

## THREE LEGAL APPROACHES TO RURAL ECONOMIC DEVELOPMENT

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### I. INTRODUCTION

Rural life has long been vaunted in American culture for its moral compass, hardworking spirit, and sense of community and place.<sup>1</sup> At the same time, the percentage of Americans living in rural communities has been shrinking for generations, and American life has been predominantly urban for over a hundred years.<sup>2</sup> In turn, America has fretted—since the country’s very inception—about the effects of urbanization on rural life, and in turn, how the loss of rituals of rural life would affect society generally.<sup>3</sup> These changes in

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1. *See infra* note 3; *see also* John Mellancamp, “Small Town” (“I can be myself here in this small town / And people let me be just what I want to be.”). Although beyond the scope of this essay, American attitudes toward rural life and wilderness are also a fruitful area for discussion. *See generally* Stephen R. Miller, *Boundaries of Nature and the American City*, in ENVIRONMENTAL LAW AND CONTRASTING IDEAS OF NATURE: A CONSTRUCTIVIST APPROACH (Keith Hirokawa ed. forthcoming 2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2306251](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306251).

2. *See infra* notes 5-8.

3. THOMAS JEFFERSON, *Query XIX: The present state of manufactures, commerce, interior and exterior trade?*, in NOTES ON THE STATE OF VIRGINIA (1785), available at <http://xroads.virginia.edu/~HYPER/JEFFERSON/cover.html> (“Those who labor in the earth are the chosen people of God, if he ever had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. . . . The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body.”); THEODORE ROOSEVELT, REPORT OF THE COUNTRY LIFE COMM’N, S. DOC. NO. 705, at 9 (2d Sess. 1909) (“I warn my countrymen that the great recent progress made in city life is not a full measure of our civilization; for our civilization rests at bottom on the wholesomeness, the attractiveness, and the completeness, as well as the prosperity, of life in the country.”); President George W. Bush, Remarks to the Cattle Industry Annual Convention and Trade Show in Denver, Colorado, (Feb. 8, 2002) (transcript available at The American Presidency Project), available at <http://www.presidency.ucsb.edu/ws/?pid=63518> (“I appreciate being with people who love the land and

rural life are redoubled by a massive shift in rural economies since World War II: agriculture, once synonymous with the rural way of life, has become so efficient that it no longer serves as a viable source of jobs for rural people despite providing record profits for agricultural corporations.<sup>4</sup>

This symposium essay takes on these challenges presented to rural economies by sketching out several roles law can play in rural economic development efforts. As rural economic development law depends upon both national and regional contexts, Section II will first provide a background summary of the status of rural America. Section III provides background on the practice of rural economic development as it has traditionally been practiced. Section IV then outlines three legal approaches to rural economic development: “bottom up” planning mandates; redefining plans, zoning and other codes to reflect non-agricultural economic production; and identifying evaluating and disclosing risks of government involvement in rural economic development.

## II. THE CHANGING NATURE OF RURAL AMERICA AND ITS ECONOMY

Rural life is changing dramatically in the U.S. and around the world. This section briefly presents several key aspects of these changes that affect rural areas.

### A. *The worldwide emptying out of rural places.*

In 2008, the world population reached a milestone when, for the first time in history, more than half of the world’s population lived in urban areas; a landmark that highlighted the near quintupling of urban population between 1950 and 2011.<sup>5</sup> Economic factors remain the major reason for urbanization as individuals seek out urban areas for perceived better opportunities<sup>6</sup> and developing countries encourage urbanization to grow a consumer base for industrialization.<sup>7</sup>

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appreciate open space. I realize there's nobody more central to the American experience than the cowboy. But cattle raising is not only a big part of America's past; I view it as an incredibly important part of America's future. This Nation has got to eat.”)

4. See *infra* notes 9-14.

5. U.N. HABITAT, CITIES AND CLIMATE CHANGE: GLOBAL REPORT ON HUMAN SETTLEMENTS 2011, at 2 (2011), available at [http://www.unhabitat.org/downloads/docs/GRHS\\_2011\\_Full.pdf](http://www.unhabitat.org/downloads/docs/GRHS_2011_Full.pdf).

6. U.N. DEV. PROGRAMME, OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT 2 (2009), available at <http://hdr.undp.org/en/reports/global/hdr2009/> (noting that most migrants from rural to urban areas see “gains in the form of higher incomes, better access to education and health, and improved prospects for their children”).

7. See, e.g., Ian Johnson, *China's Great Uprooting: Moving 250 Million into Cities*, N.Y. TIMES (June 15, 2013), [http://www.nytimes.com/2013/06/16/world/asia/chinas-great-uprooting-moving-250-million-into-cities.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/06/16/world/asia/chinas-great-uprooting-moving-250-million-into-cities.html?pagewanted=all&_r=0) (noting China's effort to move 250 million rural villagers into cities in 15 years to lessen the country's dependence on exports); see also EUGENIE L. BIRCH & SUSAN M. WACHTER, *World Urbanism: The Critical Issue of the Twenty-First Century*, in GLOBAL URBANIZATION 3, 8 (Eugenie L. Birch & Susan M. Wachter

**B. *The American emptying out of rural places.***

The U.S., as well as other developed countries, largely urbanized in the twentieth century. For instance, in 1910, just 46% of the U.S. population lived in urban areas;<sup>8</sup> by 2010, more than 80% did so.<sup>9</sup>

**C. *Non-farm U.S. rural population has steadied while agricultural population has dramatically decreased in the last century.***

America's rural nonfarm and rural farm populations have met different fates. Nonfarm rural population has held steady through most of the twentieth century: in 1900, the nonfarm rural population share was 23%; in 2000, the rural nonfarm share was nearly 20%.<sup>10</sup> On the other hand, the number of jobs in agriculture has changed dramatically. In 1900, "about 41 percent of the total U.S. workforce farmed. . . . [T]he share dropped to 16 percent in 1945, 4 percent in 1970, and 2 percent in 2000."<sup>11</sup> This is due largely to dramatic increases in farm productivity in the late twentieth century and especially since 1980.<sup>12</sup>

**D. *The viability of agriculture.***

Small family farms are not sustainable as agricultural uses.<sup>13</sup> For those remaining on small family farms, off-farm income has provided the lion's share of income—upwards of 90% of household income—for at least a decade.<sup>14</sup> Most of small farmers' off-farm income is from wage-and-salary

eds., Univ. of Penn. Press 2011) (noting that cities collectively produce seventy percent of the world's gross domestic product).

8. See U.S. CENSUS BUREAU, *URBAN AND RURAL POPULATION: 1900 TO 1990* (1995), available at <http://www.census.gov/population/censusdata/urpop0090.txt>.

9. See *2010 Census Urban and Rural Classification and Urban Area Criteria*, U.S. CENSUS BUREAU, <http://www.census.gov/geo/reference/ua/urban-rural-2010.html> (last updated July 22, 2013); see also U.S. GLOBAL CHANGE RESEARCH PROGRAM, *NATIONAL CLIMATE ASSESSMENT: LAND USE AND LAND COVER CHANGE 472* (2013) (draft for public comment), available at <http://ncadac.globalchange.gov/download/NCAJan11-2013-publicreviewdraft-chap13-land.pdf>.

10. Elena G. Irwin et al., *A Century of Research on Rural Development and Regional Issues*, 92 AM. J. AGRIC. ECON. 522, 523 (2010).

11. EXEC. OFFICE OF THE PRESIDENT: COUNCIL OF ECON. ADVISORS, *STRENGTHENING THE RURAL ECONOMY 5* (2010), available at [http://www.usda.gov/documents/Rural\\_America\\_final.pdf](http://www.usda.gov/documents/Rural_America_final.pdf).

12. *Id.* (noting that farm productivity nearly tripled in the second half of the twentieth century, while nonfarm productivity increased about 75 percent in the same time frame; most of the productivity growth divergence in agriculture has occurred since 1980).

13. See U.S. DEP'T OF AGRIC., *STRUCTURE AND FINANCES OF U.S. FARMS: FAMILY FARM REPORT, 2010 EDITION*, at iv, 46 (2010) [hereinafter 2010 FAMILY FARM REPORT], available at [http://www.ers.usda.gov/media/184479/eib66\\_1\\_.pdf](http://www.ers.usda.gov/media/184479/eib66_1_.pdf).

14. See U.S. CENSUS BUREAU, *Table 830. Family Farm Household Income and Wealth, 2005 to 2009, and by Gross Sales, 2009*, in *THE 2012 STATISTICAL ABSTRACT: THE NATIONAL DATA BOOK 538*, 538 (2012), available at <http://www.census.gov/prod/2011pubs/12statab/agricult.pdf> (indicating that in 2009 family farms had an average off-farm income of \$70,302 and average on-farm income of \$6,866).

jobs or self-employment either in the adjoining rural economy or, more likely, a nearby city.<sup>15</sup>

***E. Today's rural economies are extremely diverse.***

Today's rural economies are exceedingly diverse in both economic activity and employment. A 2005 USDA typology of nonmetropolitan counties' economies found that 585 are manufacturing dependent; 403 are farming dependent; 222 are government dependent; 114 are services dependent; 113 are mining dependent; and 615 are nonspecialized nonmetropolitan counties.<sup>16</sup>

***F. Rural economies are interdependent with local urban economies.***

Because of this diversity of the nonfarm rural economic activity, as well as the reliance of farm households on off-farm activity, the economic vitality of rural communities no longer depends on agriculture, but on the health of the non-farm economy accessible to rural communities.<sup>17</sup>

This blurring of rural and urban economies is also reflective of the sprawling nature of cities, as well. American suburbs and exurbs now cover more than fifteen times the land area of U.S. urban areas.<sup>18</sup> As a result, there is no stark distinction between urban and rural in the American landscape; instead, development is increasingly strung out along all points of the urban and rural continuum.<sup>19</sup> So, too, are rural economies.

***G. Rural economies face global market pressures and have global opportunities.***

Rural economies are increasingly tied to the global market.<sup>20</sup> U.S.

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15. 2010 FAMILY FARM REPORT, *supra* note 13, at v.

16. *County Typology Codes: Descriptions and Maps*, U.S. DEPARTMENT OF AGRIC., <http://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps.aspx#manufacturing> (last updated July 05, 2012); *see also* Irwin et al., *supra* note 10, at 524.

17. Glen C. Pulver & Glenn R. Rogers, *Changes in Income Sources in Rural America*, 68 AM. J. OF AGRIC. ECON. 1181, 1186-87 (1986) ("The survival of rural American farms and rural communities depends equally on the expansion of nonfarm income and employment opportunities in rural areas."); *see also* Irwin et al., *supra* note 10, at 525.

18. U.S. GLOBAL CHANGE RESEARCH PROGRAM, *supra* note 9, at 472-73 (*citing* D. Brown et al., *Rural Land-use Trends in the Coterminous United States, 1950-2000*, in 15 ECOLOGICAL APPLICATIONS 1851 (2005)).

19. This is also a global phenomenon. *See, e.g.*, Daniel Joseph Hogan & Ricardo Ojima, *Urban Sprawl: A Challenge for Sustainability*, in THE NEW GLOBAL FRONTIER: URBANIZATION, POVERTY AND ENVIRONMENT IN THE 21<sup>ST</sup> CENTURY 203, 205 (George Martine et al. eds., 2008) ("In France, the urbanized area increased fivefold between 1969 and 1999, while the population of these areas grew by only 50 percent. This phenomenon is more recent in Spain, Italy, and other countries of Mediterranean Europe."); *see also* MIKE DAVIS, PLANET OF SLUMS 5-8 (2006).

20. *See generally* *Ag and Food Statistics: Charting the Essentials*, U.S. DEPARTMENT OF AGRIC. (Nov. 7, 2013), <http://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/agricultural-trade.aspx#.UwJDDvldWSp>.

agricultural exports tripled between 2000 and 2012 growing by 8.8%, on average, annually over the same period; agricultural imports increased by 8.4% on average over the same period.<sup>21</sup> Recognizing this dependence on the global market for rural economies, the Obama administration is making a concerted effort to include U.S. rural manufacturing in global export initiatives and to provide access to international investment through the administration's new Made in Rural America program.<sup>22</sup>

### III. BACKGROUND ON THE PRACTICE OF RURAL ECONOMIC DEVELOPMENT

This section considers several aspects of rural economic development as it has historically been practiced and as it is practiced today.

#### A. *Beyond federal rural economic development focusing on agriculture.*

Since the 1862 creation of the U.S. Department of Agriculture and passage of the Morrill Act, which created the nation's land-grant colleges and their networks of agricultural extension units, rural economic policy has been considered federal, and it has centered on the farm.<sup>23</sup> Because of dramatically lessened agricultural employment and the fact that most small farms are made viable only by access to non-farm income, linking rural economic development to agriculture no longer makes sense.<sup>24</sup>

#### B. *Rural economic development and individual migration options.*

A primary goal of economic development is improving opportunities for individuals. Some economists have questioned the value of rural economic development because individuals migrating to urban areas almost always see improvements in income in that urbanization decision.<sup>25</sup>

New studies also show education plays a significant role in determining an individual's mobility. About half of college graduates move out of their birth states by age 30;<sup>26</sup> only 27% of high school graduates and 17% of high school dropouts do so.<sup>27</sup> Also, while farmers often view their land as a liquid form of capital—even referring to land saleable to real estate developers as a farmers "401(k)" retirement plan—the majority of rural Americans are not

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21. *Id.* at fig. U.S. exports outpace U.S. imports.

22. Office of the Press Secretary, *Fact Sheet: Opportunity for All: Establishing a New "Made in Rural America" Export and Investment Initiative*, THE WHITE HOUSE (Feb. 7, 2013), <http://www.whitehouse.gov/the-press-office/2014/02/07/fact-sheet-opportunity-all-establishing-new-made-rural-america-export-an>.

23. For a detailed review of twentieth-century federal rural economic development activities, see Wayne D. Rasmussen, *90 Years of Rural Development Programs*, 2:1 RURAL DEV. PERSP., 2, 2-9 (1985).

24. Irwin et al., *supra* note 10, at 532.

25. *Id.*

26. ENRICO MORETTI, *THE NEW GEOGRAPHY OF JOBS* 157 (2012).

27. *Id.*

farmers, and thus do not have access to such fungible assets.<sup>28</sup> In other words, many stalwarts of local communities—the owner of the local diner or the local feed store—are truly “stuck” in rural places, especially those with lower educational attainment. The opportunities that are afforded to some through urbanization do not apply to those individuals, and thus there is a need to assist those whose locus of opportunity remains rural.

**C. *Some rural economies are booming.***

In addition, there are several locations where rural economies are booming. Economists note three modern determinants of rural development in the U.S.: (i) the negative externalities of urban congestion; (ii) high costs of urban space; and (iii) attractive rural amenities.<sup>29</sup> Rural places that are the recipients of this type of growth include exurban communities on the suburban fringes of most American cities, as well as destination rural amenity communities such as Jackson, Wyoming.

**D. *State politics disproportionately favor rural areas in many states.***

Because of the gerrymandered nature of political representation in state politics, in many states—but not all—rural areas maintain an outsized political weight in excess of their population or economic heft, even though that representation has been waning.<sup>30</sup> For this reason alone, rural areas in many states continue to command a disproportionate seat at the table with regard to economic opportunity for the foreseeable future.

#### **IV. THREE APPROACHES TO RURAL ECONOMIC DEVELOPMENT**

This section sketches out three approaches to rural economic development based, in part, upon work of the University of Idaho College of Law's Economic Development Clinic (Clinic) in rural communities.<sup>31</sup>

**A. *“Bottom Up” Planning Mandates for Rural Economic Development***

One major problem rural communities face in planning for their economic futures is finding the first step towards economic sustainability. The Clinic discovered this in working with a nascent economic development council in rural Valley County, Idaho. A large portion of Valley County is covered by

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28. Maureen R. Kilkenney & Stanley R. Johnson, *Rural Development Policy*, in *THE 2007 FARM BILL AND BEYOND* 129, 129 (2007).

29. *Id.*

30. See generally GERALD E. FRUG & DAVID J. BARRON, *CITY BOUND: HOW STATES STIFLE URBAN INNOVATION* (2008); see also Alan Greenblatt, *Rural Areas Lose More Legislative Representation*, *GOVERNING: THE STATES AND LOCALITIES* (Dec. 2012), <http://www.governing.com/topics/politics/gov-rural-areas-lose-legislative-representation.html> (describing some signs of declining rural representation).

31. The author of this article is Director of the Economic Development Clinic at the University of Idaho College of Law.

federal forest lands.<sup>32</sup> Its timber industry is largely gone; what remains are several small towns popular as summer and winter resort towns for city dwellers from Boise.<sup>33</sup> The council initially consulted with the Clinic seeking assistance with incorporation of the organization. However, determining the proper incorporation strategy requires knowledge of the types of activities in which the council sought to engage. After several months of conversation, it became clear that there was no consensus on the purpose of the council, much less what its first steps were to assist the local community. One mayor thought the council's first priority should be luring an airport to the area to encourage high-end tourism from other states, while a local businessman favored a contest with a prize of \$5,000 for the best business plan. These two proposals were bandied about as if they required equal commitments of time, money, and resources. The inability to prioritize projects and create discernible timelines hampered forging ahead with any effort at all. This example illustrates that it is impossible to begin any discussion of the role of law in rural economic development without first discussing how a rural community creates a vision for itself and then, how that vision is turned into an action plan for growth. Colorado Blueprint's economic development program and the integration of economic development into comprehensive planning are methods of facilitating such planning.

### **1. Colorado Blueprint's "bottom up" approach to economic development planning.**

In January, 2011, then-newly-elected Colorado Governor John Hickenlooper initiated one of the most aggressive "bottom up" economic development planning strategies ever devised in the United States. The strategy was outlined in Hickenlooper's *Executive Order 2011-003, Implementing a Statewide Economic Development Strategy*, which provided:

In order to grow Colorado's economy, it is vital to engage Coloradans across the state in developing a comprehensive and collaborative approach to economic development. This new approach is designed to identify the needs, priorities, vision, strengths, and weaknesses of each of the state's counties, and incorporate them into 64 economic development plans, tailored to each county. These plans will roll up into fourteen regional plans that will comprise a comprehensive, statewide economic development plan.<sup>34</sup>

This planning effort, which became known as Colorado Blueprint, engaged more than 5,000 people at more than 50 meetings around the State.<sup>35</sup>

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32. VALLEY CNTY., IDAHO, VALLEY COUNTY COMPREHENSIVE PLAN 28 (2010) ("Eighty-eight percent of Valley County is contained in portions of three different National Forests: the Boise, Payette, and Challis."), available at [http://www.co.valley.id.us/images/pdf/Comprehensive\\_Plan.pdf](http://www.co.valley.id.us/images/pdf/Comprehensive_Plan.pdf).

33. *Id.* at 26 ("Tourism has become more influential to the local economy. Retail and services are now the top employment category, with government second, and construction third.").

34. Colo. Exec. Order No. 2011-003, available at <http://statebillnews.com/2011/01/text-of-hickenlooper-executive-orders-issued/>.

35. COLO. OFFICE OF ECON. DEV. & INT'L TRADE, COLORADO BLUEPRINT: A BOTTOM-UP

More than 8,600 surveys were completed and all of the State's 64 counties participated.<sup>36</sup> A State team designated to lead the effort traveled more than 6,000 miles.<sup>37</sup> In addition, a dozen state agencies and statewide organizations participated.<sup>38</sup> This was the "bottom up" approach: the State did not begin drafting any economic development objectives until it first went and talked to people throughout the State's regions.

The result of the "bottom up" approach was the *Colorado Blueprint* document, which was delivered in October 2011, just nine months after Governor Hickenlooper began the program. The document provided detailed action items for the State in six identified objectives: (1) build a business friendly environment; (2) retain, grow, and recruit companies; (3) increase access to capital; (4) create and market a stronger Colorado brand; (5) educate and train the workforce of tomorrow; and (6) cultivate innovation and technology.<sup>39</sup>

But what is most instructive for rural economic development is that the Colorado Blueprint process did not begin with the statewide plan. Instead, the process created action plans for each of the State's counties and then rolled those up into fourteen regions plans. For instance, the *Comprehensive Economic Development Strategy* developed for Region 9 (Region 9 Strategy) encompasses some of Colorado's most rural areas located at State's most south-western area.<sup>40</sup> The Region 9 Strategy concluded with a chart that listed each of the region's priorities, established strategies for achieving those priorities, listed specific actions that could be taken to advance the strategies, and then listed expected outcomes and measurable results.<sup>41</sup>

As a bolded statement in the Colorado Blueprint document noted, "This is not a comprehensive collection of all-encompassing end-goals for all of Colorado, but rather a first set of achievable objectives to undertake together."<sup>42</sup> This type of action item planning arising from the communities empowers localities with steps to an achievable local future that is, simultaneously, tied to a statewide and even a global future.

## **2. Economic development in comprehensive planning.**

One model for local rural economic development, already employed in some states, simply requires economic development planning as part of the state-

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APPROACH TO ECONOMIC DEVELOPMENT 79 (2011) [hereinafter COLORADO BLUEPRINT], available at [http://www.advancecolorado.com/sites/default/files/908\\_424\\_Colorado%20Blueprint\\_11\\_7\\_no\\_jump\\_8.5\\_0.pdf](http://www.advancecolorado.com/sites/default/files/908_424_Colorado%20Blueprint_11_7_no_jump_8.5_0.pdf).

36. *Id.*

37. *Id.*

38. *Id.*

39. *See id.* at 7-18.

40. *See* REGION 9 ECON. DEV. DIST. OF SW COLO., COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY 1-1 (2011), available at [http://www.scan.org/uploads/2011\\_CEDS\\_intro.pdf](http://www.scan.org/uploads/2011_CEDS_intro.pdf) (listing the constituents of Region 9, which include Colorado's Dolores, Montezuma, San Juan, La Plata, and Archuleta Counties).

41. *Id.* at 2-53 to 2-55.

42. *See* COLORADO BLUEPRINT, *supra* note 35, at 1.

mandated local government comprehensive planning process. The American Planning Association's *Growing Smarter* publication contains an extensive model for a comprehensive planning ordinance that requires an economic development element.<sup>43</sup> In addition, at least six states—Washington State, Oregon, Georgia, Delaware, New Jersey, and Rhode Island—currently require an economic development element as part of a comprehensive planning mandate.<sup>44</sup>

There are several potential issues with integrating economic development into comprehensive planning regimes. First, comprehensive planning is typically subject to a variety of legal requirements that govern the adequacy of the comprehensive plan produced.<sup>45</sup> For instance, California and Florida require “internal consistency” between the elements in a plan.<sup>46</sup> This requirement entails additional scrutiny of the economic development element to ensure it is consistent with all the other elements. The consideration of economic growth along with environmental and equitable concerns makes sense conceptually, but may prove difficult in practice where consistency is required.

Second, comprehensive planning is often subject to environmental review, as in those states with so-called “mini-NEPAs,” or environmental review processed based upon the National Environmental Policy Act (NEPA).<sup>47</sup> In those locations, even if consistency is not required, the economic development element may also be required to illustrate that it meets environmental standards embodied in those mini-NEPAs.<sup>48</sup> This could have a chilling effect on economic development planning if environmental review

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43. See generally GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE 7-131 to 7-134 (Stuart Meck ed., 2002) (providing model language for statute or ordinance requiring economic development element as part of comprehensive planning); see also 1 AM. LAW ZONING § 5:9 (5th ed.) (discussing same).

44. WASH. REV. CODE ANN. § 36.70A.070(7) (West 2014); DEL. CODE ANN. tit. 9, § 4956(10) (West 2014); GA. COMP. R. & REGS. 110-3-2-.04 (2014); R.I. CODE R. § 2-8-1:IV (2014); OR. DEP'T OF LAND CONSERVATION AND DEV., *Goal 9: Economic Development*, in OREGON STATEWIDE PLANNING GOALS & GUIDELINES, available at <http://www.oregon.gov/LCD/docs/goals/goal9.pdf>; see also OREG. ADMIN. R. §§ 660-009-0000 to -0030 (2014); N.J. STAT. ANN. § 40:55D-28 (West 2014). The most prominent zoning treatises have only incidental discussion of economic development elements in comprehensive planning. See 1 AM. LAW ZONING § 5:9 (discussing Model APA Economic Development Element); see also 3 EDWARD H. ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING § 36:29 (4th ed.) (discussing Oregon's economic development ordinance); *id.* at § 47:2 (discussing New Jersey's economic plan element requirement); *id.* at § 36:22 (discussing states with general references to economic development planning). In addition to the states discussed in the text of the article, Washington, D.C. also has an extensive economic development plan that operates more like a city's economic development plan. See D.C. MUN. REGS. tit. 10-A, § 700.1-.10 (1984).

45. See ZIEGLER, *supra* note 44, at §§ 14:12-15.

46. See CAL. GOV'T CODE § 65300.5 (West 1975); FLA. STAT. ANN. §§ 163.3177(1)-(2), 163.3187(4) (West 2012).

47. See DANIEL R. MANDELKER, NEPA LAW AND LITIGATION § 12:2 (2d ed. 2013).

48. Some states that require economic development elements in comprehensive plans also have mini-NEPAs. See *id.* (providing summary table of states with mini-NEPAs and their applicability).

comes to dominate how communities are contemplating their economic futures. This is not to say that environmental review of proposed economic development activities is not warranted; rather, there is a balance to strike, on the one hand, between environmental review that occurs too early and stymies discussion of potential economic development activities and, on the other hand, environmental review that occurs only after the economic development strategy is all-but-decided. Third, economic development elements may not be as enforceable as other elements in a comprehensive planning regimes, which could limit the overall enforceability of larger comprehensive plans if legal rubrics are constructed to fit economic development planning. Fourth, most states require comprehensive planning to occur at the local government level.<sup>49</sup> As economies are regional, they do not fit easily within the jurisdictional lines of comprehensive planning.

For all of these reasons, the Colorado Blueprint approach appears a preferable first step to economic development planning, which can then undergo comprehensive planning and environmental review as specific action plans come into fuller view and prescribe specific actions.

#### ***B. Redefining Plans, Zoning and Other Codes to Reflect Non-Agricultural Economic Production***

Because the nature of agricultural production is changing, plans, zoning and other codes must also change how they think about and define agriculture, especially as related to small and mid-sized agricultural uses where farmers typically derive most of their income from off-farm or on-farm non-agricultural sources. Consider Canyon County, Idaho, an agricultural county on the rural-urban interface with neighboring and sprawling Boise. According to a 2009 study, the latest available as of this writing, the county has just 3,600 jobs in the county related to agriculture while 84% of the county's land is in agricultural use.<sup>50</sup> That community is also facing an increasing desire of urbanites to come and experience life on the farm with a growing offering of wineries, distilleries, u-pick orchards, and even a dude ranch. However, not all such uses are explicitly permitted by existing agricultural zoning. Should they be?

One change that is currently evolving the law of what constitutes "agriculture" is the rise of agritourism uses. In 2013 alone, two state supreme courts—those of Tennessee and Oregon—were forced to address the issue in cases of first impression.

In *Shore v. Maple Lane Farms, LLC*, the Tennessee Supreme Court and the lower Tennessee Court of Appeals split on several key issues involving

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49. See 1 AM. LAW. ZONING § 6:2 (5th ed. 2013) (discussing general characteristics of comprehensive plans).

50. Steven Peterson & Abelardo Rodríguez, *The Impacts of Irrigated Agriculture and the Economic Base of Canyon County* 20, [http://canyoncountyfb.org/documents/The\\_Economy\\_of\\_Canyon\\_County\\_2009.pdf](http://canyoncountyfb.org/documents/The_Economy_of_Canyon_County_2009.pdf) (providing jobs data); *id.* at 13 (providing land usage data).

agritourism and the rise in accessory, typically “urban” uses, on rural lands.<sup>51</sup> The appeal in *Maple Lane Farms* involves a dispute over the noise from amplified music concerts being conducted on farm land in rural Blount County, which is south of Knoxville.<sup>52</sup> According to the Tennessee Supreme Court’s description of the facts, beginning in the mid-1980s, Robert Schmidt and his family acquired approximately 225 acres in a rural area and began operating Maple Lane Farms.<sup>53</sup> The farm raised cattle, corn, vegetables, strawberries, and pumpkins.<sup>54</sup> Over the years, however, Mr. Schmidt began to offer public attractions on the farm to increase revenue.<sup>55</sup> Between 2006 and 2008, these attractions accounted for approximately 75% of the total revenue of Maple Lane Farms.<sup>56</sup> Each spring, Maple Lane Farms hosted a Strawberry Jam Festival that offered activities, including strawberry picking, face painting, rock climbing, inflatables, and other games.<sup>57</sup> Each fall, the farm presented a multi-week festival with attractions that included a corn maze, a pick-your-own pumpkin patch, hayrides, antique shows, and pageants.<sup>58</sup> At some point, Mr. Schmidt began hosting amplified music concerts during the spring and fall festivals.<sup>59</sup>

In May 2003, Shore, a retiree from Middle Tennessee, moved to the Mountain Meadows subdivision adjacent to Maple Lane Farms.<sup>60</sup> Ms. Shore, who was in her mid-seventies, believed that Nashville had become too crowded and wanted to find a home “with a little piece of land where [she] could work it and get out and grow something.”<sup>61</sup> She purchased a one-half acre tract was on a bluff overlooking Maple Lane Farms, approximately 150 feet from the Maple Lane Farms boundary line.<sup>62</sup>

Shore became increasingly concerned about the noise from the concerts, as well as the congestion on the roads and the trash left by the persons who attended the events at Maple Lane Farms.<sup>63</sup> Shore filed suit. On review, there were two major considerations for the Tennessee Supreme Court in *Maple Lane Farms*. The first was whether Shore’s common law nuisance claim, a tort characterized by interference with the use or enjoyment of the property of another, was precluded by the protection of “agriculture” as defined by

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51. *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013); *Shore v. Maple Lane Farms, LLC*, No. E2011-00158-COA-R3CV, 2012 WL 1245606 (Tenn. Ct. App. Apr. 11, 2012).

52. *Shore*, 411 S.W.3d at 409. The facts of the case recited here are taken from the Tennessee Supreme Court decision. They are substantively identical to the facts as presented by the Tennessee Court of Appeals in the case. See *Shore*, 2012 WL 1245606, at \*1-5.

53. *Shore*, 411 S.W.3d at 409.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 410.

63. *Id.*

Tennessee's Right to Farm Act.<sup>64</sup> The second question faced by the Court was whether amplified music concerts could be construed as "agriculture" for purposes of the Tennessee Code that limited local governments' regulation of agricultural uses of property.<sup>65</sup> On both issues, the Tennessee Supreme Court determined that the agritourism uses were not agriculture.<sup>66</sup>

Similarly, in *Greenfield v. Multnomah County*,<sup>67</sup> the Oregon Supreme Court had to decide whether farm-to-table dinners for 150 guests and limited to 45 events per year fell within an exception of permitted uses in an otherwise exclusive farming use district.<sup>68</sup> The Oregon Supreme Court concluded that such uses were similar enough to a "farm stand" use, as defined by statute, that they could be permitted in the use district dedicated to farming.<sup>69</sup>

Both *Maple Lane Farms* and *Greenfield* illustrate the need for codes that reflect the changing uses of agricultural lands. Many codes, especially those where there are more traditional agricultural operations, clearly do not permit alternative uses such as agritourism, that could permit farmers to have access to alternative revenue streams.

That is a mistake. Because small and mid-sized farmers depend upon non-farming sources of revenue to make their farming enterprises possible, plans, zoning, and other codes should facilitate these uses. Consider Blaine County, Idaho, which is home to the Sun Valley ski resort.<sup>70</sup> Blaine County permits a wide variety of uses in agricultural areas that allow its farmers to have access to alternative forms of income, including: commercial pet care, breeding and boarding; storage, fabrication and sales of irrigation systems; alcohol plants such as winery, brewery or distillery; greenhouses and commercial nurseries with an on-site retail facility; landscape contractors with more than two employees; stables and riding schools; guest ranches; processing of milk products; storage, mixing, blending for the purpose of sales of fertilizers or compost not to include restaurant waste; transportation services

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64. *Id.* at 415.

65. *Id.*

66. *See id.* at 423-24 ("Despite our diligent search, we have found nothing that suggests the General Assembly considered noise from amplified music concerts held on a farm to necessarily have a connection with producing farm products. Nor have we found any basis to conclude that the General Assembly considered music concerts to be some sort of farm operation. The plain language of the Tennessee Right to Farm Act reflects a close connection between producing farm products and the conditions or activities shielded by the Act. Accordingly, we decline to give the same broad interpretation to the Tennessee Right to Farm Act that was given by the courts below."); *see also id.* at 430 ("We have determined as a matter of statutory interpretation that the music concerts presented at Maple Lane Farms do not fall within the rubric of "agriculture" as that word is currently defined" by Tennessee's agricultural exemption to zoning.").

67. *Greenfield v. Multnomah Cnty.*, 317 P.3d 274 (Or. Ct. App. 2013).

68. *Id.* at 277.

69. *Id.* at 290.

70. BLAINE COUNTY, IDAHO, *Blaine County History and Statistics* (last visited April 27, 2014), [http://www.co.blaine.id.us/index.asp?SEC=2C86BABD-6D50-4F85-AC89-330E068D3D77&Type=B\\_BASIC](http://www.co.blaine.id.us/index.asp?SEC=2C86BABD-6D50-4F85-AC89-330E068D3D77&Type=B_BASIC).

for hauling agricultural products; and post and pole fabrication.<sup>71</sup> Such alternative forms of income make farming more viable for small and mid-sized farmers and make it less likely that they will feel the need to sell their land to survive.<sup>72</sup> Agricultural zoning, as well as other codes touching on agriculture, should reflect this change in the nature of how small- and mid-sized farmers operate.

Still, the greatest effect in whether more urban, agritourism uses are permitted on farms will likely depend on how state courts interpret broadly worded statutes dealing with “agriculture.” For instance, the Tennessee appellate court that was overruled in the Tennessee Supreme Court’s ruling in *Maple Lane Farms* had noted that “agriculture is changing and evolving,” and thus held that the agritourism uses were within the definition of “agriculture” for purposes of the Tennessee right-to-farm Tennessee.<sup>73</sup> While that decision was overruled in Tennessee, the appellate court’s reasoning may still prove appealing to other state appellate and state supreme courts facing the same question on first impression. Further, rulings, such as that of the Tennessee Supreme Court in *Maple Lane Farms*, may create political pressure on legislatures to redefine “agriculture” in state statutes to provide more protection to secondary uses on agricultural lands, especially if crafted to assist the viability of smaller farms.

### ***C. Identifying, Evaluating and Disclosing Risks of Government Involvement in Rural Economic Development***

Almost all rural economic development activities require governmental assistance because the market almost always trends toward urban projects.<sup>74</sup> Rural communities face tough challenges in knowing how to evaluate potential opportunities. This section advocates for state laws that provide a minima of guidance while also still retaining control at the local level. State statutes can help local communities think through key issues while still permitting local control over how those deals are conducted. The section first presents two stories that illustrate the need for oversight in rural economic development, and then proposes an approach to state statutes that could guide local governments

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71. BLAINE COUNTY, IDAHO, COUNTY CODE § 9-2-1(a)-(k) (2013), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=450](http://www.sterlingcodifiers.com/codebook/index.php?book_id=450).

72. See *supra* note 13.

73. *Shore v. Maple Lane Farms, LLC*, E2011-00158-COA-R3CV, 2012 WL 1245606 (Tenn. App. 2012), appeal granted (Aug. 16, 2012), rev’d, 411 S.W.3d 405 (Tenn. 2013).

74. Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1843 (“In the United States, the top ten metropolitan regions account for about thirty percent of national economic output; those same ten regions account for about eight percent of global economic output. To talk about the U.S. (and the global) economy then is to talk about the economy of specific regions in the United States (and around the globe). To talk about economic development is to talk about the development of cities.”); EUGENIE L. BIRCH & SUSAN M. WATCHER, *World Urbanism: The Critical Issue of the Twenty-First Century*, in GLOBAL URBANIZATION 8 (Eugenie L. Birch & Susan M. Wachter eds., Univ. of Penn. Press) (2011) (100 most populous U.S. metropolitan areas contribute seventy-five percent of the United States’s gross domestic product).

in evaluating economic development deals.

### 1. Boom-and-bust in rural amenities communities.

Teton County, Idaho was, for most of its history, a remote, high-elevation agricultural community located on the western side of Yellowstone National Park and just over the pass—an enormous pass—from Jackson, Wyoming.<sup>75</sup> Beginning around 2000, the area became inundated with speculative real estate money from around the country that saw the community as “the next Aspen” because its local ski hill, Targhee, receives one of the highest snow totals in the country.<sup>76</sup> From 2000 to 2010, Teton County’s population grew from 5,999 to 10,170, an increase of 69.5%.<sup>77</sup> Anecdotal evidence suggests much of this growth was due to the influx of recreationalists and retirees.<sup>78</sup> The influx of capital led to speculative subdivisions dotting the pristine landscape at the base of the Grand Tetons: approximately 31% of the private land has been subdivided, predominately in the last decade.<sup>79</sup> After the real estate bust, the market died and there are currently approximately 8,702 vacant lots in the county.<sup>80</sup> Of greater concern, many of the developments put in infrastructure in communities that will never be built, thus pock-marking land at the foot of one of the country’s most iconic landscapes.<sup>81</sup> The county also signed development agreements to service those communities and maintain their infrastructure, a task that could well bankrupt the county.<sup>82</sup>

### 2. The bet-the-town rural economic development deal.

The tiny town of Twin Falls, Idaho just built one of the largest yogurt factories in the world for a Greek yogurt company that did not exist five years ago. On paper, the deal looks good. The factory is worth \$450 million—maybe more than the rest of the town put together—and is a 1 million square-foot plant that employs 1,000 full- and part-time workers said to have a total

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75. TETON CNTY., IDAHO, COMPREHENSIVE PLAN – A VISION AND FRAMEWORK 2012 – 2030, at 2-1 (2012), available at [http://www.tetoncountyidaho.gov/pdf/codePolicy/120928\\_TetonID\\_CompPlan\\_FINAL.pdf](http://www.tetoncountyidaho.gov/pdf/codePolicy/120928_TetonID_CompPlan_FINAL.pdf).

76. For a full recounting of the Teton County story, see Jerrold A. Long, *Private Lands, Conflict, and Institutional Evolution in the Post-Public-Lands West*, 28 PACE ENVTL. L. REV. 670 (2011); Donald Elliott, *Premature Subdivisions and What to Do About Them* (Lincoln Inst. of Land Policy, Working Paper No. WP10DE1, 2010), available at [http://www.lincolnst.edu/pubs/1761\\_Premature-Subdivisions-and-What-to-Do-About-Them](http://www.lincolnst.edu/pubs/1761_Premature-Subdivisions-and-What-to-Do-About-Them).

77. Anna Trentadue, *Addressing Excess Development Entitlements: Lessons Learned in Teton County, Idaho* 11 (Lincoln Inst. of Land Policy, Working Paper No. WP12AT1, 2013), available at [https://www.lincolnst.edu/pubs/dl/2191\\_1517\\_Trentadue\\_WP12AT1.pdf](https://www.lincolnst.edu/pubs/dl/2191_1517_Trentadue_WP12AT1.pdf).

78. *Id.* at 10.

79. *Id.* at 1.

80. *Id.*

81. *Id.* at 31.

82. See Jim Holway, Don Elliott & Anna Trentadue, *Combating Zombie Subdivisions: How Three Communities Redressed Excess Development Entitlements*, LAND LINES, January 2014, at 4, 5, available at [https://www.lincolnst.edu/pubs/dl/2342\\_1682\\_Combating\\_Zombie\\_Subdivisions\\_0114LL.pdf](https://www.lincolnst.edu/pubs/dl/2342_1682_Combating_Zombie_Subdivisions_0114LL.pdf) (noting that locations with excess subdivision entitlements “continue to debilitate the fiscal health and quality of life in affected areas” and discussing Teton County as one example of a location seeking to correct the existing overabundance of subdivisions).

economic impact in the area of \$1.3 billion.<sup>83</sup> There is another side to the story: the ballooning subsidies to the plant because of a development agreement signed by the town and the company.<sup>84</sup> In November 2011, the company said it planned to use about \$25 million in business grants, federal grants, and state and local tax dollars to open the facility; by the time the doors to the factory opened, that subsidy had grown to more than \$54 million, including worker training reimbursements and waived fees.<sup>85</sup> In addition, urban renewal tax increment financing dollars went from \$17 million to \$36 million, because the building's size also more than doubled from its original plan.<sup>86</sup> The city also waived its sewer, building and impact fees.<sup>87</sup> The waste disposal turned out to be a big issue because Greek yogurt production yields a tremendous amount of acid whey—a 3:1 ratio of acid whey-infused water to every drop of Greek yogurt<sup>88</sup>—that is currently being spread on farm fields. As one local news report quoted a local, “I don’t know if you’ve smelled whey or not. It is nasty. Really nasty.”<sup>89</sup> Another local noted, “I was raised on a farm that had 3,000 pigs and we had whey. . . And it is not a bad smell at first, but when it gets hot, it ferments and it’s a horrible, horrible smell.”<sup>90</sup>

### 3. Identifying, evaluating and disclosing risks.

In both the Teton County and Twin Falls examples, the government shouldered tremendous risk to bring private development to a community that might otherwise have not seen growth. In Teton County, the community bet big and lost, and the results have been devastating. In Twin Falls, the future rides on whether Greek yogurt will continue to be the darling of the American palette, and also on the performance of one particular brand, which just lost distribution from a major grocery chain as of this writing.<sup>91</sup> Rural communities are especially vulnerable to this type of risk-taking, and the question becomes how to permit local governments to control their futures while also putting some limits on the amount of risk that the local government can take.

The proposal here is that state statutes can provide a minima of risk identification, evaluation, and disclosure for these types of deals that at least ensure that the local government has thought through and disclosed all of the

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83. Stephanie Strom, *U.S. Hunger for Yogurt Leads to Gigantic Factory*, N.Y. TIMES, Dec. 16, 2012, at B3.

84. City of Twin Falls, Idaho, Development Agreement (Nov. 3, 2011) (on file with author).

85. Emily Ritter Saunders, *Chobani Opens Twin Falls Yogurt Facility Today, but at What Cost to Taxpayers?*, STATEIMPACT IDAHO (Dec. 17, 2012, 7:00 AM), <http://stateimpact.npr.org/idaho/2012/12/17/chobani-opens-twin-falls-yogurt-facility-today-but-at-what-cost-to-taxpayers/>.

86. *Id.*

87. *Id.*

88. Carissa Wolf, *Away with the Whey: Chobani Yogurt Puts Rural Idaho in a Stink*, BOISE WEEKLY, Aug. 14, 2013, at 11, 13.

89. *Id.* at 12.

90. *Id.*

91. Nora Caplan-Bricker, *Why Whole Foods Really Dropped Chobani: The Yogurt Wasn't Classy Enough Anymore*, NEW REPUBLIC (Dec. 20, 2013), <http://www.newrepublic.com/article/116008/whole-foods-and-chobani-cultural-history-greek-yogurt>.

necessary components of such participation. An example of this type of statute is California's development agreement statute,<sup>92</sup> which allows a local government to enter into a contractual agreement with a developer for land development but also mandates that the agreement discuss specific items; for instance, some provisions relate to property located in flood zones<sup>93</sup> and other provisions recommend discussing financing and phasing.<sup>94</sup> Simply requiring, or even suggesting, such discussions by statute may have a significant effect on the nature of high-risk rural economic development activities. It may also help to make dealmakers more accountable, and potentially, yield better deals for communities.

## V. CONCLUSION

There is no easy solution to the difficult challenges facing rural economies. Hope, however, should not be lost. In Idaho, where I live and work, and which contains some of the largest federal forests in the country, the life of Gifford Pinchot looms large in illustrating how the diligence and perseverance of one person can dramatically alter a rural place. For much of Pinchot's life, he sought the designation of federal forests<sup>95</sup> but most of his effort was in vein. There came an opportune moment, however.

After a year of particular bad fire in the West, Teddy Roosevelt summoned Pinchot to the White House and the two men, having spent much of their free time traveling through the western forests, sat on the floor of the White House with maps and drew the boundary lines of western forests from memory.<sup>96</sup> Out of those maps the federal forests were born. They were also born out of decades of hard work, and two men singularly able—through experience and knowledge—to seize a moment of opportunity that presented itself.<sup>97</sup>

Rural economic development is much the same. Rural communities cannot simply take the first bet-the-town offer that comes their way or move from crisis-to-crisis. Instead, they need to understand the forces that are shaping rural communities and plan for the moment when the right opportunity comes. All communities will have their Pinchot moments—the time when action can yield long-sought dreams—however, such action must be guided by experience, knowledge and thought about that particular community: there is no one-sized fits all solution.<sup>98</sup> The three approaches outlined in this article—

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92. CAL. GOV'T CODE §§ 65864–65869.5 (West 2014).

93. *Id.* § 65865.5.

94. *Id.* § 65865.2.

95. *See generally* TIMOTHY EGAN, *THE BIG BURN: TEDDY ROOSEVELT AND THE FIRE THAT SAVED AMERICA* 70 (2009).

96. *Id.* at 70.

97. *Id.*

98. *See* Maureen R. Kilkenny & Stanley R. Johnson, *Rural Development Policy*, in *THE 2007 FARM BILL AND BEYOND* 129, 131 (Bruce Gardner & Dan Sumner eds., 2007) (arguing for “place-tailored” as opposed to national or “place-specific” rural economic development strategies).

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visioning for future economies; redefining the regulation of agriculture; and requiring the identification, evaluation, and disclosure of risk—are tools each community can use in pursuit of a better economy and a better life, as they await the right time for action—their Pinchot moments—to move their respective rural communities forward.