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INFORMAL GOVERNANCE STRUCTURES AND DISASTER PLANNING: THE CASE OF WILDFIRE

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I. INTRODUCTION

Never has disaster planning been more important than in this time of the climate's change. In the western United States, climate change has produced a number of stark effects already evident. None, however, is more dramatic than wildfire's growth from seasonal annoyance to nearly year-round threat to life.[1] These climatic changes butt up against the West's extraordinary population growth, which brings the urban edge of population

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1. *See generally* STEPHEN R. MILLER ET AL., PLANNING FOR WILDFIRE IN THE WILDLAND-URBAN INTERFACE: A RESOURCE GUIDE FOR IDAHO COMMUNITIES: DISCUSSION DRAFT V 1.0 12–13 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2845046 [hereinafter WUI WILDFIRE PLANNING GUIDE]. The guide was edited and re-published to embrace a wider audience of Western cities. *See* Stephen R. Miller, *Planning for Wildfire at the Wildland-Urban Interface: A Guide for Western Cities*, 49 URB. LAW. 207 (2017). A shorter version of the guide was also published. *See* Stephen R. Miller, *Planning for Wildfire at the Wildland-Urban Interface*, 40(5) ZONING & PLANNING L. REP. 1 (2017).

centers increasingly into areas that once burned with little or no concern for loss of life or property.[2] As suppression costs for wildfire have soared, a new emphasis on planning for wildfire in this wildland-urban interface (WUI, pronounced "WOO-ee") has taken on a new strategic importance.

One goal of this article is to introduce a basic structure for engaging wildfire planning in WUI communities. Another, and perhaps more far-reaching, goal of this article is to argue for the importance of utilizing informal governance structures in disaster planning, especially in the smaller rural communities that often still predominate at the edge of urban areas. In such rural communities, informal governance structures can often have a significant role to play in whether disaster planning is successful, often more than the formalized legal codes of the local government.

To frame this argument, the article proceeds in the following manner. Section II describes the underlying project, which focuses on increasing capacity for wildfire planning in the WUI of Idaho, on which this article relies.[3] Section III briefly describes the crisis of wildfire in the WUI as development, especially in the West, encroaches further into wildlands and wilderness.[4] Section IV describes the WUI wildfire planning process the authors have previously presented in both written and oral presentations.[5] This process offers a conceptual framework for wildfire planning that emphasizes community engagement, the creation of regulatory and non-regulatory tools that reflect the local community's values, implementation and enforcement strategies, and a re-assessment period that would begin the cycle anew. While this framework is consistent with current wildfire planning strategies, this article seeks to investigate and propose another layer of engagement: the informal governance structures of rural communities. Section V does this by illustrating how informal governance structures can provide the missing link in disaster planning for rural communities.[6] In Section VI, the authors illustrate how local government in local communities can, in many cases, appear to have all the trappings of traditional large-scale government apparatuses.[7] However, upon closer investigation, these rural local governments often struggle for relevance. In some cases, their planning and building codes are not enforced, judicial resources can be scarce for enforcement of civil matters, training of planning staff and commissioners is often non-existent, codes in rural

2. The risk perception study was overseen by Professor Eric Lindquist. The study was initially begun by Professor Thomas Wuerzer, Associate Professor for Real Estate Development, Nova Southeastern University, while previously at Boise State University.

3. *See infra* Section II.

4. *See infra* Section III.

5. *See infra* Section IV.

6. *See infra* Section V.

7. *See infra* Section VI.

communities are often boilerplate and not tailored to local communities, and emergency response equipment is often a shell of what would be expected in an urban environment. The importance of these observations is not to diminish the governmental efforts of rural communities; rather, they illustrate the complicated mechanisms of local government that are challenging for small and resource-strapped locales to implement. Further, this section seeks to use sociological research to explore how rural communities can utilize informal governance structures in place of, and in support of, formalized local government. In Section VII, the article encourages agencies engaging in disaster planning to find ways to quickly evaluate and engage informal governance structures in rural communities.[8] One approach would be to adopt something like the participatory rural assessment (PRA) technique for evaluating informal governance structures in developing countries. In Section VIII, the article returns to the importance of formal local government, even for those communities that culturally prefer informal local governance structures.[9] Codes unattended can become weapons of development projects the community does not want, which can be problematic for disaster planning generally, and especially in the case of wildfire.

II. ABOUT THE PROJECT

In June 2015, the U.S. Forest Service and the Idaho Department of Lands provided a grant to scholars at the University of Idaho and Boise State University, who are also the authors of this article, to address planning for WUI wildfires throughout Idaho's varied terrain and communities.[10] In the first phase of the project, law students in the Economic Development Clinic[11] at the University of Idaho College of Law's Boise campus contacted all 200 Idaho cities and forty-four Idaho counties to determine the status of existing wildfire regulations and incentives. In addition, the Clinic collected

8. *See infra* Section VII.

9. *See infra* Section VIII.

10. Letter from Tyre Holfeltz, Cmty. Fire and Program Manager, Idaho Dep't of Lands, to Stephen R. Miller, Professor of Law & Assoc. Dean for Faculty Dev., Univ. of Idaho Coll. of Law (June 2, 2015) (on file with author). Thereafter, the Grant was referenced as: IDL Reference: Grant No./Task Order No.: 16-303. Funds for the Grant were provided by the U.S. Forest Service's Landscape Scale Restoration Grant program.

11. *Economic Development Clinic,* UNIV. OF IDAHO COLL. OF LAW, http://www.uidaho.edu/law/academics/practical-skills/clinics/econ-dev (last visited Aug. 6, 2018). The Economic Development Clinic is directed by Professor Stephen R. Miller. Two students in the clinic, Brian Stephens and Alexander Grad, provided especially valuable research for the project.

and reviewed all forty-four of Idaho's counties' wildfire protection plans,[12] which were generally written between 2003 and 2007, as well as updates to those plans currently underway in several counties.[13]

At the same time, Boise State University's Public Policy Research Center[14] conducted a risk perception study to understand how Idahoans relate to wildfire risk.[15] In subsequent years of the grant, the University of Idaho's Bioregional Planning and Community Design program[16] has joined the effort and is in the process of coordinating workshops around the State to assist local communities to formulate locally appropriate approaches to planning for wildfire in the WUI. By the end of the project, the team hopes to be able to formulate an outreach strategy that will allow state and federal agencies to successfully work with communities throughout Idaho on mitigation for wildfire.

III. WILDFIRE IN THE WILDLAND-URBAN INTERFACE (WUI)

The importance of wildfire planning has become evident as the cost of wildfire suppression continues to skyrocket. In 1995, fire made up 16% of the U.S. Forest Service's annual appropriation budget; in 2015, wildfire consumed more than 50% percent of the agency's budget, a benchmark reflective of steadily rising costs.[17] A recent study of wildfires in Wyoming found that protecting just one isolated home can add $225,000 to the overall cost of fighting a fire.[18] The price of fire is also told in lost recreational opportunities, scarred landscapes adjacent to city centers, loss of wildlife

12. Idaho has largely used the term "county wildfire protection plan" rather than "community wildfire protection plan" even though those plans fulfill requirements of federal community wildfire protection plan statutes. STATE OF IDAHO, IDAHO STATEWIDE IMPLEMENTATION STRATEGY FOR THE NATIONAL FIRE PLAN 1 (2006), http://idahofirewise.org/assets/library/National%20Fire%20Plan%20and%20Idaho%20Strategy/General/id%20nat%20fire%20plan%20implementation.pdf [hereinafter IDAHO FIRE PLAN].

13. Referenced county wildfire protection plans on file with Professor Stephen R. Miller. *See also* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 21–33.

14. Wuerzer, *supra* note 2.

15. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 14–17.

16. This effort is led by Professor Jaap Vos.

17. U.S. FOREST SERV., THE RISING COST OF WILDFIRE OPERATIONS: EFFECTS ON THE FOREST SERVICE'S NON-FIRE WORK 2 (2015), http://www.fs.fed.us/sites/default/files/2015-Fire-Budget-Report.pdf. In 2018, the financing of wildfire suppression was changed beginning with fiscal year 2020. While this will relieve the Forest Service's budgetary concerns, it does not lessen the extraordinary escalation in such costs. By fiscal year 2027, the federal government plans to appropriate $2.97 billion in funds annually for wildfire suppression. *See Cost of Operations,* U.S. FOREST SERV., https://www.fs.fed.us/about-agency/budget-performance/cost-fire-operations (last visited June 7, 2018).

18. ANNA M. SCOFIELD ET AL., RESIDENTIAL DEVELOPMENT EFFECTS ON FIREFIGHTING COSTS IN THE WILDLAND-URBAN INTERFACE 3 (2015), http://wyoextension.org/agpubs/pubs/B-1268.pdf.

habitat, presence of invasive species, and increasingly, secondary after-effects such as flood and landslides, that can cause even greater long-term harm to a community than the initial fire.[19]

Wildfires occur in a variety of terrain, fuels, and weather, but this article focuses on those wildfires in the WUI. The WUI is both a sociological and legal term that is fluid based upon context; however, a common definition is that the WUI is where "humans and their development meet or intermix with wildland fuel."[20] In 2006, the Forest Service adopted a similar policy definition, which states that "[t]he WUI is the area where structures and other human development meet or intermingle with undeveloped wildland."[21]

Although fewer wildfires occur in the WUI compared to timberlands or rangelands, they are of increasing concern for several reasons. First, WUI fires are expensive to fight. Six of the ten most expensive fires in the past 100 years were WUI fires.[22] Further, the WUI is relatively undeveloped. By one account, just fourteen percent of the WUI is developed, leaving a vast potential region of growth that, if developed without wildfire in mind, could yield staggering costs as the West continues to grow.[23] Finding ways to prevent "locking in" long-term, high-cost development patterns, while still encouraging such development and growth, is a threshold issue facing Western communities' property owners, taxpayers, and governments.

IV. THE WUI WILDFIRE PLANNING PROCESS

In September 2016, the authors produced the first major report of the project, which was a guide to planning for wildfire in the wildland-urban interface.[24] That report, *Planning for Wildfire in the Wildland-Urban Interface: A Resource Guide for Idaho Communities* ("WUI Wildfire Planning Guide" or "Guide"), utilized existing best practices gleaned from research, as well as numerous conversations with leading wildfire planning experts across the country and with local members of the community. The

19. *See, e.g.,* URBAN DRAINAGE FLOOD CONTROL DIST., A SEPTEMBER TO REMEMBER: THE 2013 COLORADO FLOOD WITHIN THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (2014) (describing after effects of wildfire on Colorado communities).

20. Urban Wildland Interface Communities within the Vicinity of Federal Lands That Are at High Risk from Wildfire, 66 Fed. Reg. 752,753 (2001).

21. OFFICE OF INSPECTOR GEN., U.S.D.A., AUDIT REPORT: FOREST SERVICE LARGE FIRE SUPPRESSION COSTS, at i n.1 (2006), http://www.usda.gov/oig/webdocs/08601-44-SF.pdf.

22. ROSS GORTE, THE RISING COST OF WILDFIRE PROTECTION 1 (2013), http://headwaterseconomics.org/wphw/wp-content/uploads/fire-costs-background-report.pdf.

23. HEADWATERS ECON., SOLUTIONS TO THE RISING COSTS OF FIGHTING FIRES IN THE WILDLAND URBAN INTERFACE 5, 11 (2009), http://headwaterseconomics.org/wphw/wp-content/uploads/HeadwatersFireCosts.pdf.

24. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 7.

WUI Wildfire Planning Guide is considered a "discussion draft" that could be amended as it was presented to, and reaction was received from, communities across the state subject to high wildfire risks. The approach presented in the Guide was a process that, while in line with the general scope of wildfire planning literature, was a new means of organizing complex material in a manner intended to make it easier for rural communities with fewer resources to actively participate in the wildfire planning process.[25]

The amount of science and technology dedicated to addressing wildfire in the WUI issues is substantial: decades of research provide a rich array of knowledge about fire from which to draw. The missing piece of the puzzle is the planning and legal framework that would apply that knowledge to protect property and lives from fire. The Guide sought to use planning, law, and incentives to implement what is already known about wildfire and keep communities safe.

The Guide's primary contribution was a conceptual framework that local communities—governmental and non-governmental—could use over time. The framework, which the Guide calls the "WUI Wildfire Planning Process," consists primarily of a four-step, cyclical planning process that revolves around the inter-governmental National Cohesive Strategy Vision and Goals for wildfire, and is supported at all times by education and outreach.[26]

Although little known outside of the fire community, the National Cohesive Strategy Goals are simple, but important, goals established through a five-year planning process (2009 to 2014) in which federal agencies, state, tribal, and local governments, as well as non-governmental partners, built a common vision of how the country could address wildfire.[27] The three goals of the Cohesive Strategy are maintaining landscapes, developing fire-adapted communities, and developing a multi-jurisdictional wildfire response based upon risk-based decision making.[28] These Cohesive Strategy Goals are the core around which the WUI Wildfire Planning Process revolves.

The four active steps of the WUI Wildfire Planning Process are illustrated below.[29] The steps are (1) draft and adopt a community wildfire protection plan (CWPP); (2) regulate and incentivize the built environment

25. *Id.*

26. *Id.* at 23.

27. U.S.D.A., DEP'T OF THE INTERIOR, THE NATIONAL STRATEGY: THE FINAL PHASE IN THE DEVELOPMENT OF THE NATIONAL COHESIVE WILDLAND FIRE MANAGEMENT STRATEGY 1 (2014), https://www.forestsandrangelands.gov/strategy/thestrategy.shtml [hereinafter NATIONAL COHESIVE STRATEGY].

28. *Id.* at 3.

29. See Figure 1.

at all scales; (3) implement, maintain and enforce regulations and incentives; and (4) respond to substantial changes such as wildfires or the passage of time.[30]

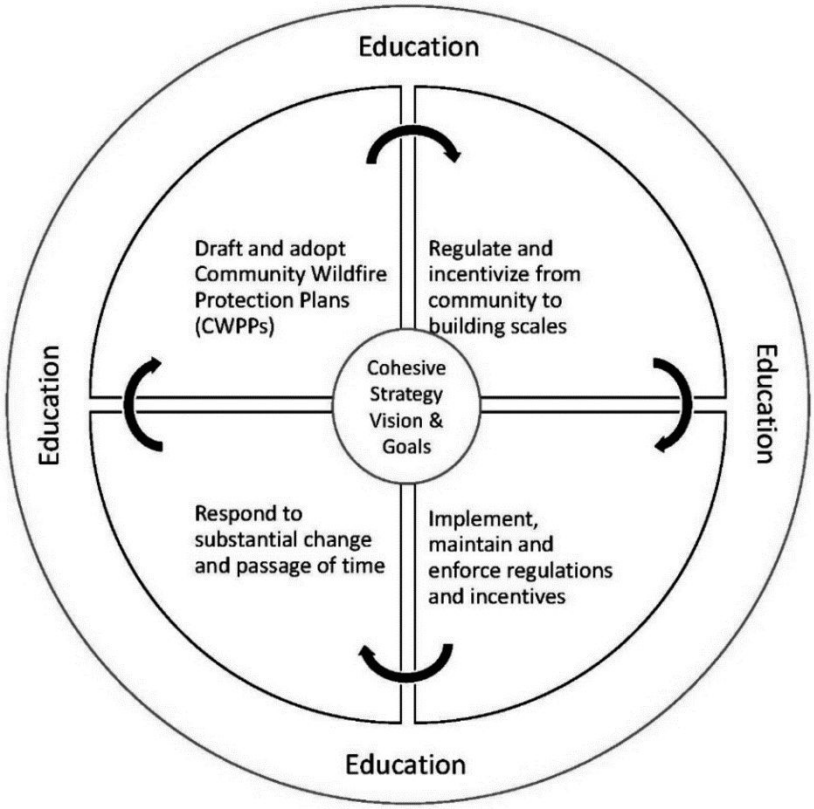

Figure 1. The WUI Wildfire Planning Process

CWPPs are an excellent place to begin wildfire planning for several reasons. A creature of federal law, CWPPs actually permit local communities to have a say in how wildfire on federal lands is maintained, which is a major concern for many Idaho, and many Western, communities.[31] Further, CWPPs make communities eligible for federal funding opportunities; such opportunities will grow as CWPPs are increasingly integrated into county All Hazard Mitigation Plans and, if properly updated every five years, will make wildfire hazards eligible for even more funds.[32] CWPPs are also important because they provide a

30. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 9.

31. 16 U.S.C. § 6511(1) (West, Westlaw through Pub. L. No. 115–206) (defining "at risk community" for purposes of CWPPs broadly).

32. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 10.

framework for identifying wildfire risk at an ecological scale that permits local communities to think beyond their jurisdictional boundaries, precisely because the process includes federal, state, tribal, and local government and non-governmental participants.

For example, one of the limiting factors in the success of CWPPs in Idaho in the past has been that they have been conducted solely at the county level and by a select group of fire community individuals.[33] While county CWPPs are clearly still valuable, Idaho Department of Lands sought to encourage the preparation of CWPPs at multiple scales, as contemplated by federal law and practiced in other Western states.[34] For instance, a county-wide CWPP may be supplemented by a city CWPP and even a neighborhood CWPP conducted by a homeowner's association that has a particular wildfire hazard, as is well-illustrated by the nested CWPPs of Boulder County, Colorado.[35] Each scale permits a different level of preparedness and analysis that is valuable. CWPPs could also be more valuable by increasing the scope of participation to include others that will facilitate wildfire decisions in other parts of the process.[36] This would mean including local officials, local staff, and a proposed citizens' advisory board, in addition to the traditional fire staff, in the CWPP process.[37]

The second step in the process is for a local jurisdiction—a city or county—to decide on the package of regulations and incentives it will utilize to address the identified wildfire risk.[38] Doing so requires local governments to decide whether to allow development in areas of high wildfire risk and, if they do so, to decide how to respond with local values related to regulatory versus incentive-based approaches and the successes of each in relation to the risk.[39] The Guide discusses several approaches that have worked well in other communities, which include seeking co-benefits, such as open space, that may matter locally; seizing upon interest that often arises after a wildfire; choosing an approach that the community can support; and anticipating for wildfire's after-effects, especially flood, landslide, aesthetic harm, and economic development issues.[40]

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33. IDAHO FIRE PLAN, *supra* note 12, at 2.

34. *See, e.g., Wildfire*, PLANNING FOR HAZARDS: LAND USE SOLS. FOR COLO. https://www.planningforhazards.com/wildfire (last visited Oct. 28, 2018).

35. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 34–35; *see also* BOULDER CTY., COLO., BOULDER COUNTY COMMUNITY WILDFIRE PLAN (2011), https://assets.bouldercounty.org/wp-content/uploads/2017/02/community-wildfire-protection-plan-book-low-res.pdf.

36. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 29–31.

37. *Id.*

38. *See generally id.* at 36–53.

39. *Id.* at 36–37.

40. *Id.*

There is no one-size-fits-all approach to wildfire.[41] For some communities, a simple approach could be to focus on the basics: defensible space, metal roofs, and weed ordinances to reduce fuels.[42] This simple, effective solution can work very well in rural areas. More urban areas will likely want a solution that fits the complexity of the built environment. Regulatory tools are discussed at the community scale, such as comprehensive plans, specific plans, and land use zoning overlay districts; the neighborhood and subdivision scale; the individual site or project scale; and the building scale.[43] Non-regulatory tools are equally important and can supplement regulatory tools, or stand-alone.[44] They include the popular Firewise program,[45] which is a valuable educational tool but which often yields uncertain results; insurance, which has a role to play in pricing fire risk;[46] and homeowner's associations, which have served as a vehicle for local communities to provide enhanced wildfire security for their community independent of government regulation.[47]

Once regulations and incentives have been adopted, they must be applied to specific projects and enforced over time; similarly, incentive programs must be implemented and examined to determine efficacy.[48] This third step may be the most important—it is where ideas yield results—but it is also an especially hard step for wildfire. That is because many of the factors associated with wildfire risk reduction require maintenance—of buildings, of landscaping, of cleanliness near structures—that collides with the entitlement-driven development process that prioritizes one-time, up-front conditions of approval.[49] This section of the Guide begins by discussing the importance of communication between local government departments to address precisely this issue.[50] The section then turns to the types of enforcement mechanisms that are being tried by some Idaho

41. *Id.*

42. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 37–38; *see also Defensible Space*, IDAHO FIREWISE (Apr. 6, 2017), http://idahofirewise.org/2017/04/06/creating-defensible-space-can-save-your-home/.

43. NAT'L FIRE PROT. ASS'N, COMMUNITY WILDFIRE SAFETY THROUGH REGULATION: A BEST PRACTICES GUIDE FOR PLANNERS AND REGULATORS 23–24 (2013), https://www.nfpa.org/-/media/Files/PublicEducation/Bytopic/Wildland/WildfireBestPracticesGuide.ashx?la=en [hereinafter NFPA GUIDE].

44. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 48–54.

45. *Firewise USA: Residents Reducing Wildfire Risks*, NAT'L FIRE PROT. ASS'N, http://firewise.org/usa-recognition-program.aspx (last visited Aug. 27, 2018).

46. *See Does Insurance Affect Home Development on Wildfire-Prone Lands?*, HEADWATERS ECONS. (June 2016), http://headwaterseconomics.org/wildfire/solutions/insurance-wildfire-home-development; WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 51.

47. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 51–54.

48. *See id*. at 54–59.

49. *See id.* at 10.

50. *See id.* at 55–56.

communities, but also communities throughout the West.[51] These include homeowner's association covenants, conditions, and restrictions that make local governments the third-party beneficiaries of wildfire-related maintenance agreements;[52] using the development agreement process to plan for wildfire upfront;[53] using zoning to require maintenance;[54] as well as re-tooling nuisance ordinances to address wildfire.[55] The section also discusses some non-enforcement mechanisms, such as disclosure techniques that prioritize informing property owners of the wildfire risk on their lands, and how to mitigate it.[56] Other approaches include cities that conduct wildfire fuel reduction work for private property owners so long as they sign a maintenance agreement for on-going upkeep of the mitigation.[57]

The fourth, and final step in the process occurs when there is a substantial event, such as a wildfire, or even a secondary effect like a flood or landslide, that causes the local community to realize that it needs to re-evaluate, and re-visit its wildfire planning strategy.[58] In addition to such an event, the passage of time becomes its own reason to revisit a wildfire planning strategy, if only because WUI demographics change quickly; an exurban community one year could be a bona fide bedroom community in a decade.[59] In addition, as Idaho and other states move to integrate CWPPs into All Hazard Mitigation Plans (AHMP), the CWPPs will need to be reviewed every year and revised every five years for compliance with AHMP regulations.[60] The combination of wildfire events and the passage of time give local communities a number of reasons to revisit their approaches to planning, determine what has worked and what has faltered, and create an amended plan going forward.

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51. *See id.* at 10.

52. *See id.* at 56–57; *see also* GREATER LAGUNA COAST FIRE SAFETY COUNCIL, LAGUNA BEACH COMMUNITY WILDFIRE PROTECTION PLAN AND OTHER NATURAL DISASTERS § 1.1.4.5, http://www.lagunacoastfiresafecouncil.org/images/Written%20Plan%2003-05-07.pdf.

53. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 57–58; *see also* CAL. GOVERNOR'S OFFICE OF PLANNING & RESEARCH, FIRE HAZARD PLANNING: GENERAL PLAN TECHNICAL ADVICE SERIES 49–50 (Apr. 2014), https://www.opr.ca.gov/docs/Fire_Hazard_Planning_Public_Review_Draft_June_24_2014.pdf.

54. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 58–59; *see also* COEUR D'ALENE, IDAHO, DEV. CODE § 17.08.950 (2016).

55. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 59–60; *see also* SISTERS, OR., Ord. No. 444 (2014), https://www.codepublishing.com/OR/Sisters/html/ords/Ord444.pdf.

56. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 60; *see also* Interactive GIS Map, MCCALL, IDAHO tinyurl.com/mccallfirewise (last visited Aug. 27, 2018).

57. *See* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 60; *Firesmart*, KOOTENAI CTY., IDAHO, https://www.kcsheriff.com/190/FireSmart (last visited October 23, 2018).

58. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 60–61.

59. *Id.*

60. *Id.*

Although a community's planning process may not follow this conceptual framework precisely, the WUI Wildfire Planning Process provides a way to contemplate how to use all of the tools available to maximize wildfire preparedness. Along the way, education remains a vital component of wildfire planning, both to communicate the nature of wildfire risk but also what it means to be prepared to face that risk.[61]

V. THE MISSING LINK IN DISASTER PLANNING: INFORMAL GOVERNANCE STRUCTURES

Outreach for the Grant is on-going; however, the authors continue to believe that the approach outlined in WUI WILDFIRE GUIDE, described briefly in the previous section, captured a viable and important framework for WUI wildfire planning. Concerns raised thus far about the proposed process are primarily as follows: (1) overcoming inter- and intra-governmental barriers is difficult; (2) ownership of the process is complicated because the scope of proposed actions is cast between different agencies and different departments; and (3) the approach provided required significant time commitment by non-fire employees and non-fire residents to come up to speed and engage in the process, which is hard to achieve.[62] All of these were expected criticisms of the Guide's approach, which specifically sought to challenge many of the institutional barriers that carve up decision making in the wildfire planning arena. However, in the course of presentations, the authors came to realize a missing link in the process: a nuanced engagement of informal governance structures.

The authors argue that, in many rural communities, the primary problem in establishing a disaster planning process is not presented by the typical inter- and intra-governmental problems that occur in almost any governmental program. The primary problem, instead, is that many rural communities are not governed in any meaningful way by government at any level. That does not mean these communities are lawless. Instead of the formalized mechanisms of government, which many rural communities reject, these places instead rely upon an alternative governance structure that maintains order and responds to local concerns in an informal manner that nonetheless reflects an ordering commensurate with a governance structure. These informal governance structures are often highly localized and knowing about the governance of one local community does not ensure understanding of other rural communities' approaches to governance.

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61. *Id.*

62. This list of concerns is based upon responses received in over a dozen presentations by the authors presenting the WUI WILDFIRE GUIDE to various groups including academics, planners, fire department officials, building code officials, and local government elected officials.

Informal governance in rural communities has significant implications for how federal, state, and local efforts to approach and manage disaster planning should be done. In the WUI Wildfire Guide, the authors made every effort to offer solutions for how non-governmental community actors could engage in the CWPP process, as well as how non-regulatory tools and incentive-based processes could be used in the creation of policies (Step 2), as well as their implementation and enforcement (Step 3). However, these structures ultimately depend upon a government entity—or, perhaps, a quasi-governmental entity such as a homeowner's association—to take control in the implementation and enforcement phase. When the government entities in rural communities fail to take these steps of policy creation, implementation, and enforcement, this can lead to the exasperating conclusion that rural communities are either uninterested in planning for disaster, or so intransigently opposed to the governmental forces that could help them that future efforts for assistance can seem futile.

The authors, however, seek to argue for an alternative approach. While the WUI Wildfire Guide still provides the best framework for working within the existing legal structures, the authors suggest that disaster planning should evaluate how to better engage the informal governance structures that predominate in rural communities. This is no small thing. Such informal governance often has no direct financial accountability, the structure of its leadership is typically unelected, and enforcement of local norms has nothing to do with due process.

A good example of informal governance can be found in Idaho City, a community that one of the authors has now worked with for several years. In Idaho City, the local Chamber of Commerce plays an important role in governance. In this small town with about 400 residents, the Chamber has approximately seventy paying members and it is very active.[63] The Chamber is led by a group of women and men that own a variety of businesses in town, most of which are dependent on tourism.[64] Many of these business owners, however, are not residents of Idaho City and either live outside of town or in one of the communities nearby. The former president of the Chamber, now the vice president, and her husband own two businesses in downtown Idaho City, but she lives in Centerville, a small town about ten miles north of Idaho City. In addition, their businesses close around Thanksgiving for the winter and do not reopen until Mother's Day weekend. During this winter break, she travels around the globe. During her presidency, that meant the Chamber was effectively without its president,

63. *Chamber Members*, IDAHO CITY CHAMBER COM., https://www.idahocitychamber.org/businesses.html (last visited Dec. 19, 2018).

64. *Id.* According to Idaho City Chamber of Commerce's membership list, more than one third of all members are directly dependent on tourism for their income.

and now still without its vice-president and important voice. In addition, the CuMo Mine is a member of the Chamber and the Chamber actively supports the CuMo mining project, as it supports all its members.[65] Meanwhile, the opening of this mine (about twelve miles North of Idaho City) will have major impacts on Idaho City, including potential positive impacts on the local economy but also a potential strain on the already limited infrastructure and services in town.

Without recognizing and fully engaging the informal governance that predominates in rural communities, governmental efforts will likely fail to achieve any significant changes to disaster planning, or any other meaningful governmental objective, without investigating and relating to the community's informal means of governance.

VI. GOVERNMENT AND GOVERNANCE IN RURAL COMMUNITIES

From afar, rural communities—whether legally cities, towns, or hamlets—can look like they are simply smaller versions of larger cities. Indeed, they often have many of the same formalities of government as large cities. In some states, these formalities are graduated by city size with additional responsibilities—and powers—granted to larger cities.[66] Even in those states, however, rural local governments almost always have some kind of elected decision-making body, such as a city council, as well as fundamental powers to determine how land and development in their community will occur.[67]

In Idaho, where the authors conducted their research, there is no gradation of local governments by size. The same legal powers and responsibilities that apply to Boise, the State's capital with a population of 226,000, also apply to all other 199 cities in the state even though 118 of the 200 Idaho cities have a population fewer than 1,000 persons and 167 of the 200 Idaho cities have a population fewer than 5,000 persons.[68] The result is that local government laws meant to require cities to plan for explosive growth, such as extensive comprehensive planning, makes sense for Boise and its chief suburb, Meridian, which are routinely listed by the Census as

65. Personal communication with Lisa Hanson, Vice President of the Idaho City Chamber of Commerce.

66. *See generally* 1 MCQUILLIN MUN. CORP. § 2:43 (3d ed. 2007) ("Cities are divided by statute in some states into cities of the first class, cities of the second class, and so on, according to population, and separate chapters of the statutes govern such cities differently to some extent according to such classification.").

67. *See generally* 2A MCQUILLIN MUN. CORP. §§ 10:1–10:51 (3d ed. 2007) (describing construction and execution of powers in local governments).

68. *Idaho 2017 City Census Tables*, IDAHO DEPT. LABOR, https://lmi.idaho.gov/census (last updated May 24, 2018).

among the fastest-growing cities in the country.[69] On the other hand, such planning provisions make less sense for many of Idaho's rural communities that are losing population or where growth is more modest.[70] The result in Idaho, and likely in many other states, is that the laws for local governments are written primarily to fit—and circumscribe—the powers of the largest cities.[71]

Federal and state programs that seek to interface with rural communities prioritize the local rural government for obvious reasons: governments seek to work with other governments that have similar powers and abilities to enforce provisions where there is mutual agreement on goals and objectives.[72] Governments also prefer working with other governments because of accountability and a structure of departments that make intergovernmental conversations easier and, often, more effective and efficient.[73]

The problem is that local governments in rural areas often do not have the capacity—staff, planning and legal knowledge, and financing, among other concerns—to live up to the expectations of other governments seeking partners in large-scale projects such as disaster planning.[74] The following are several examples of ways in which local governments' administrative structures obscure the actual ability to achieve stated objectives in disaster planning.

A. Non-Enforcement of Planning and Building Codes at the Administrative Level

In many rural communities, the planning apparatus appears similar to that of larger cities. For instance, in Idaho, every city has a mandatory comprehensive plan, there is almost always zoning, and there are building

69. Nicole Blanchard, *Idaho Officially Earns the Title of Nation's Fastest Growing State, Census Bureau Says,* IDAHO STATESMAN (Dec. 21, 2017, 9:12 AM), https://www.idahostatesman.com/news/local/article190738949.html.

70. Steve Bertel, *Census Report: Idaho's Rural-to-Urban Shift Continues; Larger Counties Still Growing,* KIVTV (Mar. 22, 2018, 12:46 PM), https://www.kivitv.com/news/census-report-idahos-rural-to-urban-shift-continues-larger-counties-still-growing.

71. This issue extends to the planning profession and planning tools, which treat rural places either as cities or as places that still have to become cities, see for instance "citation."

72. 1 MCQUILLIN MUN. CORP. § 3A:5 (3d ed. 2007) ("The point seems inescapable that the taxpayers, citizens, and the state as a whole would be better served if local governments would substitute cooperation.").

73. 1 MCQUILLIN MUN. CORP. § 3A:11 (3d ed. 2007) (discussing procedures of intergovernmental cooperation).

74. Admittedly, many larger cities also fall short in their own planning efforts; however, the goal here is to focus on those problems that rural communities face and, as such, urban issues will not be discussed here.

codes.[75] However, in many rural communities, those planning and building codes are never, or selectively enforced.[76]

One building code inspector for Teton County, Idaho, a rural eastern Idaho county with a population around 10,000, reported that he knew of several building and planning code violations.[77] The county code required that the misdemeanor notice be served in person.[78] However, the sheriff's office was too busy to do it, or unwilling, and the building code inspector feared for his personal safety because the person committing the violation was known for violence.[79]

The planning and building department director of Horseshoe Bend, Idaho, was the only staff member who also served as the city clerk. Horseshoe Bend is a rural Idaho city with a population of approximately 700 persons in the foothills north of Boise.[80] The director reported that she enforced no planning or building code provisions, except for fences because that was the only thing about which the city received complaints.[81]

A different issue with enforcement has to do with the social fabric of small communities. Since people typically know each other intimately, minor violations are typically tolerated as long as people behave as responsible neighbors. The authors ran into an interesting case of this in Lapwai, Idaho, where the city decided not to take any action against a badly damaged building.[82] The damage was done by a fire in which the brother of the current resident lost his life. Although the building should have been demolished after the fire, nobody wanted to add to the loss that the owner

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75. IDAHO CODE § 67-6508 (2018) ("It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan."); IDAHO CODE § 67-6511 (2018) ("Each governing board shall, by ordinance . . . establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. . . ."); *see also* Idaho Division of Building Safety, *IDAPA Administrative Rules,* IDAHO OFF. OF THE ADMIN. RULES COORDINATOR, https://adminrules.idaho.gov/rules/current/07/index.html (state rules governing private construction).

76. In the 2011–12 and 2012–13 academic years, Professor Stephen R. Miller's Economic Development Clinic worked with officials in the Teton County, Idaho local government. The discussion of Teton County here is based upon these two years of experience working in this community.

77. *Id.*

78. *Id.*

79. *Id.*

80. *See Idaho 2017 City Census Tables*, *supra* note 68.

81. In the 2016–17 academic year, Professor Stephen R. Miller's Economic Development Clinic worked with officials in the Horseshoe Bend, Idaho local government during the spring semester. The discussion of Horseshoe Bend is based upon this experience working in the community.

82. There is no record of this "decision" since it was decided during informal discussions outside city hall.

had faced in losing his brother in the fire, and so they permitted the burned building to remain despite legal requirements to tear it down.[83]

B. Rural Local Governments Often Have Few Resources for Enforcing Civil Violations

In Teton County, Idaho, local government officials reported that even when misdemeanor charges were filed for violating the county planning or building codes, they still had trouble enforcing the charges.[84] The county judicial system consisted of a sole judge who held court only several days a month.[85] The judge prioritized criminal and domestic violence charges. If there was not time to hear the civil matters, the judge would dismiss them.[86]

Further, Idaho has no statutory means of enabling administrative enforcement of planning or building codes. While such administrative enforcement is arguably legal in the state and utilized by some larger, urban cities like Boise, the legal uncertainty in this Dillon's Rule state causes smaller rural communities to shy away from administrative enforcement by notice of violation.[87] As such, legal uncertainty keeps rural communities from utilizing a method of enforcement that would be cheaper and less reliant on the whims of judicial resources.

C. There is Almost no Training of Planning and Building Staff or Commissions.

Rural states, and rural cities in particular, have few resources to train and maintain talented local officials. For instance, Idaho is one of the few states that has no statewide planning office. For states that do have such aid, such as Colorado's Department of Local Affairs and California's Office of Planning and Research, these state agencies provide a much-needed resource for basic planning guidance. In addition, planning and building staff often do not have formal experience or training in development. For instance, the planning director in Horseshoe Bend reported that prior to taking her position, she had worked as a clerk at a gas station in town and previously had no experience in the planning world.[88] In Idaho City, the city

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83. Interview with Ruth McConville, Mayor of Lapwai, Idaho (July 2017).

84. *See supra* note 76.

85. *Id.*

86. *Id.*

87. *See* Idaho Code § 31-714 (2005) (limiting enforcement options to "such fines or penalties, including infraction penalties, as the board may deem proper"). *But see* Idaho Constitution, Article XII, § 2 (granting police power, which arguably provides grant of power sufficient to enforce administrative remedy).

88. *See supra* note 81.

clerk was not aware that the city had a comprehensive plan and only became aware of the plan after the authors asked for it.[89]

Even in Boise, members of the planning and zoning commission, which oversee development in the fastest-growing city in the nation, receive no training in the city planning code, have almost no engagement with city council, and are encouraged to simply approve the projects with conditions as defined by staff.[90]

D. Codes and Plans Are Often Antiquated Boilerplate

A review of codes in rural local governments often uncovers an uncanny similarity: they are typically boilerplate versions shopped from town to town by some consultant or lawyer who made a living providing rural communities the most basic provisions of a code that complied with state enabling statutes.[91] The cookie-cutter approach works as well here as it does anywhere, which is to say it often means local rural communities have city codes that do not reflect the rural local government's legal needs and do not embody strategic foresight about the rural local governments challenges.

E. Emergency Equipment is Often Less-Equipped than Appears

Emergency planning in rural communities is often direr than it might initially appear. For instance, the city of New Meadows, Idaho, with a population of around 500 has a fire department with an ambulance. [92] However, that ambulance is staffed entirely by volunteers, almost all of whom are older men.[93] There is limited technical ability offered on the ambulance, which renders it primarily a shuttle service to a nearby hospital in the neighboring city of McCall.[94]

These anecdotes are intended to provide illustrative examples of how rural communities struggle to fulfill the legal formalities of government that

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89. Since 2016, Professor Jaap Vos has been working with the Idaho City, Idaho local government officials. The discussion of Idaho City is based upon this experience working in this community.

90. Professor Stephen R. Miller, one of the authors, served on the Boise Planning and Zoning Commission for several years. *See also* 1 Am. Law. Zoning § 4:8 (5th ed. 2008) (discussing the few states with required training for planning and zoning board members).

91. The boilerplate language found in many rural Idaho city codes is evident by comparing the codes' language. *Codes by Municipality,* STERLING CODIFIERS, http://sterlingcodifiers .com (last visited Oct. 14, 2018).

92. In the 2014–15 academic year, Professor Stephen R. Miller's Economic Development Clinic worked with the New Meadows local government officials. The discussion of New Meadows is based upon that experience.

93. *Id.*

94. *Id.*

are often attuned to the expectations of urban dwellers. That does not mean, however, that rural communities operate without rules or that they are lawless places. Indeed, in many cases, there are informal institutions that provide a means by which the community solves its problems and works together to maintain its way of life. In fact, in some cases, keeping the local government weak can be a purposeful strategy for preserving a rural way of life that is unique to that city.

A study by the sociologists Jon C. Allen and Don A. Dillman is of particular note in understanding this phenomenon. Allen and Dillman spent considerable time in the 1980s and 1990s living in and studying the small town of Bremer, Washington.[95] At the time, Bremer had a population of 500 persons in the incorporated city and a total population of 1,000 persons including those scattered in surrounding areas.[96] In their study, an important chapter details the role of a local community club, which many in town deemed "more important than government."[97] The Bremer Community Club, once a gun club established after World War II, had developed over the years into a place where locally important people met to talk about the community's ills. Allen and Dillman describe the club this way:

> The organization and membership of the club is rather informal, yet the decisions made in the small (24-by-36 foot) building have long-term and far-reaching effects on the town and surrounding community of Bremer. It is here that members who represent almost all groups within the community, from retired farmers to business owners, meet to discuss, outside legal constraints, the needs of the community. Here, more than any other place, community issues are connected to one another and directions are decided. Whereas the participants see themselves as a social club, their ability to bring resources, human and economic, to bear on community-wide problems makes them the most powerful group within the community.[98]

The club's meetings appear to be purely social, are informal, and are limited to members, most of whom were male.[99] Meanwhile, at city hall, a public meeting of the city council and mayor address a tree cutting issue with significant back-and-forth with a local resident.[100] Allen and Dillman note:

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95. *See generally* JON C. ALLEN & DON A. DILLMAN, AGAINST ALL ODDS: RURAL COMMUNITY IN THE INFORMATION AGE (1994).
96. *Id.* at xv.
97. *Id.* at 103.
98. *Id.* at 103–04.
99. *Id.* at 104–05.
100. *Id*. at 107.

> The manner in which the business of the tree cutting was handled reflects the informal norms of Bremer. The community-control attribute of talking informally to community members before a decision is made follows a long tradition in Bremer. With the overlapping institutions within the community it is necessary that decisions be made by consensus within the community. This differs quite drastically from the formal norms of mass society, where legal mandates would dictate how tree cutting or other changes in the community would be handled. Bremer's political institution is working within the community-control era.[101]

Even this formal process has its informal traditions: when the city council meeting is over, the council members move to the local tavern/café for coffee, which is a place where everyone knows they can go and continue the debate about even formal business.[102] The structure of both the community club and the informality of even the city council's access to the community permit Bremer "to bypass many of the regulations placed on small rural governments by larger bureaucracies."[103]

Of course, to an outsider, such ways of doing business may well smack of due process and equal protection violations, much less open meeting laws and many other government regulations. Nonetheless, the informal structure is important to the traditions of the community and, as such, the community norms are more likely to be upheld than the formal regulations thought to generate from outside the community.[104]

Similarly, sociology professors Cornelia Butler Flora and Jan L. Flora have noted the importance of including informal governance structures in decision-making along with those of a formalized local government:

> Governance is particularly important in rural areas, where governments are small, elected government officials serve part time with small budgets, and few professional staff are available to find the necessary information to make sound decisions or to implement decisions when they are made.[105]

The authors also note:

> Because of their limited resources, most rural governments find it difficult to provide adequate levels of public services when acting on their own. By mandating certain services, state and federal governments can require that local resources be directed to services that may not be

101. ALLEN & DILLMAN, *supra* note 95, at 107.
102. *Id.* at 110.
103. *Id.* at 114.
104. *Id.* at 115–18.
105. CORNELIA B. FLORA & JAN L. FLORA, RURAL COMMUNITIES: LEGACY AND CHANGE 340 (4th ed. 2013).

> needed. Multiple general-purpose and special-purpose governments can lead to conflicted or fragmented responses to local community needs. Or they can overcome the natural desire to protect turf to collaborate in providing synergy and efficiency. Finally, most rural governments face fiscal stress that arises from a limited tax base facing increased demand for local services. Governance—widening decision making and responsibility to multiple jurisdictions and including market and civil society groups—can help rural governments provide services and increase public involvement.[106]

A number of other studies of rural places offer similar analyses.[107] In our own work in Idaho City, we discovered that most major initiatives were initiated and executed by the local Chamber of Commerce.[108] We also found that a long-time resident and local store owner effectively acted as the city's archivist using a wicker laundry basket that contained almost 40 years of studies, reports, and minutes of meetings.[109]

VII. ENGAGING INFORMAL GOVERNANCE IN THE WUI WILDFIRE PLANNING PROCESS

The WUI Wildfire Planning Guide provided a number of strategies for engaging the community beyond local governments. For instance, in the CWPP process, the WUI Wildfire Planning Guide sought to "engage public and encourage public ownership of the WUI wildfire planning process."[110] This was not a new invention; indeed, guidance from both the State of

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106. *Id.* at 357–358.

107. *See, e.g.,* RYAN LIPCSEI ET AL., ECON. DEVELOPERS COUNCIL OF ONT., EVOLVING THE COMPETITIVE EDGE: RURAL COMMUNITY ENGAGEMENT (2015), https://cdn2.hubspot.net/hubfs/316071/Resources/Article/RuralCommunityEngagement_Report.pdf; Arthur A. Steiner & Jane Farmer, *Engage, Participate, Empower: Modelling Power Transfer in Disadvantaged Rural Communities*, 36(1) ENVTL. & PLAN. C: POL. & SPACE 118 (2018); Jo Barraket, *Enabling Structures for Coordinated Action: Community Organizations, Social Capital, and Rural Community Sustainability*, *in* A DYNAMIC BALANCE: SOCIAL CAPITAL AND SUSTAINABLE COMMUNITY DEV. 71 (Ann Dale & Jenny Onyx eds., 2005); Richelle Winkler et al., *Social Landscapes of the Inter-Mountain West: A Comparison of 'Old West' and 'New West' Communities*, 72(3) RURAL SOC. 478 (2007); K.G. Ricketts & H. Ladewig, *A Path Analysis of Community Leadership within Viable Rural Communities in Florida*, 4(2) LEADERSHIP 137 (2008); Michael R. Cope et al., *Making Sense of Community Action and Voluntary Participation—A Multilevel Test of Multilevel Hypotheses: Do Communities Act?*, 81(1) RURAL SOC. 3 (2016).

108. *See supra* note 89.

109. After the discovery of the basket, University of Idaho students scanned all the materials and wrote summaries of each document. All these documents are now readily available for residents in the local library.

110. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 21.

Idaho[111] and the federal government[112] has long encouraged broad participation in CWPPs. This stems from the heart of the CWPP enabling statute, which does not emphasize governmental actors, but "communities."[113] In practice, however, the drafting of CWPPs has typically fallen to local governments, and often specifically to fire departments within city or county governments. The non-governmental participation, in all but a few communities, has almost always been through homeowner's associations, Firewise-designated communities, or some other entity with a quasi-governmental role. In the WUI Wildfire Guide, we proposed that participation in CWPPs should consist of four groups: the fire group; the local official group; the local staff group; and the citizen advisor group.[114]

What the Guide did not address, however, was the community issue we have identified here: where local government is weak and alternative, local governance holds sway. Failure to recognize or identify this structure has important implications as disaster planning moves from the planning process to the creation of regulatory and incentive-based programs and, especially, the enforcement and maintenance of such provisions. If there is an alternative local governance structure that is not identified and not embraced from the beginning, the rest of the planning mechanism may result in a hollow exercise. This is true even when the local government may implement policies that, on the surface, appear to result in a meaningful change in disaster planning. As identified previously, in many rural communities, laws and regulations are not always enforced and incentives that require onerous paperwork or other government-style interactions are unlikely to garner much interest.

As a result, we suggest that, early in the planning stage for disaster management, the entity responsible for the planning document, such as a fire department for a CWPP, should engage in a process to map the local governance and power structure.[115] If that analysis determines that local governance and power exists in some substantial manner outside of the local government, the disaster planning process must seek to include that informal governance mechanism in the planning process. Moreover, the goal should

111. IDAHO FIRE PLAN, *supra* note 12, at 5; *See also* WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 29–30 n.28.

112. FORESTS AND RANGELANDS, PREPARING A COMMUNITY WILDFIRE PROTECTION PLAN 5 (2004), https://www.forestsandrangelands.gov/documents/resources/communities/cwphandbook.pdf [hereinafter PREPARING A CWPP].

113. *See* 16 U.S.C.A. § 6513 (West 2016).

114. WUI WILDFIRE PLANNING GUIDE, *supra* note 1, at 30–31.

115. Based on our experiences in Idaho, initial identification of a general outline of these governance and power systems is relatively easy but in order to really understand the subtleties of how decisions are made and how things get done in a community, it is necessary to be involved in a community for a longer period and gain the trust of the residents and local leadership.

be to keep the informal governance mechanism engaged in disaster planning through its entire cycle, such as that embodied by the WUI Wildfire Planning Process.

This will likely not prove an easy task. Disaster planning, such as the WUI Wildfire Planning Process, is based upon formalized processes of baselines, definitions, and fact-based decision-making. Informal governance often eschews these approaches, instead favoring relationships, personal commitments, and a deep knowledge of the community—a feeling in the gut. It can lead to amorphous goals that vary considerably in approach from one rural place to another. However, our experience indicates that failure to acknowledge and engage this alternative informal governance structure will likely make any formal disaster planning by a local government almost meaningless. A governmental disaster planning policy that does not have the support of a locally prominent, informal governance structure will yield smart policies on paper, but those policies will have little chance to be implemented, enforced, or maintained.

Acknowledging the logistical challenge of rural informal governance requires an acknowledgement that one of its most powerful forces is an ability to thwart the intentions of distant governmental agencies, whether state or federal. If those agencies want to work with rural communities, those agencies must quickly identify whether the local government is the source of power. Indeed, the presence of a non-governmental, local governance structure does not forestall federal or state agency involvement. Many federal and state agencies have worked successfully with informal governance structures. This has perhaps been best identified in the academic research on common pool resources.[116]

The dilemma, however, is identifying those informal governance structures idiosyncratic to local communities when an agency is first engaging and has no history with the place. There are approximately 39,000 local governments in the United States, and even more un-incorporated communities.[117] There is no easy, one-size-fits-all approach to engaging all of these places. On the other hand, shrinking resources demand efficiency in entering into and working with a community by agency personnel that does not permit a prolonged period to engage and learn about the local community.

To address this issue in the wildfire planning process, we suggest that leaders of the process consider amending some of the rapid assessment tools utilized by researchers and development officials seeking to understand the

116. *See* Michael Cox et al., *A Review of Design Principles for Community-Based Natural Resource Management*, 15(4) ECOLOGY & SOC'Y 38 (2010).

117. CARMA HOGUE, U.S. CENSUS BUREAU, GOV'T ORG. SUMMARY REPORT: 2012 at 1 (2013), https://www2.census.gov/govs/cog/g12_org.pdf.

dynamics of rural communities in developing countries. While these rapid assessment tools may need some amendment to the particular agency or disaster planning mechanism, the underlying principles of rapid assessment tools could prove valuable in quickly engaging informal governance structures in rural American communities.

Perhaps chief among these tools, long used in the developing world, is a participatory rural appraisal (PRA).[118] The success of PRAs have spawned a host of related community engagement mechanisms, such as participatory action research utilized by research scholars[119] and community-based participatory research, which has become popular in the public health community.[120] This discussion will focus on PRAs, however, as the purpose is to present a mechanism for engaging and evaluating the presence of informal governance structures that can be utilized in a disaster planning process.

PRAs have been defined as "a family of approaches and methods to enable rural people to share, enhance, and analyze their knowledge of life and conditions, to plan and to act."[121] The term PRA ultimately is more of an approach and group of techniques that can, as one sociologist frames it, be practiced "to enable local people to conduct their own analysis, and often to plan and take action."[122]

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118. Robert Chambers, *The Origins and Practice of Participatory Rural Appraisal,* 22(7) WORLD DEV. 953, 953 (1994).

119. *Id.* at 954.

120. *See* STEVEN S. COUGHLIN, SELINA A. SMITH & MARIA E. FERNANDEZ, *Overview of Community-Based Participatory Research*, *in* HANDBOOK OF COMMUNITY-BASED PARTICIPATORY RESEARCH 2 (2017). Community-based participatory research, or CBPR, is described in this manner:

> Community-based participatory research is a collaborative approach to research in which the research process is driven by an equitable partnership that is formed between relevant community members, organizational representatives, and academic researchers; the CBPR framework uses this partnership with the aim of increasing the value of the research product for all partners. Community-based participatory research takes advantage of the unique strengths and insights that community and academic partners each bring to framing health problems and developing solutions. Community members, organizational representatives, and academic researchers participate in and share control over all phases of the research process from assessment—discovering the community's health needs—to dissemination—developing strategies to increase the adoption, implementation, and maintenance of evidence-based interventions (EBIs) in communities and healthcare settings. Community-based participatory research approaches facilitate and accelerate research translation so that research produces pragmatic results capable of leading to positive and sustainable community change.

Id.

121. Chambers, *supra* note 118, at 953.

122. *Id.* at 958.

PRAs evolved in the late 1980s and 1990s out of the practice of rapid rural appraisals, or RRAs, which were primarily used "for learning by outsiders."[123] The PRA is not a prescribed method of local community engagement; rather, it is more of a grab bag of approaches that can be utilized by researchers or, in this case, potentially agency personnel, seeking to learn about a local community.[124] While there is no one single definition of a PRA, an influential one presents three pillars of PRA: methods, attitudes and behavior, and sharing.[125] In all cases, the PRA is an approach that seeks both to rapidly learn about the local community and also to find ways to utilize the structure of that community to allow it to help itself.[126] A number of guides provide detailed approaches on how to use PRAs in accordance with the different missions of charity and relief organizations, as well as development organizations.[127]

While a detailed review of the PRA literature is beyond the scope of this article, the PRA process, and its success, illustrates a ground-up process that has shown success in learning about the informal governance structures of rural communities in the developing world. While there are community engagement tools aimed at rural communities in the United States, few, if any, start from the basic premise of those aimed at the developing world: that to understand how the community operates, we must first understand its governance structure. This results from the presumption by many in law and policy arenas that the presence of local governments, planning commissions, and laws also means that those governments, commissions, and laws truly govern rural places. It is the argument of this article that, in some rural

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123. *Id.*

124. *Id.* at 959-61. Chambers identifies methods used in development countries as follows: the presence of secondary sources; semi-structured interviews; finding key informants and social mapping; group interviews and activities; do-it-yourself activities taught or performed; they-do-it where residents do the researchers work; participatory analysis of secondary sources, such as aerial maps or land tenure; transect walks to identify different soils, land uses, and so on; oral histories; seasonal community calendars; identifying groups or rankings of households according to wealth or well-being; analysis of difference, such as by gender, wealth/poverty, or group identity; key probes, or questions that lead to direct key issues, such as "What do you talk about when you are together?"; stories, portraits and case studies; participatory planning and budgeting; group discussions and brainstorming; and short questionnaires.

125. N. Narayanasamy, *Evolution of Participatory Rural Appraisal*, *in* PARTICIPATORY RURAL APPRAISAL: PRINCIPLES, METHODS AND APPLICATION 7–10 (2009).

126. *Id.* at 25.

127. *See, e.g.*, PEACE CORPS, PUB. NO. M0053, PARTICIPATORY ANALYSIS FOR COMMUNITY ACTION (PACA) TRAINING MANUAL (2007), https://files.peacecorps.gov/multimedia/pdf/library/PACA-2007.pdf; KAREN SCHOONMAKER FREUDENBERG, RURAL RAPID APPRAISAL (RRA) AND PARTICIPATORY RURAL APPRAISAL (PRA): A MANUAL FOR CRS FIELD WORKERS AND PARTNERS (2008).

communities, those governmental trappings hide more important informal governance structures. Disaster planning needs to uncover such informal governance and find a way to empower it, along with the formal government structures, if it is to be effective. Disaster planning can only do that when it is aware of those informal governance structures. The easiest, and quickest, way to uncover those is likely to incorporate something like a PRA into the earliest parts of a disaster planning process.

The chief argument in this article—that rural communities utilize informal governance structures often at the expense of maintaining functional local governments—do not afford an easy response for those federal or state agencies seeking to offer assistance to rural communities. Nonetheless, a greater cognizance of this issue can help those agencies working in rural communities to make better use of planning resources and funds. At a minimum, we suggest that federal and state agencies adopt both a rapid assessment tool for rural local government abilities and a rapid assessment tool that would seek out alternative forms of power in local communities. These rapid assessment tools could be modeled on participatory rural appraisals utilized in developing countries for similar purposes.

VIII. THE IMPORTANCE OF LOCAL GOVERNMENT, EVEN IN THE PRESENCE OF STRONG INFORMAL LOCAL GOVERNANCE

While rural local communities may gain some autonomy by investing in informal governance as opposed to formal local government processes, such an approach can also backfire in unexpected ways. Chief among them, antiquated or poorly drafted comprehensive plans and zoning codes can make it hard to refuse massive developments that may alter the community in ways that go against the wishes of even a majority of the local community. Many rural communities have learned this lesson when mines, server farms, animal feeding operations, or other large-scale developments come to town. When local comprehensive plans and zoning do not anticipate such development, the mere application of a large-scale development can mean it is too late to address such issues, because due process and equal protection will likely ensure that the project will be judged according to the un-anticipating, lax development standards. Further, while sophisticated jurisdictions—even rural ones—could still utilize discretion in the development process to defeat an unwanted project, the communities that have given short shrift to government almost certainly will be unable to marshal the necessary skills to defeat a development that is willing to go to litigation.

Idaho City's comprehensive plan again provides for an interesting example. While the comprehensive plan was adopted by the City Council in

2013, the city clerk did not know of its existence, and the plan was never distributed or used as a guide for planning decisions[128]. In addition, the plan refers to a "Land Use Designation Map" that was never prepared.[129] Finally, the Planning and Zoning Committee that was formed with the purpose of updating the comprehensive plan and the development of a new planning and zoning ordinance, never actually developed a planning and zoning ordinance. Residents were not too concerned about this since they were mostly interested in protecting the historic character of downtown, which was achieved through Historic District Guidelines that were developed by the Historic Preservation Committee.[130] While approval for development within the historic district required approval by the Historic Preservation Committee, the enforceability of the "guidelines" is questionable and would probably not hold up to a legal challenge.[131]

In another case, Boise County, Idaho, (a small population, rural community not associated with Boise City, which is in Ada County) was sued under the Fair Housing Act[132] after it entered an order imposing conditions on the CUP that were illegal and discriminatory under the Act. At trial, a jury rendered a verdict against the county of $4 million,[133] which has left the small rural county reeling and left it to file for bankruptcy.[134]

As a final example, residents in Flathead County, Montana, recently passed an initiative to try to zone out a proposed bottling facility, but only after the facility had already received most of its other necessary permits.[135] Clearly, the community had not anticipated the intensity of development.

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128. It is not completely clear when the comprehensive plan was adopted since it has no date of adoption on it. The document only states that is was prepared by the Planning and Zoning Committee that was established in 2010.

129. Since the land use map is a required element of a comprehensive plan under Idaho's land use statute, Idaho City's comprehensive plan is null and void. *See* Idaho Code § 67–6508(e) (2018) ("A map shall be prepared [as part of a comprehensive plan] indicating suitable projected land uses for the jurisdiction.").

130. In researching this article, the authors found that based on our assessment of the shortcomings of their comprehensive plan, the City has now created a land use map and is at the brink of adopting a zoning ordinance.

131. 42 U.S.C.A. §§ 3601 et seq. (West, Westlaw through Pub. L. No. 115–223).

132. *Id*.

133. Betsy K. Russell, *County Hit with $4 Million Verdict for Obstructing Home for Troubled Teens*, THE SPOKESMAN-REVIEW (Dec. 20, 2010, 7:24 PM), http://www.spokesman.com/blogs/boise/2010/dec/20/county-hit-4m-jury-verdict-over-obstructing-proposed-home-troubled-teens/.

134. *In re Boise County,* 465 B.R. 156 (Bkrtcy.D.Idaho 2011).

135. Patrick Reilly, *Flathead County Zoning Initiative Passes, but Bottling-plant Controversy Continues*, THE MISSOULIAN (June 6, 2018), https://missoulian.com/news/local/flathead-county-zoning-initiative-passes-but-bottling-plant-controversy-continues/article_fce06616-a09d-563b-90c5-33e0353451c9.html.

That left it scrambling when a sophisticated and potentially litigious developer came forward with a project that proved controversial but for which existing planning documents provided no discretionary review.

In the wildfire planning context, this means that any community interested in wildfire planning cannot simply forsake the formalities of government entirely. If communities want new projects to plan for wildfire—especially projects where the developer may come from outside of the community—the formal legal processes must be put in place to ensure the community has a say in how its future development plans for wildfire.

IX. CONCLUDING REMARKS

In *The Concept of Law*, the legal theorist HLA Hart argues that, "[i]t is plain that only a small community closely knit by ties of kinship, common sentiment, and belief, and placed in a stable environment, could live successfully by such a regime of unofficial rules. In any other conditions such a simple form of social control must prove defective and will require supplementation in different ways."[136] Hart is almost certainly right; on the other hand, there remain thousands of small communities in the United States. In many of those communities, the "unofficial rules" are as meaningful as what is written in the city code, which may well go unenforced most of the time. Disregarding the import of this informal governance has real consequences. As Robert C. Ellickson noted in his book about Shasta County, California ranchers' preference for informal rules, "lawmakers who are unappreciative of the social conditions that foster informal cooperation are likely to create a world in which there is both more law and less order."[137]

It would be easy for disaster planning to emphasize success by tangible means: new code provisions, new policies adopted, people attending workshops. In rural communities, however, emphasizing only those formal measures is likely to overlook equally or more important informal governance structures that have deeper roots in the community and which are likely to yield longer-lasting changes in behavior. Agencies looking to engage rural communities should make an effort to quickly appraise the sources of local power beyond the local government. While informal governance structures do not replace the need for formal local government policies, the informal governance will almost certainly decide the success of disaster planning in the community as much, or more, than the tangible and

136. H.L.A. HART, THE CONCEPT OF LAW 92 (Oxford University Press, 3d ed. 2012).

137. ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

legal rules that in rural places lack the enforcement mechanisms to ensure compliance and the results sought.