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IDAHO 16 PROJECT UPDATE

Look for the Environmental Impact Statement in January 2009

The much anticipated Environmental Impact Statement (EIS) for the Idaho 16 Extension between I-84 and Idaho 44 will finally be available for public review and comment in January, 2009. The EIS, which was expected last August, should discuss:

- The preliminary engineering plans for the new road,
- The environmental impacts to the area of impact,
- The preferred alternative choice for alignment, and
- The initial projections for right-of-way requirements.

This document will give property owners the first real picture of the impacts the project will have to their property, their neighborhood, and the greater surrounding area. You should review it if you live in the area.

The public comment meeting is expected in February 2009 and is required to stay open for 45 days, according to NEPA standards, before being submitted to the Federal Highway Association for the Record of Decision. Watch for meeting notices.

CONTACT YOUR LEGISLATORS

District 14:

Sen. Chuck Winder
(208) 342-2300

Rep. Mike Moyle (House Seat A)
(208) 286-7842

Rep. Raul R. Labrador (House Seat B)
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For more information look at www.idaho.legislature.gov
Or call (208) 334-2475 for the Legislative Services Office.

ITD Proposes New Legislation to Curb Access Rights to Your Property

TAPs Threaten to Take Your Rights to Access without Just Compensation

Most people assume that if they own property adjacent to a roadway, they have the right to access the road from their property. Generally, that is true – property owners have a vested right of access to adjacent roadways except in rare circumstances where access rights were previously acquired by the government or where a new limited-access road was constructed where no road existed previously. The government has the right to reasonably regulate your access, as in determine how wide it must be, how far from intersections and other driveways, etc., but generally the government cannot deny you reasonable access to your property without acquiring your access rights. Access rights can be purchased or taken via condemnation, just like other property rights. If you are facing a taking, one thing you need to be absolutely clear on is whether your access rights are being condemned or not. If not, how are they going to be affected? The future use of your land may be limited or changed if your legal or physical access is changed. ITD has had a series of condemnation cases dealing with this issue in recent years.

The way ITD regulates access to State highways is through an adopted code, the Idaho Administrative Procedures Act (I.D.A.P.A.), which sets out standards for access management. These are currently the legal standards set for access to state roads throughout Idaho. According to I.D.A.P.A., the number of accesses you can obtain and the spacing of those accesses is determined by the type of road your property abuts; the type of road is defined by the number of lanes and other physical characteristics of the road.

GET THE FACTS. KNOW YOUR RIGHTS.

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In 2002, the ITD Board adopted a resolution which declared that three state roads (Highways 16, 20/26 and 44) which were physically classified under I.D.A.P.A. as Type III roads would be treated by the Department as if they were Type IV roads. The impact of this is that properties adjacent to those roadways would be denied access if they applied for it, because access to Type IV roads in urban areas is allowed only every half mile, while access to Type III roads is allowed every 300 feet. Many affected property owners were not aware of this change or its potential impact on their property value. Some property owners challenged the application of the resolution and were successful in obtaining access.

Now ITD is taking a new approach and proposing an amendment to existing law which would allow ITD to enter into Transportation Access Plan agreements, known as TAPs, with local governments like counties and cities. These agreements would allow the contracting governmental agencies to control access to the State's highways in specified areas. The amendment also allows these agreements to supersede I.D.A.P.A. standards for access management, which are the legal standards set for access statewide currently. This would mean that instead of all state residents having the same regulations of access to State roads, different standards could apply in different areas. It could also mean that if you want to contest the access approved, you would appeal to the City or County rather than ITD, shifting liability and litigation costs to local governments.

Transportation planning is key to proper development of transportation and certainly ITD should cooperate with local units of government in the planning process. However, the stated purpose of this legislation is for contracting governmental agencies to preserve the

capacity, function and safety of existing and future highways. In many cases that translates into limiting or denying access to properties, because roadways function best and have the most capacity when there are few driveways. There needs to be a balance between limiting access and allowing reasonable use of property via reasonable access. Right now, I.D.A.P.A. strikes that balance, based on traffic engineering principles. To allow cities and counties to regulate access apart from that engineering framework could lead to arbitrary and political access decisions which are not soundly based on balancing public and private interests through engineering that takes safety into account. The bill could have a dramatic effect on property values as well. It is more cost effective for government to increase the capacity of existing roads by denying access to them than to expand the roads. However, there is a middle ground; they could condemn the access rights needed and pay just compensation, not attempt to "regulate away" access rights without compensation by changing the rules without any engineering or public safety justification. This legislation appears to be another attempt to change the rules in a way that saves money but erodes private property rights without facing that fact and addressing its consequences.

The Idaho Supreme Court has consistently held that access to abutting public right of ways is one of the fundamental components and vested constitutional rights of ownership which cannot be taken without just compensation. However, this proposed legislation attempts to do just that. We have contacted Governor Otter with our concerns and will keep you informed about this legislation, should it be introduced as a bill to the legislature. If you have property on Highways 16, 20/26 or 44, you should track this issue very carefully.

GET THE FACTS. KNOW YOUR RIGHTS.