the project is in one state or local jurisdiction and the workers live in another. The project raises no property-tax revenues for the government experiencing the influx. The tax revenues received from the increased worker-population itself do not begin to cover the costs of providing the necessary services.[17] The lack of coordination among governmental entities further exacerbates this problem.

The second category of boom-town problems is social. The social problems resulting from boom-towns are best summarized by what is known as the "Gillette syndrome", a phrase coined by social psychologist E.V. Kohrs in the town of Gillette, Wyoming, after it had boomed.[18] Kohrs said that the Gillette syndrome consists of equal parts of alcoholism, accidents, absenteeism, depression, divorce and delinquency. Others have refined that definition and added other components, including bifurcation (the us-them syndrome), alienation and crime.[19]

An in-depth discussion of the social impacts of a boom-town is beyond the scope of this article. However, all of these undesirable consequences have been recorded in each community which has boomed.[20] Even in communities which avoided the economic stress on municipal services, the social consequences have appeared.

Social impacts have appeared even when a completely new town has been erected to serve a project. Ronald Little found boom-town social problems in Page, Arizona.[21] Page is a community that was built from the ground up by the federal government and in which all residents were newcomers. The town was built for the purpose of housing construction workers for the Glen Canyon Dam hydro-electric facility and later the Navajo coal-fired electric-generating station. Federal funds were used for planning and installation of all municipal services. In fact, all of the economic burdens of expansion were accepted by the federal government. Nevertheless, Page experienced all of the interpersonal and interinstitutional conflicts of other boom towns.

17. See e.g. Watson supra n.12 at 396. See also U.S. Dept of the Interior (USDI) *Draft Environmental Impact Statement· Decker Coal Project* (1976).
18. E.V. Kohrs Speech (entitled *The Gillette Syndrome*) to Montana Coal and Energy Development Conference, Helena, MT (1973).
19. See e.g. J.A. Davenport and J. Davenport eds. *Boom Towns and Human Services* (1979); J.A. Davenport and J. Davenport eds. *The Boom Town· Problems and Promises in the Energy Vortex* (1980); J. Gilmore and M. Duff *Boom Town Growth Management A Case Study of Rock Springs-Green River, Wyoming* (1975); Cortese and Jones "The Sociological Analysis of Boom Towns" (1977) Vol.8 *Western Sociological Review* 76; Freudenburg "Women and Men in an Energy Boomtown--Adjustment, Alienation and Adaptation" (1981) 46 *J. Rural Sociology* 220; Little supra n.6; R. Gold supra n.15.
20. See *e.g.* Gilmore and Duff supra n.6; Gold supra n.15; E. Kohrs "Social Consequences of Boom Growth in Wyoming" (1974) (paper presented at meeting of Rocky Mtn. Association for the Advancement of Science, Laramie, Wyoming); Mountain West Research, Inc., Construction Worker Profile: Final Profile (1975) (prepared for the Old West Regional Comm'n).
21 Little supra n.6 at 416-423.

The Existing Legal Structure

Boom-town problems can involve national, state, and local legal systems. Each governmental level has its sources of authority, limitations on its actions, and traditional areas in which it acts. Part of the difficulty in mitigating boom-town problems has been in defining the roles of these governmental levels.

A case can be made that boom-town problems should be the responsibility of the national (federal) government. The federal government may be involved because federal land is involved in the development project. Federal investments (for example, in the Page dam-construction programme) may give rise to a boom-community. National security needs, recently the threat of foreign oil embargo, may stimulate development. Lastly, many development projects have interstate aspects, such as the construction of power-plants in New Mexico or Utah to supply electricity to southern California. All of these factors justify federal responsibility.

The federal government has the legal authority to involve itself in boom-town mitigation. The United States Constitution gives Congress powers to tax and spend for the national welfare, powers to regulate interstate commerce, and powers over the federal lands.[22] A series of United States Supreme Court cases has given a broad definition to interstate commerce, leaving very few matters not capable of federal regulation.[23] The Court has also held that Congress has extensive power over the federal lands when Congress chooses to act.[24] Constitutional questions would arise, however, from a federal attempt to manage boom-town impacts by ordering state and local governments to take particular action. A 1976 Supreme Court decision held that the Congressional power under the interstate commerce clause could not disturb certain integral state and local governmental functions.[25] The source of this protection for the states and localities is the 10th amendment to the Constitution, which provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people." But a series of Supreme Court cases since the 1976 landmark *National League of Cities* decision has sided with a federal claim of authority and against the states.[26]

Despite the substantial federal authority, federal boom-town performance has been limited. Occasional boom communities like Hanford (Washington) Los Alamos (New Mexico) or Page (Arizona) have been

22. U S. Const. Art. I 8 and Art. IV, sec. 3.
23. E g. Wickard v. Fillburn, 317 U.S. 111 (1942); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).
24. Kleppe v. New Mexico, 426 U.S 529 (1976).
25 National League of Cities v. Usery, 426 U.S 833 (1976).
26. See, e.g , Hodel v. Virginia Surface Mining and Reclamation Ass'n, 452 U.S. 264 (1981); EEOC v Wyoming, U.S. (1983).

largely federally funded, planned or managed. For the most part, however, the federal government has viewed boom-town impacts as a matter for state and local law. On the other hand, the rise of the environmental movement in the late 1960's has stimulated federal planning. The National Environmental Policy Act, which requires an environmental impact-statement for any major federal action significantly affecting the quality of the human environment, has been the key legal provision. Federal land ownership and other federal involvements have made most western developments subject to the impact-statement process. The process itself has been valuable in gathering information about the many consequences of a development. Environmental consequences include the community impacts of any development.[27]

While planning help is of value, most veterans of the boom-town experience claim that the greater need is for money in the proper place at the proper time. As suggested earlier, existing state and local tax-schemes may not provide revenues to the jurisdictions needing them or not provide the dollars early enough to be of significant help. A few provisions of federal statutes have provided some impact funds.[28] However, they have been narrowly drafted and, particularly in the cost-conscious Reagan administration, poorly funded. In brief, while the federal government has ample power in boom-town matters, its intervention has been minimal.

The state governments also have considerable legal authority to deal with boom-town problems. State shortcomings have more often been the product of lack of state willingness to exercise authority than lack of the authority itself. The two most significant state powers are the power of taxation and the police power. The power of taxation is often addressed in detail in the state constitution and may face some significant state constitutional limitations. In addition, provisions of the federal constitution limit state taxing-power.[29] The "police power" is typically not mentioned in the state constitution. It is viewed as an attribute of state sovereignty and authorizes the state lawmakers to take reasonable steps to protect the health, welfare, safety, and morals of the population. Exercises of the police power are limited by a variety of provisions of state and federal constitutions. Among the frequently examined limitations are the requirement that due process of law is required for the deprivation of life, liberty, or property, that equal protection of the laws shall not be denied, and that private property shall not be taken for public use without just compensation. Needless to say, these constitutional terms of art have been the subject of much litigation to define their exact contours. Such provi-

27. 40 Code of Federal Regulations 1508.8. Effects include " . aesthetic, historical, cultural, economic, social, or health . . ." effects.
28. See Public Law 95-620 601, Public Law 94-370 7, Public Law 97-425 116.
29. U S. Const Art. I secs. 9 and 10.

sions do limit government actions jeopardizing the interests of private developers in boom-town communities. For example, a request that a developer donate land for schools or public parks raises the possibility of an illegal or discriminatory taking of property without compensation.[30]

In addition to the protections of private rights contained in the state and federal constitutions, state constitutions also contain a variety of provisions forbidding certain government entanglements with private enterprise. These constitutional provisions were the product of earlier experiences in which state and local governments were asked to finance or otherwise support private railroad and canal developments. When the private developments turned sour, government was left to bear the responsibility.[31] Representative provisions forbid laws granting irrevocably any privilege, franchise, or immunity;[32] a large variety of "local or special laws";[33] loaning the credit of government or making government a shareholder in a private corporation;[34] making appropriations to persons or corporations not under the control of the state;[35] or delegating governmental functions to certain special commissions or private bodies.[36] All of these provisions offer potential roadblocks to certain forms of government co-operation with major developers. As the business of government has expanded, government and private enterprise are often allied. Frequently the constitutional provisions have been tested by state statutes authorizing industrial development and urban redevelopment programs. The state legislature and implementing ordinances view the redevelopment or provision of housing as public business suitable for governmental activity. In most instances, however, the actual building and development will be done by private construction companies and financed by private financial institutions. Often bond counsel will instigate the "friendly lawsuit" that will resolve the constitutional question. For the most part, courts have validated the legislation and found no violation of the constitutional provisions.[37] However, the constitutional provisions have in-

30. C. Antieau *Municipal Corporation Law* (1964-) at 8A 11 and 12; *see* Call v. City of West Jordan, 614 P.2d 1257 (1980) and 606 P.2d 217 (1979).
31. See discussion of the origins of these constitutional provisions in Rochlin v. State, 112 Ariz. 171, 540 P.2d 643 (Arizona 1975).
32. Arizona Const. Art. II 9; Idaho Const. Art. I §14; Montana Const. Art. II §31; Utah Const. Art. I §23.
33. Arizona Const. Art. IV 19; Colorado Const. Art. V 25; Idaho Const. Art. I 19; Nevada Const. Art IV §20; Utah Const. Art VI §26; Wyoming Const. Art. III §27.
34 Arizona Const. Art. IX §7; Colorado Const. Art. XI §1; Idaho Const. Art. VIII §2; Nevada Const. Art. VIII §9 and 10; Utah Const. Art. VI §29.
35. Colorado Const. Art. V §34; Montana Const. Art. V §11(5); Wyoming Const. Art. III §36
36. Colorado Const. Art. V §35; Utah Const. Art. VI §28; Wyoming Const. Art. III §37.
37. Kennecott Copper v. Hurley, 84 N.M. 743, 507 P.2d 1074 (New Mexico 1973); State ex rel Brennen v. Bowman, 512 P 2d 1321 (Nevada 1973); Huber v. Groff, 558 P.2d 1124 (Montana 1976); Boise Redevelopment Agency v. Yick Kong Corporation, 94 Idaho 876, 499 P.2d 575 (1972); Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (1979)

validated certain actions[38] and their mere presence may be enough to restrain the cautious government official or private planner. Several states in recent years have amended their constitutions to allow particular kinds of assistance to development.[39]

A second constitutional limitation, found in all states in the region, controls taxing and spending of the state and local governments. One limitation is a requirement of uniformity in taxation.[40] Typically, court decisions have allowed differences in taxation rates where different categories of property are involved.[41] A second constitutional provision requires a rough matching of state revenues and expenditures.[42] A third provision controls government borrowing, often by requiring electoral approval of the debt and placing a ceiling on the debt amount.[43] The ceiling usually will be a percentage of the total assessed property valuation within the jurisdiction. Where these provisions apply to local governments, they are a significant constraint on borrowing to pay for new facilities needed to respond to boom-town growth.

While the constitutional limitations deter some state efforts to correct boom-town problems, state governments retain significant power to address boom-town issues. In many cases the state government should exercise its powers. A major boom-town will burden a variety of state-provided services. A boom-town in one part of the state will influence governments and citizens in other localities. In the extreme case, if the state feels local government is incapable of handling boom-town consequences, it may need to step in to assure essential services to the citizens. Despite some state activity in the field, states have relied on local units of government to handle most boom-town impacts. This has been due to a deference to local authority, a reluctance to spend state money, and a lack of awareness of the scope of the problem.

Most of the actual government response to boom-town problems has been at the local level. Government below the state level is composed of a mass of different entities serving different geographical areas with

38. State ex rel Nevada Bldg. Auth. v. Hancock, 468 P.2d 333 (Nevada 1970).
39. Colorado Const. Art. XI §2 (development of energy resources); Idaho Const. Art. VIII §2 (unused water power development), 3A (pollution control bonds); Nevada Const Art. IX §3 (natural resources).
40. Arizona Const. Art. IX §1; Colorado Const. Art. X §3, Idaho Const. Art. VII §5; Montana Const. Art. VIII §1; New Mexico Const. Art. VIII §1; Nevada Const. Art. X §1; Utah Const. Art. XIII §3; Wyoming Const. Art. 1 §28.
41. *E g* Anaconda Co. v. Property Tax Department, 94 N.M. 202, 608 P.2d 514 (1979), School District No. 25 v. Tax Commission, 612 P.2d 126, 101 Idaho 283 (1980); but see Hahn v. County Assessor, 92 N M. 609, 592 P.2d 965 (1978) and Maricopa County v. North Central Development Co., 566 P.2d 688, 115 Ariz 540 (Arizona Ct. App. 1977) for decisions striking down taxing actions violating the uniformity provisions.
42 *E g* Colorado Const. Art. X §16; Montana Const. Art. VIII §9; Utah Const. Art. XIII §9.
43. *E g* Arizona Const. Art IX §8; Colorado Const. Art. XI §3 and 6; Idaho Const. Art. VIII §1 and 3; New Mexico Const. Art. IX §§8, 10, 11, 12 and 13; Utah Const. Art. XIV §§1, 3, 4; Wyoming Const. Art. XIV §§4, 5, 8

different legal powers and with different limitations on their actions. To say that local government should respond to boom-town problems requires that one ask: which local government?

Local government in the Inland West can be subdivided into several categories. The first unit of government is the county, an entity whose geographic boundaries are defined by state constitution or statute and whose existence is mandated by these laws. The second category of government is the municipal corporation. While the county is formed on the basis of land alone, the incorporated city or town is normally formed around a concentrated population. Constitutional or statutory provisions define the ways in which municipal corporations can be voluntarily created by their residents.[44] Once created, the new entity becomes a general-purpose government with powers of its own and considerable freedom from county authority. The third category of local entities is the special-purpose district. Like the municipal corporations, these districts are created by citizens pursuant to authorization of the state constitution or legislature. Unlike the municipal corporation, the special districts are typically designed for a single purpose.[45] Examples include water-supply districts, hospital districts, sanitation districts, or refuse-control districts. As a consequence of this proliferation of governments, a development project may find itself dealing with a number of governmental bodies with varying powers to tax and regulate. As an example, the Intermountain Power Project in Millard County, Utah has had to deal with over twenty separate cities, villages, and special-purpose districts within one county whose population does not exceed 10,000 citizens.

Local governments, unlike the United States and the states, are not sovereign entities. Local governments must draw their authority from their state constitution or from specific delegations of power from the state legislature.[46] The last century of American local government law has seen a gradual increase in the autonomy of local governments. Many of the constitutions provide for the exercise of home rule by counties or cities and towns. Under the home-rule concept, the local government can structure a government that leaves it free to act in most areas of purely local concern.[47] Absent home-rule status, a community is often forced to seek specific state legislative permission to act in certain areas. In innovative matters such as boom-town impact mitigation, this may impose a signifi-

44. *E g.* Arizona Const. Art. XIII §1; Colorado Const. Art. XIV §13, Art. XX §6; Montana Const. Art. XI 3, Utah Const. Art XI §5.

45. Antieau supra n.30 at 28.00 classifies "supplementary public corporations" as bodies which perform "a specific governmental function or a limited number of such functions and [are] usually not possessed of the taxing power and [are] customarily not directly responsible to the electorate " Recent cases exploring the forms of local government include Barker v. Wagner, 96 Idaho 214, 526 P.2d 174 (1974) and Tribe v. Salt Lake City, 540 P.2d 499 (Utah 1975).

46. Antieau supra n.30 at §1.01.

47 Antieau supra n.30 at §3.08.

cant burden on the unit of local government.

In addition to concerns about its general power to legislate and the recognition that state legislation may remove its authority, local governments also must contend with the taxing and spending limitations of state constitutions. As previously mentioned, the constitutional provisions may pose significant problems. The lightly-populated jurisdiction facing boom-town development is limited in its bonding capacity to a small percentage of its taxable property.[48] Further, voter approval must be secured for the debt.[49] Both limitations may be significant. Voters may be accustomed to small local government expenditures and may be uncertain of the long-range consequences of boom-town growth. Even if they are willing to approve new public ventures, the constitutional debt-ceiling may be far below what is needed to respond fully to the boom.

Part of the problem may be that the records of taxable property (on which the constitutional expenditure percentage is based) do not yet reflect the added value of the boom-town development.

The failure to mitigate boom-town consequences is not due entirely to an inadequate legal structure. Nonetheless, the existing legal structure both consciously and inadvertently imposes restraints on mitigation of boom-town impacts. Among the significant restraints are:

(1) Local governments are uncertain about their powers. While the growth of the home-rule concept and a liberal reading of delegations of the state powers to lesser governmental entities has increased, local governments may still be uncertain of their powers as regards major developments. The local government may operate on the premise that, without clear authorization from the state legislature, an innovative land-planning or revenue measure is not authorized. Most probably, the attorney for the small town or county will be a jack-of-all-trades, representing private clients as well as the municipal government. He or she will not be well-versed in modern impact-planning law, and will have access to a very limited law library.

(2) As noted, taxing and spending limitations imposed by the state constitution may make it difficult to raise the money necessary for impact mitigation. This is a particular problem where the growth of the tax-base runs several years behind the need for the new public services.

(3) The large number of local government entities make it likely that the government unit burdened by the impact may not be the government unit able to take action to correct it. The location of the mine or power-plant may be in one taxing-jurisdiction, while much of the

48. Ariz. Const. Art IX §8; Montana Const. Art VIII §10, Utah Const. Art. XIV §4.

49. Colo. Const. Art. XI §6; Idaho Const. Art VIII §3; New Mexico Const. Art. IX §§10-13; Wyoming Const. Art. XIV §§3-5.

work force lives in another. The first jurisdiction is able to tax the development and largely be free of providing services for the people who build and operate it. The second jurisdiction receives the worst of both worlds — no tax revenue from the development and a heavy burden on public services.

(4) The state constitutional limitations on assistance to private enterprise discourage certain forms of negotiated agreements with developers. Prohibitions on contract-zoning raise similar difficulties.[50]

Recent Attempts to Correct Boom-Town Problems

The preceding section has illustrated the deficiencies in law which make it difficult to handle the boom-town situation. Not surprisingly, all levels of government have shown some interest in responding to boom-town problems. These approaches illustrate the flexibility of contemporary American government law.

(a) Planning Laws

The federal National Environmental Policy Act has been the major stimulant to American environmental planning. The federal statute requires the preparation of an environmental impact statement by the proponent of any major federal action significantly affecting the quality of the human environment. One aspect of the impact statement is an examination of the consequences of a development on local communities.

Similar objectives are achieved by state environmental-planning acts,[51] facility-siting acts,[52] and state agencies with planning responsibilities. The combination of federal and state planning has greatly increased the study of the consequences of a major development. In most cases, the elaborate and expensive planning work would be far beyond that which a local government could afford.

The planning process also encourages early discussions between the developer and the units of government. If done properly, this can encourage a relationship of mutual candour and support that is probably more important to impact-mitigation than any particular laws.

Utah's 1981 resource development law requires the filing of an impact statement and alleviation plan ninety days prior to the commencement

50. Antieau supra n.30 at 5.29. Antieau observes that without express constitutional or statutory authority municipal corporations cannot "contract away their governmental, legislative or police powers." Recent cases addressing the contract-zoning prohibition include Collard v. Village of Flower Hill, 421 N.E.2d 818 (N.Y Ct. App. 1981); Nolan v. City of Taylorville, 420 N.E.2d 1037 (Ill. Ct. App 1981); and Cross v. Hall County, 235 S.E.2d 397 (Georgia 1977).

51. *E g* Montana Rev. Codes Ann. §§75-1-101 et seq. (1981)

52. *E.g.* Montana Rev. Codes Ann §§75102 et seq.; North Dakota Stats. ch. 49-22 et seq.; Wyoming Statutes 35101 et seq

of construction of a "natural resource facility" or "industrial facility" where the facility will employ more than 500 people or cause a population increase of more than 5% in the "affected unit of local government."[53] The statute requires: "The financial impact statement shall assess the projected financial impact on state agencies and units of government, including, but not limited to, the impact on transportation systems, culinary water systems, waste-treatment facilities, public safety, schools, public health, housing, planning and zoning, and general government administration. The alleviation plan shall set out proposals for alleviating the impact and and may include payments to local units of government or direct expenditures by the developer to alleviate the impact."[54] The statement and alleviation plan shall be prepared in cooperation with the state department of community and economic development and any affected units of local government.[55] The statute also authorizes, but does not require, the developer to prepay property taxes in order to provide money to the community to pay for impact costs.[56]

Planning programs are often coordinated by a state body with responsibility for development's impacts on communities.[57] These state agencies can offer planning assistance to the local community and serve as a point of contact with the developer. Several of the agencies also dispense impact assistance funds to the communities.

(b) Zoning and Planning Controls

State and local authority to regulate the use of land provides a significant means for controlling project impacts. State statutes authorize local government units to zone property according to uses of property (residential, commercial, industrial) and to control building on a particular lot (building height, lot size, set-back requirements).[58] Specific county or city ordinances will then implement the terms of the state zoning enabling Acts. Separate building codes will address matters more immediately related to health and safety like adequate roof and floor support, electrical connections, and plumbing. Local building inspectors and zoning boards typically enforce the provisions by requiring the builder to obtain a municipal permit in order to proceed with construction.

In some cases a county or city zoning-plan may already authorize the major development (the power plant, mine, or refinery) and its related

53. Utah Code Annotated 632 and 10
54. Id. at 6310
55. Id
56. Id
57. Colorado Rev. Stats. 2-3-1102 (Colorado Energy Coordinating Council); Id. at 39110(2) (Energy Impact Assistance Advisory Committee in Department of Local Affairs); Utah Code Annotated 63-28a-1 et seq. (Resource Development Coordinating Committee); Id. at 632 (Natural Resources Community Impact Board); New Mexico Revised Statutes 9-5-7C (energy resource and development division); Id. at 11-6-4 (community assistance council).
58. Antieau supra n.30 at §7.02

development (housing developments for workers, new shopping-centres, etc.). Frequently, however, small community zoning laws have not anticipated such a major change in the community. Therefore, revision of the existing zoning laws is necessary for the project to proceed. In these situations, co-operation between local officials and the developer will pay dividends. The community that is kept in ignorance of the details of the development until as late as possible may slow project development by not having local zoning laws ready to accommodate the project. Amendments of zoning-plans (or passage of an initial zoning-plan) take time. Often state statutes mandate minimum time-periods in order to give opportunity for public notice and comment. The project that tries to hasten a zoning change through local government risks both legal error and the perception in the local population that the project developers are trying to 'steamroller' local officials.

A zoning device allowing considerable flexibility is the special-exception, special-use or conditional-use permit. Traditional zoning legislation specifies that a particular zone shall allow particular uses. If a geographic area is zoned to allow grocery stores, any grocery store is entitled to locate within the zone. The conditional-use ordinance, by contrast, recognizes that a certain use *may* be located within a particular zone.[59] The ordinance then expands on the conditions that must be met in order to receive authorization for location in the zone. In effect, the conditional-use recognizes that some grocery stores are more desirable than others, using criteria such as parking space, building design, and control of noise and odours. The conditional-use approach gives zoning officials the opportunity to examine particular development proposals before granting zoning approval.

The conditional-use permit is a valuable zoning tool in dealing with the large-scale project. Local officials can amend the basic zoning ordinance to treat the mine, power plant, or refinery as a permitted use within an existing zone or in a newly created zone. They may then prepare a list of conditions of permit-approval that allows attention to a variety of public needs. As an example, the conditional-use permit for the Intermountain Power Project in Utah addressed such matters as fire prevention, law enforcement, site landscaping, and compliance with environmental standards. The permit may impose a continuing responsibility on the developer to meet community needs. The permit may also require that certain costs of services will be placed on the project. For example, a use permit that requires a developer to provide a private security-force during project construction may reduce the costs of local law enforcement. Similarly, the developer could agree to build or improve the road bet-

59. Antieau supra n.30 at §7.107

ween the plant site and the population centre.

The use permit can specify that the unit of government may revoke the permit upon violation of a condition. The issue is obviously a sensitive one. Revocation of a permit after several hundred million dollars have been invested in construction does not appeal to anyone's good sense. The developer acquires a vested right in the permit.[60] The developer will be entitled to notice of any default and an opportunity to contest the issue. Before authorizing the extreme sanction of revocation, a court would quite probably insist that a major default in the permit terms be found and that the developer be unwilling to correct it. In addition to the legal aspects of revocation, economic concerns may also discourage local government from taking revocation action. The community may need the project by this stage as much as the project needs the community. Local employment, tax revenues, and future community plans may hinge on completion of the project. It is the unusual mayor or councillor who is willing to stop a development in order to correct a minor failure of performance on a conditional-use permit.

A project may also be put at risk by threats of permit revocation. Delay costs millions of dollars a day. Further, the ability to sell bonds to finance the project may be jeopardized by rumours of a legal dispute with local officials. The serious consequences of a dispute over permit terms should encourage community and developer to consider including mediation and arbitration conditions in the original permit. Any multi-million dollar project construction of which may take a decade should be expected to encounter difficulties. If the parties anticipate the need to address these differences of opinion, valuable time, money, and goodwill can be saved.

Zoning and other land-use laws may also require a donation of land or money to cover the costs imposed on the community. Building-permit fees may cover the "direct and indirect cost of issuing the permit and regulating construction."[61] The fee that is disproportionate to the cost may be held invalid.[62] Similarly, land and money dedication for parks and schools have been upheld so long as "statutorily authorised, constitutionally applied, and reasonable."[63] Courts have differed, however, on how precisely the dedication of land or money must be attributable to the developer's activity. The strict view requires that the dedication be "specifically and uniquely attributable" to the developer's activities.[64] More lenient tests require only a reasonable relationship between the dedication and the developer's activity and a showing that the request

60 Antieau supra n.30 at §7.133 notes that the landowner with a permit who in good faith makes a "substantial and material change . . by excavation and construction" secures a vested right which allows completion despite a change in the ordinance

61. Id. at 6.90

62. Id.

63. Id. at 8A.12.

64. Pioneer Trust and Savings Bank v Mt. Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

not be disproportionate.[65] Both tests recognize that a developer is receiving an economic benefit from a governmental grant of land-use permission and is imposing a burden on government.

(c) Taxing the Development

The previous section has pointed out the risks of relying solely on the property tax to cover the cost of community impacts. The property tax may not begin to generate significant revenue until the project is nearing completion. By then the community may have suffered through several years of boom-town impacts. Also the jurisdiction able to impose the property tax may not bear all of the impact costs.

Community impact problems have encouraged innovative taxing legislation. One approach has been to allow prepayment of property-taxes. The Utah resource development statute encourages this alternative. Other statutes also allow advance payment of sales- and use-taxes. The prepayment helps solve the problem of impacts arriving before the tax revenue is available. Most statutes, however, have not made such payments mandatory. A developer may be reluctant to pay taxes early if he does not have to. The provision may be useful, however, for the developer who is persuaded that an early contribution to impact alleviation is necessary as a matter of receiving planning permission or of keeping community goodwill. Prepayment is also sensible government planning. The temptation to spend the taxes as soon as received may be a logical political response. Incumbent officials may want to have community improvements credited to their administrations. The consequence may be to leave future officials short of tax revenues at a time when public revenue needs are also great.

A second major taxing-initiative has involved state taxes on the product by the development. These statutes most often tax the severance of minerals from the land.[66] State severance-tax laws often specify the disposition of the receipts. A prominent recipient of the revenues is the community impact fund.[67] This allows state tax dollars to be supplied to the local units of government who bear the increased costs of development.

65. Call v City of West Jordan, 614 P.2d 1257 (1980) and 606 P.2d 217 (1979); See Wood Bros. Homes v. Colorado Springs, 568 P.2d 487 (Colo 1977) for a case finding a charge on the subdivider is excessive.

66. Montana Const. Art. IX §§2 and 5; New Mexico Const. Art. VIII §10; Wyoming Const. Art. XIV §18; Colorado Rev. Stats. 39101 et seq.; Montana Stat. Ann. 15101 et seq.; Wyoming Stat. Ann. 39-6-303 et seq.; New Mexico Rev. Stat. 71 et seq

67. Colorado Rev. Stats. 39101 (portion of severance tax to the impacted local government); 39107.5 (credit for prior payment of impact assistance); 39110 (local government severance tax fund; 85% to subdivisions socially or economically impacted by development; 15% to counties or municipalities based on proportion of employees of project who reside there); Montana Rev. Stat. 90-6-201 et seq. (local impact and education trust fund); Wyoming Stat. Ann. 39-6-305(e) (disposition of funds by farm loan board to impacted communities to assist in financing water, sewer, highway or street projects); New Mexico Rev Stat. 11-6-6 (severance tax bonds for local projects)

In *Commonwealth Edison v. Montana*, the United States Supreme Court sustained the Montana coal-severance tax against constitutional challenges that it intruded on federal laws and disrupted the movement of interstate commerce.[68] While the major burden of the tax fell on out-of-state consumers of Montana coal, the Court found that no discrimination existed between in-state and out-of-state customers. A Montana customer would pay the same tax as an out-of-state customer. Such a discrimination against non-resident purchasers had earlier invalidated New Mexico's tax on the sale of electricity.[69]

(d) Grants and Loans from the Project to the Communities

A more direct approach to providing the money for impact mitigation than reliance on the tax laws is for the community to receive specific grants or loans from the developer. This approach can provide money when it is needed and where it is needed without having to rely on the peculiarities of the property tax or the proper distribution of state severance-tax revenues.

At one extreme, company attention to impact mitigation can result in project responsibility for all aspects of community life. The company town with its control over shopping, services, and access of outsiders has a less-than-honoured place in American history.[70] Where a new community must be built from the ground up, some aspects of the company town may be inevitable. Where the development enters an existing community, the developer will probably choose to work with the community government. In this situation the developer and community may choose to view the issue as "What impact-mitigation actions are needed?" rather than "What tax obligations do we face?" Enlightened self-interest may guide the developer. The community submerged under boom-town consequences and short on money to pay for public services may be an unattractive place to recruit and retain a work-force.

The "up-front" grant has been used in several impact-mitigation situations. The Overthrust Industrial Association has joined together oil- and gas-development companies in southwestern Wyoming to create an impact-mitigation programme. Rio Blanco County in western Colorado has negotiated the most extensive mitigation-agreement with developers of a mine and power-plant.

A grant and loan programme is also authorized to mitigate impacts from the construction of the Inter-mountain Power Project in Utah. State legislation requires the developer to enter into agreements to pay the costs

68. Commonwealth Edison v. Montana, 453 U.S. 609 (1981)
69. Arizona Public Service v. Snead, 441 U.S. 141 (1979)
70. See Marsh v Alabama, 326 U S. 501 (1946)

of "direct impacts" of the project on local government units.[71] Project developers and local officials evaluate the need for public costs and determine the portion of the cause attributable to the direct impacts of the development. Cash grants would then be provided to cover the costs. The grants would, in most cases, serve as a credit to be recovered from subsequent property taxes when the power plant came on line.[72] If the project and a unit of government cannot agree on a mitigation obligation, a state administrative board and the courts will resolve the dispute.[73]

Another approach to mitigation is authorized under the recently enacted federal Nuclear Waste Policy Act of 1982.[74] Section 116 of the Act requires the federal Secretary of Energy to provide impact mitigation funds to a stage which has been selected for construction of the nuclear waste repository. The statute also authorizes federal funds to assist in the planning process for states being considered for repository selection and authorizes federal payments "in lieu of taxes" to the state and "unit of general local government" in which the repository will be located. The "in lieu taxes" are intended to replace the revenue lost from the removal of the waste-repository site from the tax-rolls.

A grant or loan program does offer a more certain guarantee that impact money will be available when and where needed. However, it is not free of problems. As noted, any requirement to repay impact grants out of later property-taxes poses a dilemma for the community.

A second problem is the definition of "direct impacts". Clearly, the development may be responsible for the cost of a new road to the plant site or for additional law-enforcement officers needed to police the construction camp. What responsibility should the project bear, however, for public service demands of workers moving to the area but unable to secure work at the project? Is the project responsible for the additional school-age population brought by parents operating the motels, fast food franchises, and entertainment facilities stimulated by the project? The unit of government will argue that, without the major development, it would not have faced any of the secondary costs. The developer will take an opposing position.

A third consequence of the direct-grant approach is that a developer may play a large role in local government. This can be frustrating to both sides. The developer may feel that it must watch over improvident local expenditures (the too rapid increase of social-service personnel, the construction of a new school for a fluctuating school-age population) to avoid

71. Utah Code Annotated 1128
72. Id. at 1125 and 34
73. Id. at 1129
74. Public Law 97-425

waste of "its" money. The developer may feel that it is forced to take a position on local issues that have divided the citizens long before the project arrived. These actions may persuade local officials that the project is attempting to run the community and to displace the decisions of elected local officials.

Conclusions

Each boom-town in the Inland West has had its distinctive features. Accordingly, there are obvious risks in trying to generalize about successful mitigation-procedures. What may work splendidly in one situation may fail in another. Nonetheless, the following conclusions about boom-town mitigation apply to most Inland West development. They may also be relevant to attempts to mitigate boom-town problems in other parts of the world.

1. Advance planning is essential. Rapid development will cause undesirable impacts on a community. Planning will allow the developer and the community to anticipate the impacts and, if possible, to attempt to mitigate them. Poor planning can both slow the development (e.g., by having to wait for last-minute changes in land-use laws) and can damage the community.
2. Cooperation among the developer, the citizens of the community, and local government is desirable. Developers have on occasion been slow in informing local officials of development plans. This may be due to a desire to prevent premature land speculation. At times, however, the developer conveys the attitude that local government would simply get in the way of "his" development. The developer should take local officials into his confidence and begin candid assessment of the impacts of the development. The developer should also encourage a general discussion of the project and its impacts with the citizens of the community. The developer's goal should be to secure broad community support for the project. The developer who confines his discussions to the local officials of the moment may find that a local election can wipe out his base in the community. The developer should also establish an office in the community so that local residents and government officials may have continuous access to a representative of the developer. This representative should have sufficient authority to resolve minor questions on the spot and to bring major ones to the immediate attention of the project decision-makers. The representative can keep a finger on the pulse of the community and can provide project information to the community.
3. Officers of local government should recognize their considerable powers in dealing with a major project. In most cases, their powers

are sufficient to kill a project that does not enjoy local support. If a project enjoys general support or, at least, is worth further investigation, local officials can do much to control impacts. Local powers over land-use and building construction provide significant opportunities for local government to tailor project development. They also provide the opportunity to generate agreements about the costs of project impacts. Local officials faced with a major development are well advised to undertake a thorough examination of their powers before entering into negotiations with the developer.

4. While planning studies are valuable, much of impact-mitigation requires money at the right time and in the right place. The project should be ready to make firm promises of impact-mitigation dollars early in the process. A particular need may be to pay for the initial planners' and lawyers' fees. These fees may exceed $100,000 — a large amount for any small government. Project contribution is appropriate and an excellent way of demonstrating the project's commitment to impact-mitigation.
5. Sensible planning must recognize the contingencies present in any major development. The most tightly structured agreement on impact-mitigation can unravel owing to events beyond the control of the parties. A major strike may disrupt the construction schedule. A change in world oil prices or a decline in demand for electricity may cause abandonment or reduction of a project. Communities should consider the desirability of a security-bond to clean up the mess if the project goes sour. Even the development that proceeds "on schedule" will provide some unexpected turns of events. The best relationship between developer and community is one in which the parties view completion of initial negotiations as only the beginning of their dealings. Any mitigation-agreements should allow for mid-course corrections.
6. Legal innovations have been more successful in addressing economic impacts than social ones. The mechanisms discussed can provide money to build a road or school in the impacted community at the time it is needed. Legal innovation can not automatically correct problems of increased alcoholism and family violence or the perception of long-time residents that their community is no longer neighbourly. Dollars can provide social workers or community centres. Other aspects of the problem are beyond purely legal solution.

Both project developers and local communities can benefit from major developments. No development will be without some undesirable consequences. However, the consequences can be fairly assessed by the local citizens and, to the extent possible, controlled.