

# URBAN SPRAWL AND FARMLAND PROTECTION: RESPONDING TO CHANGES IN IDAHO'S TREASURE VALLEY

RYLEE I. DOLVEN\*

## ABSTRACT

*Agricultural land in Idaho's Treasure Valley is increasingly falling victim to urban sprawl. Notwithstanding the existence of Idaho's Right to Farm Act, policymakers should take further action to protect Idaho's farmland because the Act only functions to provide a limited nuisance exemption in response to conflict flowing from urban sprawl.*

*Though Idaho's Right to Farm Act purports to reduce the loss of agricultural land, the law has limited applicability, does not fit modern agriculture, and fails to garner community support for agriculture in urbanizing communities. This comment reviews the evolution of right-to-farm laws, takes a close look at Idaho's Right to Farm Act, and examines the future of farmland protection in Idaho, including actions that policymakers should take to protect one of Idaho's most valuable resources.*

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\* J.D. 2021, University of Idaho College of Law

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Agriculture shapes both the spirit and the landscape of the place where it is found. Its open fields, scenic vistas and way of life help define the character of an area. These attributes, so synonymous with rural life, are unique to farming [and ranching]. Other land uses cannot replicate them. When farming [and ranching] begin[] to disappear, the physical and human personality of the area is altered forever.<sup>1</sup>

## I. INTRODUCTION

Well-known as the potato state,<sup>2</sup> Idaho is nationally recognized as a significant agricultural producer and home to “nearly 25,000 farms and ranches which produce more than 185 different commodities.”<sup>3</sup> Beyond growing commodities, Idaho’s human population has made headlines in recent years, growing at record pace in

1. AM. FARMLAND TR., AGRICULTURAL AND FARMLAND PROTECTION FOR NEW YORK 6 (1993).

2. See, e.g., IDAHO CODE ANN. § 49-417C (West 2020).

3. 2018 *Idaho Agriculture Facts*, IDAHO STATE DEP’T OF AGRIC., (Nov. 2018), <https://agri.idaho.gov/main/wp-content/uploads/2018/02/IdahoAgStatsWEB.pdf>. Moreover, agriculture drives Idaho’s economy, standing as the state’s largest economic contributor. *About Idaho Agriculture*, IDAHO STATE DEP’T. OF AGRIC., <https://agri.idaho.gov/main/about/about-idaho-agriculture/> (last visited Nov. 5, 2020); see also Gracy Olmstead, *The Forgotten Treasure in These American Lands*, RESILIENCE (Nov. 19, 2019), <https://www.resilience.org/stories/2019-11-19/the-forgotten-treasure-in-these-american-lands/>.

Idaho's Treasure Valley.<sup>4</sup> Changes in otherwise rural, agrarian populations have brought many changes to rural communities, both in Idaho and throughout the United States.

These changes include loss of agricultural appreciation and involvement, as well as loss of productive agricultural land. In the last thirty years, Americans' involvement with agriculture has shifted drastically.<sup>5</sup> In that time, the percentage of the national population directly involved in agricultural production has gone from about fifty percent to only about two percent.<sup>6</sup> At the same time, young, rural people have been migrating to urban areas as part of a phenomenon known as "brain drain,"<sup>7</sup> and older, urban people have been retiring to quieter, rural America.<sup>8</sup>

Evidence of this change is readily found in the demographics of agriculturists.<sup>9</sup> For example, "[i]n 2012, the average age of a farmer or rancher was fifty-eight years, and about one-third of all agricultural land was owned by people over seventy years old."<sup>10</sup> As a result, today's average American finds herself several generations removed from farming or ranching.<sup>11</sup> These demographic changes lead to conflict when people with little understanding of agricultural operations relocate to rural communities and find themselves surrounded by agriculture.<sup>12</sup> People new

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4. *Fastest-Growing Cities Primarily in the South and West*, U.S. CENSUS BUREAU (May 23, 2019), <https://www.census.gov/newsroom/press-releases/2019/subcounty-population-estimates.html> (citing Meridian, Idaho as one of the fifteen "[f]astest-[g]rowing [l]arge [c]ities [b]etween July 1, 2017, and July 1, 2018"); see also Jillian L. Moroney & Rebecca Som Castellano, *Farmland Loss and Concern in the Treasure Valley*, 35 AGRIC. & HUM. VALUES 529, 529–30 (2018); Samantha Sharf, *Full List: America's Fastest-Growing Cities 2018*, FORBES (Feb. 28, 2018, 3:53 PM), <https://www.forbes.com/sites/samanthasharf/2018/02/28/full-list-americas-fastest-growing-cities-2018/#27fd85ab7feb>; Katie Warren, *4 Days in the Fastest-Growing City in America: Microbreweries, Millennial Transplants – and Locals Who are Already Afraid of Getting Priced Out*, BUS. INSIDER (Dec. 11, 2019, 6:15 AM), <https://www.businessinsider.com/boise-idaho-fastest-growing-city-in-us-photos-growth-cost-2019-12>.

5. See *infra* notes 6–13.

6. Tiffany Dowell, *Daddy Won't Sell the Farm: Drafting Right to Farm Statutes to Protect Small Family Producers*, 18 SAN JOAQUIN AGRIC. L. REV. 127, 127 (2009); see also Lindsey L. Johnson, *Urban Creep in Upstate New York: Optimizing the Preservation of Agricultural Land*, 82 ALB. L. REV. 665, 665–69 (2019).

7. PATRICK J. CARR & MARIA J. KEFALAS, *HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA* 1–4 (2009).

8. Dowell, *supra* note 6, at 127–28. As related, Idaho is becoming increasingly attractive to wealthy, absentee landowners, which is further contributing to Idaho's gentrification and increasing tension between Idaho natives and newcomers. See Julie Turkewitz, *Who Gets to Own the West?*, N.Y. TIMES (June 22, 2019), <https://www.nytimes.com/2019/06/22/us/wilks-brothers-fracking-business.html>. As these wealthy newcomers continue to purchase large swaths of land and shutter access to these same lands under the guise of preservation, resource-based economic activity, as well as the region's culture, will suffer. See generally Laura Lundquist, *Montanans Fear Growth Will Diminish Outdoor Heritage*, MISSOULA CURRENT (Nov. 4, 2019), <https://missoulacurrent.com/outdoors/2019/11/montana-outdoor-heritage/>; Turkewitz, *supra*.

9. See *infra* notes 10–13.

10. THOMAS L. DANIELS & JOHN C. KEENE, *THE LAW OF AGRICULTURAL LAND PRESERVATION IN THE UNITED STATES* 17 (2018).

11. Dowell, *supra* note 6, at 129.

12. *Id.* at 129–30.

to rural living commonly complain about agricultural practices that are regular business for those familiar with agriculture, including slow moving tractors on roadways and the smell of manure as it is spread across fields.<sup>13</sup>

Perhaps predictably, the reduced involvement in agricultural production and shifts in rural populations have also led to loss of productive agricultural lands to housing developments.<sup>14</sup> Such loss is often referred to as urban sprawl, which may be “defined as dispersed and inefficient urban growth.”<sup>15</sup> Unfortunately, farmland is prime fodder for urban sprawl because “farmland is usually the easiest to develop because of its deep, well-drained soils and gentle topography.”<sup>16</sup> That said, “[a]bout half of the agricultural land lost is prime farmland.”<sup>17</sup>

Though not exclusively lost to housing developments, over one hundred million acres of farmland were lost between 1974 and 2012, and while loss of farmland has slowed some in recent years, the average loss continues to exceed half a million acres annually.<sup>18</sup> *Every hour*, urban sprawl removes another 175 acres from agricultural use in America.<sup>19</sup> The impacts of urban sprawl on agriculture may even be felt well before the land has been converted to other uses.<sup>20</sup> For example:

[w]hen farmers and ranchers expect nonfarm development to occur nearby, they often reduce or postpone their investments in buildings and equipment because they foresee the eventual sale of the farm or ranch for development. Some agricultural lands may even sit idle as landowners wait to sell the farm or ranch. This situation is known as the “impermanence syndrome” and explains how the agricultural industry can decline in a community or region even before agricultural land is actually converted to residential or commercial use.<sup>21</sup>

Once productive agricultural land is developed for housing, that land likely will never return to productive agricultural use.<sup>22</sup>

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13. *Id.* at 130–31.

14. See generally SUSAN A. SCHNEIDER, FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW 187 (2011); Moroney & Som Castellano, *supra* note 4, at 529–30.

15. John E. Hasse & Richard G. Lathrop, *Land Resource Impact Indicators of Urban Sprawl*, 23 APPLIED GEOGRAPHY 159, 159 (2003).

16. DANIELS & KEENE, *supra* note 10, at 4.

17. DANIELS & KEENE, *supra* note 10, at 24.

18. DANIELS & KEENE, *supra* note 10, at 24. While the loss of farmland has not received much attention at a national, newsworthy level, recent presidential candidate Joe Sestak expressed concern for the livelihood of American farms and even proposed a National Land Bank that would keep agricultural lands in productive agricultural use. See generally *Joe Sestak Releases His Agriculture Policy Platform*, CNBNEWS (July 18, 2019), <https://www.gloucestercitynews.net/clearysnotebook/2019/07/joe-sestak-releases-his-agriculture-policy-platform.html>.

19. Johnson, *supra* note 6, at 667.

20. DANIELS & KEENE, *supra* note 10, at 24–25.

21. DANIELS & KEENE, *supra* note 10, at 24–25.

22. Johnson, *supra* note 6, at 666–69; see also SCHNEIDER, *supra* note 14, at 188. Unfortunately, rural amenities like these are not regularly accounted for in the market value of land, and therefore, the value of these amenities is not always considered when landowners decide whether to develop agricultural lands. SCHNEIDER, *supra* note 14, at 188. Given that the development of farmland is usually a permanent loss of farmland, the loss of rural amenities offered by farmland is also a permanent loss. *Id.*

In Idaho, the Treasure Valley has grown immensely in the last twenty years.<sup>23</sup> For example, Idaho's capital, Boise, was nationally recognized as the fastest growing city in the United States in 2018 and is part of the area within the state known as the Treasure Valley.<sup>24</sup> The increase in population has not only led to greater competition in land use but has also contributed to increasing urban encroachment, as urban areas sprawl into traditionally rural, agricultural areas.<sup>25</sup> In terms of development to accommodate population growth, urban encroachment into farmland is the Treasure Valley's primary form of urban growth.<sup>26</sup> Despite development's intrusion into the Treasure Valley's agricultural lands, little has been done in the name of farmland protection in Idaho.<sup>27</sup>

In light of the increasing threat of urban sprawl to the Treasure Valley's agricultural lands, this comment explores why people should care about this issue and discusses farmland protection and preservation, including the differences between the two. Though the differences in farmland protection and preservation will be explored, this comment focuses more exclusively on farmland protection and, specifically, on right-to-farm acts. The discussion of farmland protection will address current techniques in effect in Idaho, such as Idaho's Right to Farm Act, and will explore other protection methods Idaho could adopt to further solidify its support of agriculture.

## II. THE IMPORTANCE OF PROTECTING IDAHO'S AGRICULTURAL LANDS

Though loss of agricultural land is undeniable, why is it important that policymakers and the public take action on farmland protection? First, agriculture is economically beneficial for the nation, standing as one of the few economic sectors with a trade surplus.<sup>28</sup> In Idaho, agriculture accounts for 28 percent of the state's economic output.<sup>29</sup> Second, agricultural lands are beneficial to the environment.<sup>30</sup> These lands provide wildlife habitat, recharge water tables, and

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23. See Moroney & Som Castellano, *supra* note 4, at 529–30; Frankie Barnhill, *Growing Pains: What Rapid Growth Means for the Future of the Treasure Valley*, BOISE ST. PUB. RADIO (Sept. 21, 2020), <https://www.boisestatepublicradio.org/post/growing-pains-what-rapid-growth-means-future-treasure-valley>; see also Sharf, *supra* note 4. See generally Olmstead, *supra* note 3.

24. Sharf, *supra* note 4. Between 2010 and 2018, Boise's population increased over eighteen percent. Warren, *supra* note 4.

25. Moroney & Som Castellano, *supra* note 4, at 530; see also Rachel Spacek, *Commissioners Say No to Affordable Homes Near Farmland*, BOISEDEV (Aug. 14, 2020), <https://boisedev.com/news/2020/08/14/canyon-county-homes/>; *Growing Pains: Balancing Farmland and Affordable Housing Needs in Caldwell*, BOISE ST. PUB. RADIO (Sept. 28, 2020), <https://www.boisestatepublicradio.org/post/growing-pains-balancing-farmland-and-affordable-housing-needs-caldwell>.

26. Moroney & Som Castellano, *supra* note 4, at 530–31.

27. See *infra* notes 119–158.

28. DANIELS & KEENE, *supra* note 10, at 2.

29. *Agriculture in Idaho*, IDAHO ST. DEP'T OF AGRIC., <https://agri.idaho.gov/main/idaho-agriculture-facts-and-statistics/> (last visited Nov. 20, 2020).

30. DANIELS & KEENE, *supra* note 10, at 3.

help with carbon retention.<sup>31</sup> Third, the loss of grazing land, specifically, can negatively impact biodiversity and result in adverse effects to rural economies.<sup>32</sup> Specifically, the loss of grazing land may negatively impact wildlife populations, which in turn may reduce wildlife-based recreation, such as hunting and fishing, in the community.<sup>33</sup>

More generally, the continued loss of farmland in increasingly urban areas will result in additional adverse effects. Though the loss of agricultural land does not pose an immediate threat to our nation's food supply, about a quarter of the nation's food is produced in metropolitan areas.<sup>34</sup> As suburban areas continue to grow, the farmland in these metropolitan areas faces development.<sup>35</sup> Additionally, the loss of farmland poses a threat to rural amenities, which include "open space, scenic views, rural agrarian character, wildlife habitat, and other environmental services."<sup>36</sup> As farmland is urbanized, these rural amenities are necessarily lost with the loss of farmland. Continued urbanization may also lead to farmland fragmentation, which occurs when nonfarm development begins to break up the otherwise agricultural landscape.<sup>37</sup> Farmland fragmentation can result in increased conflicts between farmers and urban neighbors, increased land prices, and changed farming practices.<sup>38</sup> As a result, the loss of agricultural lands reaches beyond the farmer's pocketbook and has sweeping impacts on the entire community.

With these impacts in mind, one may wonder whether the people residing in Idaho's Treasure Valley are concerned with the area's farmland loss or even believe that the area's farmland should be protected. After all, if the people residing in the area are not concerned with these land-use changes, policymakers may feel less incentive to take action. To this point, groups like the Coalition for Agriculture's Future and Treasure Our Valley have emerged with the goal of protecting and promoting agricultural lands and heritage through community education and involvement.<sup>39</sup>

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31. *Id.* at 2.

32. SCHNEIDER, *supra* note 14, at 188.

33. SCHNEIDER, *supra* note 14, at 188.

34. DANIELS & KEENE, *supra* note 10, at 26. Moreover, increasing demand for locally produced food "has increased interest in farmland [protection and] preservation, as the availability of local food is often less than current demand." SCHNEIDER, *supra* note 14, at 192. In other words, even urban residents are realizing that "[f]armland near metropolitan areas is needed to serve the local food markets." SCHNEIDER, *supra* note 14, at 192.

35. DANIELS & KEENE, *supra* note 10, at 26.

36. SCHNEIDER, *supra* note 14, at 188.

37. DANIELS & KEENE, *supra* note 10, at 25.

38. DANIELS & KEENE, *supra* note 10, at 25. Regarding changed farming practices, certain types of farming that require more acreage to be profitable may be abandoned in favor of different types of farming that require less acreage to remain profitable. DANIELS & KEENE, *supra* note 10, at 25.

39. See *Coal. for Agric.'s Future v. Canyon Cty.*, 160 Idaho 142, 369 P.3d 920 (2016); TREASURE OUR VALLEY, <https://www.treasureourvalley.org/> (last visited Nov. 5, 2020); Leif Bakken, *Ag Groups Form 'Farmers for a Sustainable Future'*, NORTHERN AG NETWORK (Feb. 20, 2020, 6:30 AM), <https://www.northernag.net/ag-groups-form-farmers-for-a-sustainable-future/?fbclid=IwAR2BiVOp6bcIEQuj1YyJF27Z-yKw8JELKFPnScAohi1b6AwQj7cr2OdNQ> (observing agriculturists' efforts to share information with the public about "U.S. agriculture's commitment to sustainability" and desire of agriculturists "to ensure the adoption of meaningful and constructive policies and programs affecting agriculture"). See also Rachel Spacek, *Commissioners Say No to Affordable Homes Near Farmland*, BOISEDEV (Aug. 14, 2020),

In 2016, researchers at Boise State University (BSU) surveyed Treasure Valley residents about the loss of farmland and found that both rural and urban residents were generally somewhat to very concerned about the loss of farmland.<sup>40</sup> Even more recently, Payette County, a small county located on the Treasure Valley's western edge, surveyed county residents about whether protection and preservation of agricultural land remained a priority for the county.<sup>41</sup> The county found that over ninety percent of survey respondents expressed continued support for agriculture.<sup>42</sup> A majority of surveyed residents living outside of city limits indicated that rural subdivision developments should be limited,<sup>43</sup> which arguably suggests that at least rural residents desire to protect Payette County's agricultural land.

In broader terms, the BSU research and Payette County survey reflect that both urban and rural residents of the Treasure Valley are concerned about the loss of agricultural land. Ultimately, this data reveals that protecting agricultural land is a supported social policy in the Treasure Valley. Policymakers should take action to increase protection for farmland because increased protection would be responsive to the public's concern about the loss of farmland to urban sprawl.

### III. FARMLAND PROTECTION VERSUS FARMLAND PRESERVATION

To address the growing concern of farmland loss from urban sprawl, agriculturalists can utilize safeguards that take the form of farmland protection and farmland preservation. The distinction between farmland protection and farmland preservation is worth noting. Farmland protection focuses on, often temporary, techniques to protect farmland, while farmland preservation focuses on a landowner's voluntary act of reserving land solely for farming uses, often via use of a conservation easement.<sup>44</sup> Thus, while farmland preservation creates contractual options to preserve farmland, farmland protection is illustrative of a more political focus on the importance of farmland and can play an integral role in farmland preservation.<sup>45</sup> Additionally, farmland protection techniques "can give landowners some confidence that, if they [contractually] preserve their land, they can continue

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<https://boisedev.com/news/2020/08/14/canyon-county-homes/> (noting an August 2020 Canyon County zoning decision made in favor of protecting and preserving farmland, notwithstanding an increasing need in the Treasure Valley for affordable housing).

40. Moroney & Som Castellano, *supra* note 4, at 531–33. In this study, the researchers defined the Treasure Valley as encompassing Ada, Canyon, and Owyhee counties. Moroney & Som Castellano, *supra* note 4, at 532.

41. Corey Evan, *Planning for the Future*, ARGUS OBSERVER (Dec. 25, 2019), [https://www.argusobserver.com/independent/news/planning-for-the-future/article\\_74cbe240-25e5-11ea-adf3-a75161506b6f.html](https://www.argusobserver.com/independent/news/planning-for-the-future/article_74cbe240-25e5-11ea-adf3-a75161506b6f.html). The survey was completed in preparation for updating Payette County's comprehensive plan. *Id.*

42. *Id.*

43. *Id.*

44. Thomas L. Daniels, *Farmland Preservation Policies in the United States: Successes and Shortcomings*, DEPARTMENTAL PAPERS (CITY & REGIONAL PLAN.) 4–6 (2004); see also DANIELS & KEENE, *supra* note 10, at 323.

45. Daniels, *supra* note 44, 4–6.

their agricultural operations and will not become surrounded by conflicting development.”<sup>46</sup>

In other words, the existence and availability of farmland protection techniques show the farmer that the public is in her corner and ultimately represents that, though a community may be urbanizing, the social value of agriculture and agricultural land is still recognized and respected.<sup>47</sup> As noted earlier, this comment focuses more extensively on farmland protection, rather than farmland preservation, and does so because of the social support aspect inherent to farmland protection. More to the point, that focus is due to the positive political focus that produces farmland protection techniques and provides a foundation for successful farmland preservation. However, because farmland protection often lays the ground for successful farmland preservation, this comment will briefly review common farmland preservation tactics and outcomes for context.

Usually, farmland preservation takes shape in a conservation easement.<sup>48</sup> “A conservation easement is ‘an interest in land in the possession of another which is capable of conversion by a conveyance[,]’ which serves to protect one or more natural resource features of a particular piece of land.”<sup>49</sup> For example, a farmer’s sale of an agricultural conservation easement generally restricts the land to agricultural uses and, as a result, serves to preserve that land from urban development.<sup>50</sup> Thus, farmland preservation relies on the individual farmer’s choice to preserve lands and, unlike farmland protection, is not necessarily reflective of a community understanding or endorsement of the importance of agricultural land.

Federal farmland preservation began to emerge in 1981 when the federal government started taking action to lessen the conversion of farmland to urban use.<sup>51</sup> At that time, Congress had already developed a taxable deduction for conservation easements to incentivize landowner participation in such preservation.<sup>52</sup> By 1996, the Farmland Protection Program, later renamed the Farm and Ranch Lands Protection Program, emerged as a farmland preservation tool that provided funds to purchase agricultural conservation easements.<sup>53</sup> In 2002, the federal government authorized the Grassland Reserve Program (GRP) to protect grazing lands via permanent conservation easements or rental contracts.<sup>54</sup> The GRP “[was] designed to protect grasslands for livestock grazing and other uses from conversions to cropland and urban uses, and promote sustainable grazing practices.”<sup>55</sup> In 2014, Congress merged these two programs “and the Wetlands Reserve Program into the Agricultural Conservation Easement Program.”<sup>56</sup> Shortly thereafter, the available tax deduction flowing from a qualified conservation

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46. DANIELS & KEENE, *supra* note 10, at 323.

47. *See generally* DANIELS & KEENE, *supra* note 10, at 323.

48. *Id.* at 11–13.

49. *Id.* at 70 (quoting RESTATEMENT (FIRST) OF PROPERTY § 450 (1944)).

50. *Id.* at 13.

51. SCHNEIDER, *supra* note 14, at 188.

52. DANIELS & KEENE, *supra* note 10, at 74.

53. SCHNEIDER, *supra* note 14, at 188.

54. SCHNEIDER, *supra* note 14, at 189. The rental contracts are long-term, spanning from ten to twenty years. Lands enrolled in the GRP are also required to have an “approved grazing management plan.” SCHNEIDER, *supra* note 14, at 189.

55. SCHNEIDER, *supra* note 14, at 189.

56. DANIELS & KEENE, *supra* note 10, at 74–75.

easement was expanded to further incentivize utilization of conservation easements.<sup>57</sup> By early 2017, “nearly six million acres of agricultural lands [had] been preserved through conservation easements by government agencies and land trusts.”<sup>58</sup>

Returning to farmland protection, common farmland protection programs at the state level include “favorable property taxation for agricultural land,”<sup>59</sup> a governor’s executive order “directing state agencies to review state projects that would convert agricultural land to nonfarm uses,”<sup>60</sup> and right-to-farm laws.<sup>61</sup> Regarding the first protection technique, agricultural land receives favorable property taxation in all states.<sup>62</sup> Commonly, favorable property taxation is achieved by using differential assessment, which allows farm and ranchland to be assessed at its value as agricultural land rather than at its fair market value.<sup>63</sup> In effect, this assessment scheme serves to “assure farmers and ranchers that they are unlikely to be forced out of agriculture because of high property taxes.”<sup>64</sup>

The second protection technique, a governor’s executive order, is a minority farmland protection technique whereby the governor directs “state agencies to review state projects that would convert agricultural land to nonfarm uses.”<sup>65</sup> Clearly, this technique would be ineffective at protecting agricultural land from private urbanization because the protection is aimed at state agencies. As a third farmland protection technique, right-to-farm laws have been enacted in every state and function “to offer some legal protection for farmers and ranchers against suits involving normal farming practices.”<sup>66</sup>

Though several farmland preservation options currently exist for farmers and ranchers,<sup>67</sup> farmland protection techniques in Idaho are not as developed. Beyond favorable taxation, the most readily available farmland protection technique for Idaho’s agriculturists is Idaho’s Right to Farm Act (RTFA). Given that “[a]gricultural land preservation programs are more likely to succeed when there is public support for agriculture,”<sup>68</sup> efforts should be made in Idaho to increase the availability of farmland protection techniques. The rest of this comment explores right-to-farm laws in general, as well as Idaho’s RTFA, and discusses other methods to further protect Idaho’s agricultural land in the face of urban sprawl.

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57. *Id.* at 75.

58. *Id.*

59. *Id.* at 333.

60. *Id.* at 340.

61. *Id.* at 337.

62. DANIELS & KEENE, *supra* note 10, at 333.

63. *Id.*

64. *Id.*

65. *Id.* at 340.

66. *Id.* at 337.

67. *See, e.g.*, SCHNEIDER, *supra* note 14, at 176–78, 180–81, 187–90. For example, the Farm and Ranchland Protection Program was enacted by the federal government in 1996. Today, this program exists within the Agricultural Conservation Easement Program. DANIELS & KEENE, *supra* note 10, at 4.

68. DANIELS & KEENE, *supra* note 10, at 232.

## IV. RIGHT-TO-FARM ACTS SHARE A COMMON GOAL

In the 1980s, right-to-farm laws began to emerge as the preeminent vehicle for protecting agriculturalists from nuisance suits arising in urbanizing communities.<sup>69</sup> As urban residents moved into rural communities, conflicts arose as the previously urban residents discovered they did not appreciate the smell of livestock manure or disliked the dust the neighbor's tractor kicked up.<sup>70</sup> Within a period of four years, a majority of jurisdictions adopted right-to-farm laws.<sup>71</sup> By 1992, all fifty states had right-to-farm laws on the books.<sup>72</sup> As urban-rural conflict continued to develop, right-to-farm laws were often adopted in response to the fear of agriculturists that urbanization would force unwelcome changes in generations-old agricultural practices.<sup>73</sup>

Though right-to-farm laws vary from state to state, "the basic theme is to protect farms from private nuisance actions by codifying the 'comes to the nuisance' rule."<sup>74</sup> Generally, these laws protect a farm or ranch from a neighbor's nuisance lawsuit if the agricultural operation was there first and had been there for at least a year.<sup>75</sup> By moving in next door, the new neighbors "are coming to the nuisance, and thus they are creating the conflict."<sup>76</sup> That said, right-to-farm laws were developed with "the common goal of encouraging farmers to continue devoting their land to agricultural purposes."<sup>77</sup>

## A. Right-to-farm laws exist in three common forms.

While right-to-farm laws share a common goal, the laws may take different forms in attempting to achieve this goal. Three common forms exist.<sup>78</sup> The first, and most common, form includes those right-to-farm laws that provide a nuisance exemption for specified agricultural activities.<sup>79</sup> A farmer may utilize the nuisance exemption if her farm satisfies certain statutory criteria.<sup>80</sup> For example, Idaho's

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69. See Jacqueline P. Hand, *Right-to-Farm Laws: Breaking New Ground in the Preservation of Farmland*, 45 U. PITT. L. REV. 289 (1984); see also Beau R. Morgan, *Iowa and Right to Farm: An Analysis of the Constitutionality of Right to Farm Statutes Across the United States*, 53 CREIGHTON L. REV. 623, 625–26 (2020).

In Idaho, for example, a nuisance is statutorily defined as "[a]nything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. . . ." IDAHO CODE ANN § 52-101 (West 2020). More narrowly, a nuisance may involve the "wrongful interference with the *use and enjoyment* of real property." *Mock v. Potlatch Corp.*, 786 F. Supp. 1545, 1548 (D. Idaho 1992).

70. DANIELS & KEENE, *supra* note 10, at 337.

71. Hand, *supra* note 69, at 289. By the end of 1983, forty-seven states had enacted right-to-farm laws. Hand, *supra* note 69, at 297.

72. Tiffany Dowell, *Daddy Won't Sell the Farm: Drafting Right to Farm Statutes to Protect Small Family Producers*, 18 SAN JOAQUIN AGRIC. L. REV. 127, 133 (2009).

73. *Id.* at 132.

74. SCHNEIDER, *supra* note 14, at 155; see also Morgan, *supra* note 69, at 623–24.

75. DANIELS & KEENE, *supra* note 10, at 337.

76. *Id.*

77. Hand, *supra* note 69, at 289.

78. Madeleine Skaller, *Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability*, 27 SAN JOAQUIN AGRIC. L. REV. 209, 212–13 (2018).

79. *Id.* at 212.

80. *Id.*

Right to Farm Act is readily characterized as one that provides a broad nuisance exemption.<sup>81</sup> In order for the nuisance exemption to apply, Idaho's Act requires that the agricultural operation was not a nuisance when started and has been in operation for longer than a year.<sup>82</sup> By providing this exemption, Idaho aims "to reduce the loss to the state of its agricultural resources."<sup>83</sup> However, this form of law has a clear limitation in that it requires conflict prior to affording protection.<sup>84</sup>

The second common form, referred to as agricultural districting, prevents creation of "regulations that restrict commonly accepted agricultural practices" in a particular area (*i.e.*, "district").<sup>85</sup> Moreover, agricultural districts usually provide specific benefits, determined by state legislatures, that landowners may receive by enrolling their lands in such a district.<sup>86</sup> Designation of an agricultural district usually requires the farmer to initiate the process for districting an area as agricultural.<sup>87</sup> Additionally, an agricultural district may have acreage requirements. For example, Illinois requires a proposed agricultural district consist of at least 350 acres if the county population is less than six hundred thousand or consist of at least 100 acres if the county population is greater than six hundred thousand.<sup>88</sup>

Approval of the district usually comes from a governmental agency and may involve public comment.<sup>89</sup> In Illinois, the county board makes decisions regarding agricultural areas; interestingly though, the board may choose to create a committee of farmers to advise the board when determining whether an agricultural area should be created, modified, or terminated.<sup>90</sup> By allowing for the establishment of agricultural districts, Illinois aims "to conserve, protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."<sup>91</sup> A landowner's ability to enroll in an agricultural district usually hinges on meeting certain eligibility standards, so even in states that have this form of right-to-farm law, not all farmers and ranchers can reap the benefits of that particular program.<sup>92</sup>

The third common form, though present in only a few states, creates agricultural zoning that provides protection, via exemption from regulation, for areas zoned as agricultural.<sup>93</sup> By zoning certain areas as agricultural, this form is

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81. IDAHO CODE ANN. § 22-4501 (West 2020).

82. *Id.* § 22-4503.

83. *Id.* § 22-4501.

84. *See, e.g.*, DANIELS & KEENE, *supra* note 10, at 339. Though this type of right-to-farm provides a defense, it "does not take away a neighbor's right to file suit against the agricultural operator next door." DANIELS & KEENE, *supra* note 10, at 339. Therefore, this form of right-to-farm law necessarily depends on community conflict and does not spare the farmer or rancher the expense of litigation. DANIELS & KEENE, *supra* note 10, at 339.

85. Skaller, *supra* note 78, at 212; *see also* Hand, *supra* note 69, at 294.

86. DANIELS & KEENE, *supra* note 10, at 336.

87. Hand, *supra* note 69, at 295; *see also* 505 ILL. COMP. STAT. 5/5 (2019).

88. 505 ILL. COMP. STAT. 5/5 (2019).

89. Hand, *supra* note 69, at 295; *see also* 505 ILL. COMP. STAT. 5/6 (2019).

90. 505 ILL. COMP. STAT. 5/4 (2019).

91. 505 ILL. COMP. STAT. 5/2 (2019).

92. DANIELS & KEENE, *supra* note 10, at 336.

93. Skaller, *supra* note 78, at 212–13; *see also* Hand, *supra* note 69, at 295.

“designed to separate urban and farm uses.”<sup>94</sup> In effect, agricultural zoning establishes “the purposes for which land may be used.”<sup>95</sup> In Oregon, for example, land may be zoned “exclusively for farm use.”<sup>96</sup> Though defined extensively, Oregon defines “farm use” broadly to include, among other things, traditional farming, equine schooling shows, and even the breeding and harvesting of aquatic species.<sup>97</sup>

Though different forms of right-to-farm laws exist, all of the laws generally embody the basic goal “to protect farms from private nuisance actions by codifying the ‘comes to the nuisance’ rule.”<sup>98</sup> Despite the seemingly broad encouragement of agriculture, right-to-farm “laws are not designed to completely shield [farmers and ranchers] from all nuisance lawsuits.”<sup>99</sup> As discussed with reference to Idaho’s law above, nuisance exemptions are usually only available if the farmer meets certain statutory criteria and, therefore, qualifies for the exemption,<sup>100</sup> meaning that not all farms and ranches are protected by these laws.

Moreover, depending on the law, the difference in operation size and type may also limit applicability of a right-to-farm law, given the original intent of right-to-farm laws. Modernly,

America’s agricultural industry consists of small, medium, and large farms. The U.S. Department of Agriculture defines a farm as “[a]ny place from which \$1,000 of agricultural products were produced and sold, or normally, would have been sold during a Census year.” Small farms are less than 50 acres in size and generate less than \$250,000 a year in gross sales. . . . Medium-size[d] farms vary from 50 to 500 acres and have sales of \$250,000 to \$500,000 a year. Large farms cover more than 500 acres and have more than \$500,000 a year in gross sales.<sup>101</sup>

Thus, in a state like Illinois with minimum acreage requirements for an agricultural district,<sup>102</sup> small and medium farms are at a distinct disadvantage when it comes to utilizing the right-to-farm law purely because of the farm’s size. This oddity in application becomes even more interesting when one considers the

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94. Hand, *supra* note 69, at 295.

95. Hand, *supra* note 69, at 295.

96. OR. REV. STAT. § 215.203(1) (2020). While Oregon does provide for agricultural zoning, which is a possible form of a right-to-farm law, Oregon’s Right to Farm Law separately provides a nuisance exemption for farming and forest practices. OR. REV. STAT. § 30.936 (2020). Thus, Oregon’s attempt to encourage continued agricultural practices actually takes two recognized forms: nuisance exemption and agricultural zoning. Despite the functional effect of agricultural zoning affording protection to agricultural land use and practices, Oregon’s Right to Farm Law is expressly grounded in the nuisance exemption, not agricultural zoning. See OR. REV. STAT. § 30.933 (2020).

97. OR. REV. STAT. § 215.203(2)(a) (2020).

98. SCHNEIDER, *supra* note 14, at 155; Morgan, *supra* note 69, at 626–27. *But see* Joseph Malanson, *Returning Right-to-Farm Laws to Their Roots*, 97 WASH. U. L. REV. 1577, 1585, 1601 (2020) (noting that “numerous states provide [right-to-farm] immunity outside the context of urbanization” and arguing that right-to-farm should be reformed—specifically, arguing that “agricultural operations should only be shielded from nuisance liability when sued by new neighbors in the context of urbanization”).

99. Dowell, *supra* note 72, at 133.

100. See *supra* notes 79–84 and accompanying text.

101. DANIELS & KEENE, *supra* note 10, at 30 (internal citations omitted).

102. 505 Ill. Comp. Stat. 5/5 (2019).

original intent of right-to-farm laws and how much the agricultural industry has advanced in recent years.

B. Changes in modern agriculture have prompted questions about how right-to-farm laws should apply to industrial agriculture.

In the time since right-to-farm laws first came to be, the nature of agriculture has evolved, particularly with reference to size and scope of operation. Originally, the common goal of encouraging the continued use of land for agricultural purposes was aimed at the traditional and smaller farming operations known at that time, and times have definitely changed.<sup>103</sup> From the 1960s to 2012, the number of farms in the United States was reduced by about half while the amount of acreage used for farming remained relatively stable.<sup>104</sup> By 2015, eighty percent of the rented farmland in the United States was owned by non-farming landlords.<sup>105</sup> This shift in land ownership is representative of the general shift toward industrialized, large-scale agricultural operations, rather than the traditional farm that may otherwise come to mind.<sup>106</sup>

As an example of size-based distinction, traditional agricultural operations are readily distinguished from concentrated animal feeding operations (CAFOs).<sup>107</sup> An example of a CAFO would be an operation that houses over four thousand hogs and, due to its size, has its own sewage system.<sup>108</sup> Notably, the CAFO is readily distinguished from the aesthetically-pleasing, small farm landscape that might otherwise come to mind when thinking about what constitutes a traditional farm. In response to the perceived shift toward industrialized agriculture, people have questioned whether right-to-farm laws should offer protection to industrialized agriculture.<sup>109</sup> Indeed, even family farmers have found themselves as plaintiffs in suits against industrial operations where the industrial operation is asserting that it is protected by a right-to-farm law.<sup>110</sup>

Despite the legitimate questions surrounding industrial agriculture, right-to-farm law provisions addressing change in an operation's size vary or, sometimes, do not exist at all.<sup>111</sup> Some states include provisions that accommodate an agricultural operation's growth while other states do not allow for any material changes in the operation.<sup>112</sup> In what is arguably the best approach, yet another set of states generally prohibit major changes to the agricultural operation but

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103. See generally Skaller, *supra* note 78, at 209.

104. *Id.*

105. Press Release, Nat'l Agric. Statistics Serv., Most of the U.S. Rented Farmland is Owned by Non-Farmers (Aug. 31, 2015), [https://www.nass.usda.gov/Newsroom/archive/2015/08\\_31\\_2015.php](https://www.nass.usda.gov/Newsroom/archive/2015/08_31_2015.php).

106. Skaller, *supra* note 78, at 209. Some make compelling arguments that corporate agriculture should not be protected by right-to-farm laws. See generally *id.*

107. *Id.* at 209.

108. *Id.*

109. See SCHNEIDER, *supra* note 14, at 202–03.

110. *Id.* at 203.

111. Dowell, *supra* note 72, at 143–46.

112. *Id.* at 144–45.

continue to provide protection in the face of certain changes to or reasonable growth of the operation.<sup>113</sup> Examples of allowed changes or growth may take shape in allowing changes of farm ownership, adoption of new technology, or farm growth of a particular number of animals or acres in a certain period of time.<sup>114</sup>

Notwithstanding the perceptible, quantitative, and qualitative shift toward industrialized agriculture, “[a]bout 97 percent of all U.S. farms are owned and operated by families.”<sup>115</sup> Thus, while concerns about right-to-farm law provisions applying to industrial agriculture may be well-founded, especially given the nature of these industrial operations, such concerns do not apply to the vast majority of farms. Accordingly, the remainder of this comment’s discussion focuses on protecting agricultural lands via protection of traditional farming and ranching practices because protection of traditional operations is the accepted purpose of right-to-farm laws.<sup>116</sup>

That all said, the most readily available farmland protection technique available at the state level to Idaho farmers and ranchers takes form in the Idaho RTFA.<sup>117</sup> Though Idaho’s RTFA does offer agriculturalists some protection, the Act is not a reliable solution to addressing the loss of farmland to urban sprawl.<sup>118</sup>

#### V. IDAHO’S RIGHT-TO-FARM ACT

Originally enacted in 1981, Idaho’s RTFA is premised on “the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.”<sup>119</sup> As noted earlier, Idaho’s Act clearly takes form as an act providing a nuisance exemption.<sup>120</sup> To be afforded the nuisance exemption under Idaho’s RTFA, the agricultural operation must have been operating for longer than a year and must not have been a nuisance at the time it started.<sup>121</sup> For the exemption to apply, the Act also requires that the agricultural operation face “changed conditions in or about the surrounding nonagricultural activities” since the operation first began.<sup>122</sup>

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113. *Id.* at 145–46.

114. *Id.* at 143–46.

115. DANIELS & KEENE, *supra* note 10, at 29.

116. *See supra* note 103 and accompanying text.

117. *See infra* notes 119–125 and accompanying text.

118. *See infra* pp. 19–25; *see generally* Neil D. Hamilton, Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective, 3 DRAKE J. AGRIC. L. 103 (1998) (noting that despite justifiable roots, the effectiveness of right-to-farm laws is arguable).

119. IDAHO CODE ANN. § 22-4501 (West 2020).

120. *See supra* notes 79-84 and accompanying text.

121. IDAHO CODE ANN. § 22-4503 (West 2020). Idaho’s RTFA defined “[i]mproper or negligent operation” to mean “that the agricultural operation is not undertaken in conformity with federal, state and local laws and regulations or permits, and adversely affects the public health and safety.” *Id.* § 22-4502(4).

122. *Id.* § 22-4503; *see also* Payne v. Skaar, 127 Idaho 341, 344, 900 P.2d 1352, 1355 (1995) (holding Idaho’s RTFA nuisance exemption did not apply when the area surrounding the expanding cattle feedlot had not experienced urbanization). The Idaho Supreme Court has upheld the Payne requirement that urbanization is a prerequisite to application of Idaho’s RTFA nuisance exemption. *See generally* McVicars v. Christensen, 156 Idaho 58, 320 P.3d 948 (2014) (rejecting the application of Idaho’s RTFA to the construction of an indoor riding arena for horses due to a lack of urban encroachment and lack of change in surrounding activities); Crea v. Crea, 135 Idaho 246, 16 P.3d 922 (2000) (rejecting the

The Act defines an agricultural operation as “an activity or condition that occurs in connection with the production of agricultural products for food, fiber, fuel and other lawful uses.”<sup>123</sup> Conversely, nonagricultural activities under Idaho’s RTFA include “residential, commercial or industrial property development and use not associated with the production of agricultural products.”<sup>124</sup>

Generally, Idaho’s RTFA provides agriculturists in urbanizing areas with a broad nuisance exemption.<sup>125</sup> Thus, like many states adopting an RTFA, Idaho seemingly “made the policy judgment that the social benefits of retaining land in agriculture are so critical that, rather than allowing courts to decide on a case-by-case basis whether agricultural use is reasonable, the balance between agriculture and other uses should always be tipped toward agriculture.”<sup>126</sup> However, as this discussion will explore, though Idaho may have intended to tip the scales in agriculture’s favor, it has not successfully done so because the Act emphasizes its protection on production agriculture and has been interpreted to require community conflict before affording a nuisance exemption.

A. Idaho’s RTFA does not protect all farm or ranch-based agricultural pursuits in the face of urban sprawl.

First, Idaho’s RTFA protection favors traditional production agriculturists and, therefore, arguably does not afford protection to all profitable production-based agricultural pursuits. In 2011, Idaho’s RTFA was amended to expand agricultural pursuits that fell within the Act’s bounds.<sup>127</sup> Prior to amendment, the 1999 definition of “agricultural operation” focused on agricultural activities related to producing food commodities,<sup>128</sup> which is an arguably limited portion of agricultural endeavors that may be undertaken for profit on a farm or ranch.

Under the prior 1999 definition, protection was offered to “any facility for the growing, raising or production of agricultural . . . crops and vegetable products . . . , poultry and poultry products, livestock, field grains, seeds, hay, apiary, and dairy productions, and the processing for commercial purposes of agricultural commodities, including the processing of such commodities into food commodities.”<sup>129</sup> As amended in 2011, the Act now encompasses agricultural operations that are “in connection with the production of agricultural products for

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application of Idaho’s RTFA to an expanded family hog operation due to a lack of urban encroachment and lack of changes in surrounding activities).

123. IDAHO CODE ANN. § 22-4502(2) (West 2020).

124. *Id.* § 22-4502(3).

125. *Payne*, 127 Idaho at 344, 900 P.2d at 1355. Given how broad the protection under right-to-farm laws can be, some have challenged such laws, including Idaho’s, as an unconstitutional taking. *See, e.g., Moon v. North Idaho Farmers Ass’n*, 140 Idaho 536, 96 P.3d 637 (2004) (holding Idaho’s RTFA is constitutional under both the Idaho and United States Constitutions). *See Morgan, supra* note 69, at 635–41, for a continued discussion of the constitutionality of right-to-farm laws.

126. *Hand, supra* note 69, at 305.

127. IDAHO CODE ANN. § 22-4505 (West 2020).

128. *See id.* § 22-4502(2).

129. *Id.*

food, fiber, fuel and other lawful uses.”<sup>130</sup> The 2011 definition goes on to provide an unlimited list of uses that would fall under this definition.<sup>131</sup>

Though the “other lawful uses” portion of the definition seems like it might reach broadly, the list of activities that expressly fall within activities of an “agricultural operation” remains largely tailored toward commodity production.<sup>132</sup> For example, the list includes “[p]reparing land for agricultural production,”<sup>133</sup> “[p]rocessing and packaging agricultural products,”<sup>134</sup> and “[m]anufacturing animal feed.”<sup>135</sup> Relying on the canon of *eiusdem generis*,<sup>136</sup> one could readily conclude that “other lawful uses” must be similar in kind to “the production of agricultural products for food, fiber, [and] fuel.”<sup>137</sup> Also indicative of the emphasis on production agriculture, the Act defines “[n]onagricultural activities,” which would not receive protection, as “residential, commercial or industrial property development and use *not associated with the production of agricultural products.*”<sup>138</sup>

Based on the existing text, Idaho’s RTFA still favors production agriculturists despite the 2011 attempt to broaden the Act’s reach. Unfortunately, the Act does not define the meaning of agricultural production or agricultural products.<sup>139</sup> Therefore, secondary usage of the farm, which may be adopted to increase the farm’s profitability, may not be protected under Idaho’s RTFA, even though that usage is related to agricultural production. For example, increasing urbanization may lead Fannie Farmer to reduce the overall acreage of her farm and to transform the now smaller operation into a “part-time hobby farm[] that produce[s] only small amounts of food and fiber.”<sup>140</sup>

To maintain the farm’s profitability, Fannie Farmer may turn to agritourism and invite her new urban neighbors to tour her hobby farm, where they identify crops and pet farm animals but do not purchase any agricultural food or fiber products. Unfortunately, this influx of visitors likely will increase dust produced by the farm, which, as a potential nuisance, calls the applicability of Idaho’s RTFA into question. Assuming all other aspects of applying Idaho’s RTFA are satisfied,<sup>141</sup> is identifying crops and petting farm animals an agricultural operation?

In this scenario, these activities are “occur[ring] in connection with the production of agricultural products,” but are these activities the type of “other

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130. *Id.*

131. *Id.*

132. See generally IDAHO CODE ANN. § 22-4502(2) (a)-(k) (West 2020).

133. *Id.* § 22-4502(2)(b).

134. *Id.* § 22-4502(2)(f).

135. *Id.* § 22-4502(2)(g).

136. *Ejusdem Generis*, CORNELL L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/ejusdem\\_generis](https://www.law.cornell.edu/wex/ejusdem_generis) (last visited Nov. 1, 2020). “When a law lists classes or persons or things, [*ejusdem generis*] is used to clarify such a list.” *Id.*

137. IDAHO CODE ANN. § 22-4502(2) (West 2020).

138. *Id.* § 22-4502(3) (emphasis added).

139. See generally *id.* § 22-4502 (defining only “[a]gricultural facility,” “[a]gricultural operation,” “[n]onagricultural activities,” and “[i]mproper or negligent operation”).

140. DANIELS & KEENE, *supra* note 10, at 25.

141. See *supra* Section V. In particular, if Fannie Farmer incorporated agritourism only after her new urban neighbors moved in, she probably is unable to qualify for Idaho’s RTFA protection, because she changed her operation in response to the urbanization. See IDAHO CODE ANN. § 22-4503 (West 2020).

lawful uses” that Idaho’s legislature intended to protect?<sup>142</sup> Idaho courts have not yet answered this question, and thus, Fannie Farmer is left unsure of whether her agricultural operation will actually be afforded the nuisance exemption.<sup>143</sup> Broadly, this example illustrates that Idaho’s RTFA does not afford nuisance protection to all profitable production-based pursuits that may occur on a farm or ranch, especially one in an urbanizing area.

B. Idaho’s RTFA requires community conflict and, thus, does not foster public support for agriculture in urbanizing communities.

Idaho’s Act is not a proactive way of preventing the loss of agricultural land, because the Act has been interpreted to require urbanization prior to affording protection.<sup>144</sup> In other words, Idaho’s RTFA does not protect farmland until the surrounding area has urbanized, and due to that urbanization, community conflict has occurred.<sup>145</sup> For example, in *Payne v. Skaar*, neighboring landowners brought suit against a cattle feedlot that had been operating for nearly twenty years.<sup>146</sup> The feedlot had expanded in that time, and the neighboring landowners grew dissatisfied with the smell, dust, and flies that came with a cattle feedlot.<sup>147</sup> In the roughly ten years leading to the lawsuit, the feedlot was “operated within industry standards and in conformity with federal, state and local laws and regulations.”<sup>148</sup> Despite the farmer’s compliance with applicable standards, laws, and regulations, the neighboring landowners’ complaint alleged both private and public nuisance.<sup>149</sup>

In his defense, the farmer argued that Idaho’s RTFA should protect his expanding feedlot from the nuisance action, because the feedlot was not initially a nuisance, had been operating for longer than a year, and had been operated in

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142. IDAHO CODE ANN. § 22-4502(2) (West 2020). As related, Idaho’s legislature has recognized that “agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture,” IDAHO CODE ANN. § 6-3002 (West 2020), and has limited the civil liability of agritourism operators in certain situations, *Id.* § 6-3004. Despite recognition of the value of agritourism, the legislature has not expressly connected agritourism to Idaho’s RTFA. Admittedly, Idaho’s RTFA does extend to “[s]elling agricultural products at a farmers or roadside market.” *Id.* § 22-4502(2)(j). See also Ross H. Pifer, *Right to Farm Statutes and the Changing State of Modern Agriculture*, 46 CREIGHTON L. REV. 707, 713–14 (2013) (discussing the murkiness of applying a typical right-to-farm law to a typical winery that grows some of its own grapes but also purchases off-site grapes and hosts non-agricultural activities, including concerts and weddings).

143. Likewise, if Fannie Farmer chose to make this change in her operation only after her new neighbors moved in, she likely would not qualify for Idaho’s RTFA protection, because her operation has not faced “changed conditions in or about the surrounding nonagricultural activities” since her now changed operation first began. IDAHO CODE ANN § 22-4503 (West 2020); see *infra* Section V.B.

144. See generally *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

145. Additionally, even when the farmer attempts to prevent community conflict by educating her new neighbors, the applicability of the Act’s nuisance exemption is murky. See generally *supra* Section V.A.

146. *Payne*, 127 Idaho at 342, 900 P.2d at 1353.

147. *Id.* at 342–43, 900 P.2d at 1353–54.

148. *Id.* at 343, 900 P.2d at 1354.

149. *Id.*

compliance with industry standards and applicable federal, state, and local laws.<sup>150</sup> The Idaho Supreme Court rejected the farmer's argument, noting that Idaho's "RTFA is more specifically tailored to encroachment of 'urbanizing areas' . . . and situations where there have been changes in 'surrounding nonagricultural activities' . . . , which is not the case here."<sup>151</sup> Therefore, application of the Act to protect farmers requires that the area urbanize after the agricultural operation has been established. Thus, Idaho's RTFA is not a proactive step in protecting agricultural land but, rather, is a reactive measure, requiring community conflict.

The Idaho Supreme Court has continued to hold that Idaho's RTFA functions reactively to community conflict.<sup>152</sup> In *Coalition for Agriculture's Future v. Canyon County*, the Idaho Supreme Court dismissed a proactive claim brought by the Coalition for a lack of standing.<sup>153</sup> There, the Coalition alleged that Canyon County was failing to comply with its new comprehensive plan, which included a component "to protect and preserve Canyon County's agricultural lands."<sup>154</sup> The Coalition sought to have action taken under the new comprehensive plan invalidated or, alternatively, to have Canyon County restrained from rezoning agricultural areas.<sup>155</sup> The Idaho Supreme Court ultimately affirmed dismissal of the Coalition's claim for a lack of standing, citing several reasons for doing so.<sup>156</sup> Consequently, precedent has firmly established that Idaho's RTFA is not a proactive farmland protection technique but, rather, is a reactive measure to be utilized when urbanization has already encroached upon agricultural lands.<sup>157</sup>

In effect, Idaho's RTFA serves to deter nuisance lawsuits by developing a defense that favors agricultural operations meeting certain requirements. However, as agriculture continues to change and urbanization continues to spread into the Treasure Valley's rural communities, the limited protection offered by Idaho's RTFA will become increasingly insufficient.<sup>158</sup>

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150. *Id.* at 344, 900 P.2d at 1355.

151. *Id.*; *Cf.* *Himsel v. Himsel*, 122 N.E.3d 935 (Ind. Ct. App. 2019) (applying Indiana's RTFA, which very broadly protects agricultural operations as long as changes to such operations are not "significant," to bar a nuisance claim, even though neighbors had moved near the farm prior to the farm's transition to a concentrated animal feeding operation (CAFO)), *reh'g denied sub nom.* *Himsel v. 4/9 Livestock, LLC*, 143 N.E.3d 950 (Ind. 2020), *cert. denied* \_\_\_ S. Ct. \_\_\_ (2020).

152. *See infra* notes 153–157.

153. *Coal. for Agric.'s Future v. Canyon Cty.*, 160 Idaho 142, 148, 369 P.3d 920, 926 (2016).

154. *Id.* at 144, 369 P.3d at 922.

155. *Id.* at 145, 369 P.3d at 923.

156. *Id.* at 145–46, 369 P.3d at 923–24. First, the Court held that the Coalition failed to allege a specific injury. *Id.* at 146, 369 P.3d at 924. Second, the Court held that the Coalition failed to establish standing because the injury claimed was "neither distinct nor particularized" because as alleged, such an injury would cause all of Canyon County's citizens to suffer. *Id.* Third, even if a specific injury was alleged, the Court found the injury lacked traceability to Canyon County's alleged failure to comply with its new comprehensive plan. *Id.*

157. *See, e.g., Coal. for Agric.'s Future v. Canyon Cty.*, 160 Idaho 142, 369 P.3d 920 (2016); *Payne v. Skaar*, 127 Idaho 341, 900 P.2d 1352 (1995).

158. *See generally* DANIELS & KEENE, *supra* note 10, at 341. As one commentator put it, "[t]o the extent states have enacted right-to-farm laws and then concluded the work needed to provide for the future of farming is done, they have misled not only themselves but their farm constituencies." Hamilton, *supra* note 118, at 118.

## VI. OTHER METHODS OF FARMLAND PROTECTION

Despite its specific goal to reduce the loss of agricultural resources, Idaho's RTFA does not eliminate other pressures to sell the farm that emerge as an area urbanizes.<sup>159</sup> For example, agriculturists still face the cost of litigation,<sup>160</sup> even if Idaho's RTFA does provide a defense to nuisance claims.<sup>161</sup> Additionally, current interpretation of Idaho's RTFA has not clarified whether a growing agricultural operation in an urbanizing area would be protected,<sup>162</sup> and given the changing nature of agriculture,<sup>163</sup> this uncertainty increases pressure to sell the farm,<sup>164</sup> rather than run the economic risk.

Additionally, increased urbanization "often cause[s] an increase in real estate values and, correspondingly, the real estate taxes that are due on agricultural lands."<sup>165</sup> On a related note, agricultural lands often are home to amenities that are not measured in the real estate value market, "including open space, scenic views, rural agrarian character, wildlife habitat, and other environmental services."<sup>166</sup> Because these amenities are not typically factored into land value, the landowner is not financially incentivized by the existing amenity benefits when considering whether to sell the land for urban development.<sup>167</sup>

Taken together, "[a]ll of these factors can impose a strain on the economic viability of farms as well as provide an incentive for farmers to exit agricultural production."<sup>168</sup> As a result, policymakers should consider other methods of farmland protection because Idaho's RTFA certainly does not eliminate other pressures to sell the farm. Other methods of farmland protection may include modifying the existing RTFA,<sup>169</sup> incentivizing secondary usage of farms and ranches

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159. See *infra* notes 160–168 and accompanying text. See generally Hamilton, *supra* note 118.

160. See Thomas B. McNulty, *The Pennsylvanian Farmer Receives No Real Protection from the Pennsylvania Right to Farm Act*, 10 PA. ST. ENVTL. L. REV. 81, 87–89 (2001). See also DANIELS & KEENE, *supra* note 10, at 339.

161. See *supra* note 125 and accompanying text.

162. See generally Payne v. Skaar, 127 Idaho 341, 344, 900 P.2d 1352, 1355, (1995) ("The district court correctly concluded the RTFA does not wholly prevent a finding of nuisance in circumstances of an expanding agricultural operation surrounded by an area that has remained substantially unchanged.").

163. Dowell, *supra* note 72, at 143–46.

164. Moreover, resale home prices in Ada County and Canyon County increased by over \$58,000 and \$32,000, respectively, from January 2019 to January 2020. Thomas Plank, *Ada County Home Prices Up \$58K Over Last Year, Canyon County up \$32K*, KTVB, (Feb. 23, 2020, 9:32 AM), <https://www.ktvb.com/article/news/local/growing-idaho/ada-home-prices-up-58k-over-last-year-canyon-up-32k/277-66dad027-2265-4158-b471-a2373721d439>. This increase in home price alone may well prompt a farmer to sell her farmhouse and accompanying land in order to relocate somewhere more rural.

165. Pifer, *supra* note 142, at 707.

166. SCHNEIDER, *supra* note 14, at 188.

167. *Id.*

168. Pifer, *supra* note 142, at 707.

169. See *infra* Section VI.A.

to increase profitability,<sup>170</sup> and actively involving local communities in farmland protection efforts.<sup>171</sup>

A. Idaho policymakers should consider modifying RTFA protections to encourage community support of agriculture.

First, Idaho could modify the existing RTFA in an effort to develop and encourage support of agriculture. Modification of existing right-to-farm laws is a legitimate option because some right-to-farm provisions are more effective for specifically protecting traditionally-sized family farms.<sup>172</sup> Such provisions include those protecting “generally accepted agricultural practices,” allowing successful defending farmers to recover attorney fees, limiting damages available to plaintiffs, and requiring that people in the community are both aware of right-to-farm laws and understand how these laws apply.<sup>173</sup> Provisions that address changes in agricultural operations are also desirable because agricultural technology is constantly evolving.<sup>174</sup> The overall impact of these changes, though, should be to encourage “community cohesion” and the support of agriculture “[a]s urban citizens continue to spread out and begin to share space with rural farmers [and ranchers].”<sup>175</sup> By making a dedicated effort to increase community knowledge of agriculture and the protection afforded by the RTFA, policymakers can effectively reduce the need for community conflict currently required for Idaho’s RTFA to apply.

Additionally, policymakers could consider expanding Idaho’s RTFA protection beyond nuisance. For example, North Dakotans passed an amendment to the North Dakota Constitution in 2012 that created a constitutional right to farm and ranch.<sup>176</sup> The amendment provides the following: “The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production, and ranching practices.”<sup>177</sup> Following this amendment, other states have attempted creating a constitutional right-to-farm and ranch amendment with mixed success.<sup>178</sup>

Some argue that right-to-farm constitutional amendments are the next step in the evolution of right-to-farm laws.<sup>179</sup> Unlike existing right-to-farm statutes that are triggered by conflict, a constitutional right-to-farm amendment may be seen as an effort to “protect[] in-state interests from out-of-state interests,” as well as a

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170. See *infra* Section VI.B.

171. See *infra* Section VI.C.

172. Dowell, *supra* note 72, at 133.

173. *Id.*

174. *Id.* at 143–46.

175. Skaller, *supra* note 78, at 229; see also AM. FARMLAND TR., AGRICULTURAL AND FARMLAND PROTECTION FOR NEW YORK 55–56 (1993).

176. N.D. CONST. art. XI, § 29.

177. *Id.*

178. Ariel Overstreet-Adkins, Extraordinary Protections for the Industry That Feeds Us: Examining a Potential Constitutional Right to Farm and Ranch in Montana, 77 MONT. L. REV. 85, 85–86 (2016). In 2013, a Montana senator unsuccessfully attempted to follow North Dakota’s lead. *Id.* However, in 2014, Missouri successfully adopted a right-to-farm amendment. *Id.* at 86.

179. Overstreet-Adkins, *supra* note 178, at 87.

response to “the growing urban-rural divide and disconnect between those who produce food and those who consume it.”<sup>180</sup> Largely, the movement toward constitutional right-to-farm amendments was spurred by California’s passage of the Prevention of Farm Animal Cruelty Act in 2008, which served as the impetus for North Dakota’s amendment.<sup>181</sup> In the face of changing pressures on agriculture, policymakers should consider expanding RTFA protection beyond nuisance, and a constitutional amendment would be a bold method of creating another layer of protection for Idaho’s agriculturalists and agricultural lands.

B. Idaho policymakers should incentivize secondary usage of farms and ranches by extending protection afforded under the RTFA.

Second, Idaho could simplify and further incentivize secondary usage of farms and ranches to increase the profitability of otherwise traditional farms and ranches. Secondary usage can be split into different forms, including direct marketing, agritourism, and nonagricultural, commercial secondary use, which will be focused on here.<sup>182</sup> The first form, including direct marketing and agritourism, usually involves a pre-existing agricultural use of the property.<sup>183</sup> By contrast, the second form, including nonagricultural, commercial secondary use, is normally not an outgrowth of a pre-existing agricultural use but, rather, is the addition of another service, such as using a historic barn for a wedding venue or hosting a music festival in a hayfield.<sup>184</sup>

Turning to the first form, extended protection for direct marketing and agritourism would be welcome because “[f]arms that engage in direct marketing and agritourism are a growing segment of modern agriculture.”<sup>185</sup> Direct marketing includes agricultural producers advertising and selling directly to the public.<sup>186</sup> In Idaho, agritourism has been defined as

any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities including, but not limited to, farming, ranching, historic, cultural, on-site educational programs, recreational farming programs that may include on-site hospitality services, guided and self-guided tours, bed and breakfast accommodations, petting zoos, farm festivals, corn mazes, harvest-your-own operations, hayrides, barn parties, horseback riding, fee

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180. *Id.* at 97.

181. *Id.* at 97–99.

182. *See infra* pp. 29–33 and notes 185–218.

183. *See infra* pp. 29–30 and notes 185–197.

184. *See infra* pp. 31–33 and notes 198–218.

185. Pifer, *supra* note 142, at 713.

186. *See generally* Pifer, *supra* note 142, at 713–14.

fishing and camping. An activity is an agritourism activity whether or not the participant paid to participate in the activity.<sup>187</sup>

Practically speaking, “[a]gritourism is a viable and sustainable diversification option for increasing farmer income and saving the family farm.”<sup>188</sup> By 2010, twenty-two states adopted agritourism legislation.<sup>189</sup> The general trend of agritourism legislation is toward providing liability protection for the agriculturalist,<sup>190</sup> rather than providing a nuisance exemption. However, given the growing role of agritourism in modern agriculture, the protection afforded by RTFAs should be expanded to include agritourism.<sup>191</sup> Policymakers who fail to consider protecting agritourism and direct marketing from farms and ranches are threatening the profitability and success of these particular farms and ranches.<sup>192</sup>

In 2013, Idaho’s legislature enacted the Idaho Agritourism Promotion Act, which provides a civil liability exemption for qualified agritourism operators.<sup>193</sup> In doing so, Idaho policymakers recognized the value of agritourism to the general public.<sup>194</sup> However, the legislature has not yet fully incorporated agritourism into Idaho’s RTFA.<sup>195</sup> One may argue that enactment of the Idaho Agritourism Promotion Act implies legislative intent that agritourism activities should fall within the bounds of Idaho’s RTFA because “agritourism provides a valuable opportunity for the general public to interact with, experience and understand agriculture.”<sup>196</sup> However, the failure to clearly bring agritourism operations within the bounds of Idaho’s RTFA protection leaves agritourism producers open to nuisance suits from new urban neighbors that may or may not be successfully defended by asserting Idaho’s RTFA.<sup>197</sup>

Moving to secondary usage that does not rely on or include a pre-existing agricultural activity, other jurisdictions have indicated that such secondary usage is

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187. IDAHO CODE ANN. § 6-3003(1) (West 2020).

188. Elizabeth Dooly, *Watch Where You’re Steppin’ Out Here: Why States Should Adopt Legislation to Promote the Diversified Farming Practice of Agritourism*, 15 *DRAKE J. AGRIC. L.* 455, 458 (2010).

189. *Id.*

190. *See generally id.*

191. *See Pifer, supra* note 142, at 713–14.

192. *Id.*

193. IDAHO CODE ANN. §§ 6-3001–6-3005 (West 2020). Provided certain requirements are met and certain exceptions do not apply, “an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities.” *Id.*; § 6-3004(1) (2020); *see also supra* note 142 and accompanying text. The “inherent risks of agritourism activities” are defined to include “those dangers or conditions that are an integral part of an agritourism activity. . . .” IDAHO CODE ANN. § 6-3003(3) (West 2020). Thus, while Idaho’s RTFA is aimed at nuisance liability, *id.* at § 22-4505 (2020), Idaho’s Agritourism Promotion Act is aimed at the civil liability “associated with inherent risks” that exists on farms and ranches. *Id.* at § 6-3002 (2020). *See also supra* Section V.A.

194. IDAHO CODE ANN. § 6-3002 (West 2020).

195. *See generally* IDAHO CODE ANN. §§ 22-4501–22-4506 (West 2020). Specifically, Idaho’s RTFA, as a bar to nuisance actions, is aimed at agricultural operations that are “connected with the production of agricultural products for food, fiber, fuel, and other lawful uses.” *Id.* §§ 22-4502(2), 22-4505. At least arguably, an agritourism facility may benefit from Idaho’s Agritourism Promotion Act but may not benefit from Idaho’s RTFA. *See supra* Section V.A.

196. *See generally* IDAHO CODE ANN. § 6-3002 (West 2020).

197. *See supra* Section V.A. *See also Pifer, supra* note 142, at 713–14.

not protected by right-to-farm laws.<sup>198</sup> For example, the Rhode Island Supreme Court held that Rhode Island's RTFA does not permit a farmer to host nonagricultural commercial events on his farmland.<sup>199</sup> In *Zarella*, the farmer had been enjoined from using his farmland for commercial events, such as weddings and fundraising events, in 2011; however, the injunction, by its own terms, could be superseded by statute at a later date.<sup>200</sup>

In 2014, Rhode Island amended its right-to-farm law, and the farmer believed that the amendment brought his secondary, nonagricultural use within the protection of Rhode Island's RTFA because the statute appeared to approve of the secondary usage of agricultural land.<sup>201</sup> The question presented was "whether, by enacting the 2014 amendment to [Rhode Island's RTFA, the legislature] expanded the definition of 'agricultural operations' to include the hosting of commercial events, such as weddings for a fee."<sup>202</sup> Though the amendment provided that "mixed-use of farms and farmlands for other forms of enterprise . . . are hereby recognized as a valuable and viable means of contributing to the preservation of agriculture,"<sup>203</sup> the court ultimately held that hosting weddings was a nonagricultural mixed-use that did not fall under Rhode Island's amended RTFA.<sup>204</sup> More to the point, the court held the amendment was not an expansion of the meaning of "agricultural operations" but rather, a statement of policy that provided "a list of encouraged activities that the [legislature] has deemed 'valuable and viable' with respect to 'contributing to the preservation of agriculture.'"<sup>205</sup>

In a more recent case, an Oregon court held that even an agriculturally-based, commercial secondary usage must be "incidental and subordinate to th[e] existing commercial farm use" to be allowed.<sup>206</sup> In *Friends of Yamhill County*, the court reviewed a county's "approval of a permit to conduct beer-tasting events on land that was zoned for exclusive farm use."<sup>207</sup> The primary agricultural use of the land at issue was an orchard of filberts, and the secondary use of the property included

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198. See generally *Friends of Yamhill Cty. v. Yamhill Cty.*, 458 P.3d 1130 (Or. Ct. App. 2020); *Gerald P. Zarella Trust v. Town of Exeter*, 176 A.3d 467 (R.I. 2018); *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405 (Tenn. 2013).

199. *Zarella*, 176 A.3d at 468.

200. *Id.*

201. *Id.* at 468–69.

202. *Id.* at 470.

203. *Id.* (quoting 2 R.I. GEN LAWS §2-23-4(a) (2014)). The amendment does provide a list of activities that the legislature has "recognized as a valuable and viable means of contributing to the preservation of agriculture" that includes "the display of antique vehicles and equipment, retail sales, tours, classes, petting, feeding, and viewing of animals, hay rides, crop mazes, festivals and other special events." *Id.* at 471.

204. *Id.*

205. *Zarella*, 176 A.3d at 471–72 (quoting 2 R.I. GEN LAWS § 2-23-4(a) (2014)).

206. *Friends of Yamhill Cty. v. Yamhill Cty.*, 458 P.3d 1130, 1131 (Or. Ct. App. 2020) (quoting OR. REV. STAT. § 215.283(4)(d)(A) (2020)). See also *Litchfield Twp. Bd. of Trustees v. Forever Blueberry Barn, L.L.C.*, 153 N.E.3d 63 (Ohio 2020) (finding that an Ohio zoning exemption for agriculture applied, even though the barn was also used as an event venue, because the primary use of the barn was vinting and selling wine produced on the property).

207. *Friends of Yamhill Cty.*, 458 P.3d at 1131. See also *supra* text accompanying note 96.

a brewery and tasting room operated on the orchard property.<sup>208</sup> The brewery had previously “applied for a separate permit to hold up to 18 commercial events per year on the property.”<sup>209</sup> As part of the process to renew the commercial event permit, the brewery had to “explain how the proposed events [were] incidental and subordinate to th[e] existing commercial farm use.”<sup>210</sup> Relying on the brewery’s explanation that this secondary use would occur no more than eighteen times a year and, therefore, was incidental to filbert production, the county found the proposed events to be incidental and subordinate to the commercial farm use.<sup>211</sup> On appeal to Land Use Board of Appeals (LUBA), LUBA rejected the petitioners’ challenge to the county’s finding that the events were incidental and subordinate to the filbert orchard and held that the county did not err.<sup>212</sup> Following rejection by LUBA, the petitioners sought judicial review.<sup>213</sup>

Faced with the question of “whether the proposed events were ‘incidental and subordinate to’ the agricultural use of the property,”<sup>214</sup> the court held “that LUBA erred in affirming the county’s determination” because “the phrase ‘incidental and subordinate to’ is a term of art . . . that requires more than an evaluation of the frequency of the proposed events compared to farm use.”<sup>215</sup> Rather, the court recognized that “incidental and subordinate to” requires consideration of several factors, “including the nature, intensity, and economic value of the respective uses.”<sup>216</sup>

Taken together, both *Zarella* and *Friends of Yamhill County* reflect that if policymakers choose to expand Idaho’s RTFA protection to apply to secondary usage of agricultural land, policymakers must expressly extend protection. Both cases also suggest that policymakers should be aware of the difference between extending protection to commercial secondary usage in general versus extending protection to agritourism events or events that are otherwise related to agriculture.

In both instances, the legislatures of Rhode Island and Oregon had contemplated extending protection to agriculturally-based secondary use.<sup>217</sup> In *Zarella*, the court made clear that in order to be afforded protection under the Rhode Island RTFA, the secondary usage had to fall within the definition of “agricultural operation.”<sup>218</sup> Moreover, both cases are clear that commercial secondary use not related to or in support of agriculture will not be a protected use under the applicable agricultural protection technique in those states. Accordingly, should Idaho’s policymakers extend RTFA protection to secondary use of farms and

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208. *Friends of Yamhill Cty.*, 458 P.3d at 1131.

209. *Id.* The county zoning ordinance allowing for such secondary use served to implement an existing Oregon statute. *Id.* at 1133. That statute allows “agri-tourism and other commercial events or activities that are related to and supportive of agriculture [to] be established in any area zoned for exclusive farm use.” OR. REV. STAT. § 215.283(4) (West 2020).

210. *Friends of Yamhill Cty.*, 458 P.3d at 1132.

211. *Id.* at 1132–33.

212. *Id.*

213. *Id.* at 1131, 1133.

214. *Id.* at 1133.

215. *Id.* at 1137.

216. *Friends of Yamhill Cty.*, 458 P.3d at 1135.

217. *See supra* notes 198–216 and accompanying text.

218. *See supra* notes 198–205 and accompanying text.

ranches, they must decide how far to extend that protection and must be express in extending protection.

Going beyond protecting agriculturally-based secondary usage, policymakers should consider other farmland protection techniques that would more readily promote nonagricultural, commercial secondary usage of agricultural use, including for example using farms as event venues. Policymakers should consider doing so because such use not only improves a farm or ranch's bottom line but also incentivizes the maintenance of historical buildings. In effect, extending protection to certain nonagricultural, commercial secondary use would do more than provide a nuisance defense, for example, because the protection would enable the landowner to confidently receive compensation for a rural amenity, relieving some pressure to sell land for development.<sup>219</sup> In short, by affording protection to agritourism and other secondary usage, Idaho could help farms and ranches increase profitability and remain sustainable. Those efforts would be reflective of the greater goal of conserving Idaho's agricultural resources.<sup>220</sup>

C. Idaho policymakers should actively involve local communities in farmland protection efforts by encouraging rural development.

Third, Idaho policymakers should make efforts to actively engage and involve local communities in farmland protection, as part of encouraging successful and sustainable rural development. Idaho policymakers should take two routes of action. First, policymakers should encourage rural communities to develop and update comprehensive plans.<sup>221</sup> Second, policymakers should develop and provide rural communities with resources aimed at stimulating rural economic development.<sup>222</sup> Though encouraging rural development may seem contrary to protecting farmland from urban sprawl, some argue that "[m]any factors threaten

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219. See SCHNEIDER, *supra* note 14, at 188. Typically, rural amenities do not factor into the value of property, which means the agricultural landowners are unable "to extract payment from anyone by providing these services." SCHNEIDER, *supra* note 14, at 188. Therefore, when deciding whether to sell land for development, the landowner may not evaluate "the social value of these amenities . . . when considering whether to develop land for urban-related purposes." SCHNEIDER, *supra* note 14 at 188.

220. See generally IDAHO CODE ANN. § 22-4501 (West 2020) (expressing "the intent of legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance").

221. See generally Neil D. Hamilton, Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective, 3 DRAKE J. AGRIC. L. 103, 118 (1998) (commenting that "[i]t does little good to provide right-to-farm protections for farms if they are not accompanied by effective land-use planning efforts that try to limit the ability of non-farm users to intrude into agricultural areas"); Gerrit-Jan Knaap & Arnab Chakraborty, Comprehensive Planning for Sustainable Rural Development, 37(1) J. REGIONAL ANALYSIS & POL'Y (SPECIAL ISSUE ON RURAL DEV. POL'Y) 18, 19–20 (2007).

222. See, e.g., Colo. Office of Econ. Dev. & Int'l Trade, Colorado Blueprint 2.0 Initiative Evaluation Report 1 (2017).

rural well-being more than urban growth,"<sup>223</sup> and others suggest that "communities must foster an atmosphere where agriculture can grow and prosper."<sup>224</sup>

Protecting farmland truly goes beyond addressing urban sprawl and requires consideration of other challenges facing rural communities.<sup>225</sup> Consequently, protecting farmland requires consideration of other methods to aid rural sustainability, including comprehensive planning and economic development.<sup>226</sup> After all, "the protection of farmland is inextricably linked to the health of farming as an enterprise, and with it the people, infrastructure and related agricultural industries that sustain it."<sup>227</sup> Thus, "successful rural development requires that agricultural infrastructure and property markets facilitate farming . . . ; that safeguards are in place to protect the integrity of environmental systems; and that critical education, health care, and other social services remain fiscally viable."<sup>228</sup> Ideally, these systems in a rural community are interdependent because interdependency creates balance among the systems, which aids the overall sustainability of the community.<sup>229</sup> Thus, sustainable rural development is necessary for facilitating farmland protection and preservation because sustainable rural development creates a more economically balanced community.<sup>230</sup>

To be successful, comprehensive planning "must be tailored to the local political realities, and most importantly, to the local farming community."<sup>231</sup> Residents of rural communities are in the best position to determine "what is best for their communities[]" because those people are who "experience and interact with the land."<sup>232</sup> Given the personal connections local communities have with their own landscape, members of local government will be inclined to protect those things that are important to the community, including agricultural lands.<sup>233</sup> Policymakers should encourage a community's agriculturalists and nonagriculturalists to work together "to find a solution for urban sprawl and to evaluate the importance of agriculture in that community."<sup>234</sup> By identifying where the community stands on the issue of protecting agricultural lands, the local government's decisions in developing a comprehensive plan will be reflective of community values.<sup>235</sup>

Moreover, policymakers should remind rural communities not to "overlook the importance of retaining existing businesses" when developing a plan for the community's economic development.<sup>236</sup> Specifically, local governments should keep in mind that

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223. Knapp & Chakraborty, *supra* note 2211, at 19.

224. Am. Farmland Tr., *Agricultural and Farmland Protection for New York* 56 (1993).

225. *Id.* at 55.

226. See Knapp & Chakraborty, *supra* note 2211, at 19.

227. Am. Farmland Tr., *Agricultural and Farmland Protection for New York* 28 (1993).

228. See Knapp & Chakraborty, *supra* note 2211, at 19.

229. *Id.*

230. See generally *id.*

231. Johnson, *supra* note 6, at 678.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* at 679.

236. DANIELS & KEENE, *supra* note 10, at 44.

[f]arms are businesses, and together with farm support businesses, they form a local agricultural industry. Maintaining the local agricultural industry is economic development in jobs, business investment, income, and property tax base.

Farming provides jobs on the farm and in transportation, processing, and marketing of farm products. Farms support local businesses, such as hardware stores and machinery dealerships. Also, in many communities around the nation, farmland is the foundation of a valuable tourist industry.<sup>237</sup>

Therefore, when developing their comprehensive plans, rural communities should consider how economic development tailored to existing agricultural pursuits would benefit the community.

As for developing and providing rural communities with resources aimed at rural economic development, policymakers should consider the value of a “bottom-up process,” which utilizes local needs to inform statewide initiatives for rural economic development.<sup>238</sup> For example, policymakers in Colorado have made a recent “effort to turn regional feedback on local economic needs, into a statewide set of initiatives to advance the economies of the communities around [Colorado].”<sup>239</sup> Originally based on a larger goal to stimulate Colorado’s state-level economy, policymakers reshaped that goal into a program, originally known as Blueprint 2.0, that “helps rural communities create economic development strategies by providing free technical assistance and consulting services.”<sup>240</sup>

During the first year of Blueprint 2.0, participating communities selected at least one initiative, such as tourism promotion or industry attraction, for their community.<sup>241</sup> Then, the communities were able to utilize the technical assistance provided by state resources and partnerships with nongovernmental organizations to take action on the selected initiative(s).<sup>242</sup> After its first year, Blueprint 2.0 produced positive results for rural communities in Colorado.<sup>243</sup> For example, the program led to increased lodging tax revenue for communities and even helped one community secure a grant for \$800,000.<sup>244</sup> By relying on Colorado’s model, for example, Idaho policymakers could provide rural Idaho communities with the resources necessary to begin sustainably developing their economies.

On the whole, Idaho policymakers should encourage sustainable rural development. First, by developing their comprehensive plans, for example, rural

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237. *Id.*

238. COLO. OFFICE OF ECON. DEV. & INT’L TRADE, *supra* note 222, at 1.

239. *Id.*

240. *Rural Technical Assistance Program (RTAP)*, COLO. OFFICE OF ECON. DEV. & INT’L TRADE, <https://choosecolorado.com/programs-initiatives/rural-technical-assistance-program/> (last visited Nov. 20, 2020).

241. *See* COLO. OFFICE OF ECON. DEV. & INT’L TRADE, *supra* note 222, at 6.

242. *Id.* at 1.

243. *Id.* at 20.

244. *Id.*

communities can evaluate the importance of farmland to the community and can become actively involved in farmland protection. Second, the State's effort to provide rural communities with resources meant to stimulate rural economies will allow for more sustainable growth based on pre-identified and agreed upon community objectives. Taken together, these efforts will aid in farmland protection and preservation.

## VII. CONCLUSION

As the population of Idaho's Treasure Valley continues to grow, rural, agriculturally-rooted communities in the Treasure Valley will be further tasked with responding to urban sprawl.<sup>245</sup> This task is complicated by the reduced involvement with agriculture that today's average American has, because new residents likely will be unaccustomed to, and potentially offended by, standard agricultural practices.<sup>246</sup> Given this growing potential for festering conflict between new urban residents and agriculturalists, Idaho's farmers and ranchers may begin to rely on Idaho's RTFA more than ever before. Unfortunately, the protection provided by Idaho's RTFA is limited to a qualified nuisance exemption that requires urban encroachment as a prerequisite to protection.<sup>247</sup>

In effect, Idaho's RTFA may serve to deter nuisance lawsuits because it creates a potential defense to such lawsuits.<sup>248</sup> However, Idaho's RTFA does not clearly protect all agricultural activities that may appropriately occur on a farm or ranch and ultimately requires community conflict before it will afford protection, meaning that any protection afforded is reactionary, not preventative.<sup>249</sup> Considering the reliance on community conflict, Idaho's RTFA is a poor farmland protection technique because instead of reflecting social support for agriculture, application of the Act ultimately requires conflict between neighbors and within the community.<sup>250</sup> Thus, while Idaho's legislature may have intended to protect agricultural resources,<sup>251</sup> the current state of Idaho's RTFA is not a successful way of doing so.

Accordingly, policymakers should consider alternative methods of farmland protection. Namely, policymakers should consider modifying the RTFA, incentivizing and protecting secondary usage of agricultural land, and encouraging rural development to actively engage local communities in farmland protection. Taken together, these routes of action will serve to protect Idaho's agricultural lands in multiple ways.

First, modifying RTFA protection shows agriculturists that they are supported and appreciated. Second, incentivizing secondary usage not only supports the financial sustainability of farmers and ranchers but also creates opportunities for new urban residents to better understand agriculture. Idealistically, the interaction provided by secondary usage leaves even those unfamiliar with agriculture in favor

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245. See *supra* notes 4, 23–27 and accompanying text.

246. See *supra* notes 5–13 and accompanying text.

247. See *supra* notes 144–157 and accompanying text.

248. See *supra* Section V.B.

249. See *supra* Section V.

250. See *id.*; Section III.

251. IDAHO CODE ANN § 22-4501 (West 2020). See *supra* notes 77, 119 and accompanying text.

of protecting it. Finally, encouraging rural development tasks local communities with identifying how they want their communities to look in the future.

By developing a response to urban sprawl and assessing the value of agricultural land to the community now, communities can develop social support for and place a political focus on protecting agricultural lands as urban development continues. Through development of social support for protecting agricultural lands now, the overall preservation of such lands in the future becomes increasingly attainable because the value of preserving agricultural lands is fully realized.