Making Sense of a 'Clear Misunderstanding of the Planning Process': Examining the Relationship Between Zoning and Rezoning Under the Change-or-Mistake Rule
Keith H. Hirokawa, Albany Law School

Honey, It's all the Buzz: Regulating Neighborhood Bee Hives
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Curtailing Ecosystem Exportation: Ecosystem Services as a Basis to Reconsider the Merits of Export-Driven Agriculture in Economies Highly Dependent on Agricultural Exports
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Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?
Patricia E. Salkin, Albany Law School
Amy Lavine, Albany Law School

Sustainable Habitat Restoration: Fish, Farms, and Ecosystem Services
Keith H. Hirokawa, Albany Law School
Charles Gottlieb, Albany Law School

Driving Local Governments to Watershed Governance
Keith H. Hirokawa, Albany Law School

In some states, zoning is marked by the persistence of the so-called "change or mistake rule." In contrast to the traditional deference afforded to local zoning decisions, this rule limits the freedom of local governments to make site-specific zoning amendments by burdening the applicant to justify the rezone with evidence of a mistake or a substantial change in circumstances since the initial zoning designation was adopted. Despite being chastised in the courts and labeled in legal literature as a "clear misunderstanding of the planning process," the rule has endured for over a half a century. This article explores the criticisms of and justifications for the change or mistake rule in order to identify the understanding that supports its continued application. Specifically, this article argues that the change or mistake rule was intended as a mediator between two fundamental purposes of zoning - maintaining communities that have sufficient flexibility to implement a new community vision, while providing stability and certainty as a planning device.

"Honey, It's all the Buzz: Regulating Neighborhood Bee Hives" Boston College Environmental Affairs Law Review, Forthcoming

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Urban beekeeping, along with other types of urban agriculture, sustainable development and green building, has generated quite a buzz in recent years. Small-scale beekeeping has proven to be especially popular among people looking to obtain more of their food from local sources and urban bees provide important pollination services to community gardens, home vegetable gardens and fruit trees. Some people also believe that honey contributes to a healthier lifestyle by providing a minimally-processed sweetener and through its various uses as a homeopathic remedy. Small-scale beekeeping may augment local economies too. Despite the benefits and growing popularity of backyard beekeeping, apiaries are not always welcomed by the neighbors. This article is designed to provide information to land use regulators about the benefits and drawbacks of beekeeping in residential areas, and it offers strategies for addressing beekeeping activities through local laws and ordinances.

"Curtailing Ecosystem Exportation: Ecosystem Services as a Basis to Reconsider the Merits of Export-Driven Agriculture in Economies Highly Dependent on Agricultural Exports"  
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This essay explores the impact of export-driven agricultural policies on the governance of natural capital. Many developing countries have adopted trade liberalization policies that encourage the intensive production of export commodities such as coffee, tea, flowers, and green beans. The primary focus of such policies is maximizing agricultural productivity and global competitiveness, which have been identified as critical factors in promoting economic growth and reducing poverty.

When viewed from the perspective of ecosystem services, however, export-driven trade policies are problematic. Export-driven agricultural trade policies leave no incentive to preserve the natural capital upon which the very success of such trade policies is predicated. This essay argues that export-driven agricultural trade policies do not take into account their impact on ecosystem services. Yet, ecosystems provide critical services such as clean and ample water supplies, biodiversity, nutrient cycling, climate regulation, and carbon sequestration. These services are critical to the success of export driven agriculture. In fact, where ecosystem processes fail or are otherwise interrupted, man-made substitutes must be put in place at a substantial cost. In order for developing countries to maximize productivity, this essay argues that export-led trade policies must be sustainable and as such incorporate the need to sustain the productivity of natural capital.

"Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?"  

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Governments at all levels have become increasingly interested in fostering healthy eating habits and sustainable agricultural production. Promoting access to locally grown produce is an important part of many policy goals seeking to address these concerns, and the concept of regional foodsheds has risen in popularity as one method to achieve these goals. Research indicates that community based food systems have the potential to address food security, public health, social justice, and ecological health. Food production and consumption patterns are influenced by a range of federal, state, and municipal policies, but meaningful change in regional food system policies is likely to start with state and local governments, which can take proactive measures to strengthen their regional foodsheds through a variety of land use planning and regulatory actions. This Article focuses on how existing land use plans and regulations can promote healthier and more sustainable communities through the foodshed movement. In particular, this Article discusses specific land use strategies that can be implemented in urban and suburban settings to facilitate local and regional food production and distribution that go beyond farmland preservation strategies and examine, among other things, smaller-scale community gardens, residential agricultural uses and farmers markets.

"Sustainable Habitat Restoration: Fish, Farms, and Ecosystem Services"  

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The conversion of estuarine marshes and floodplains to agricultural uses through diking, draining, and filling has left little adequate salmon habitat and, as a result, has been a critical factor in the decline of salmon populations. Current efforts to restore salmon by reestablishing ecosystem functionality. In particular, it has become more common to include dam and dike breaches as feasible solutions. Of course, there is a cost involved in habitat restoration, even if it is not an obvious environmental cost.

This article examines the dialogue on salmon valuation by contrasting the historical view of salmon-as-commodity with insights from "ecosystem services." This emerging trend in ecological economics will play a critical role in justifying restoration projects and formulating sustainability strategies; ecosystem services valuation is showing that investments in natural capital can provide substantial returns. This article also provides a case study of the Smith Island Habitat Restoration Project in Snohomish County, Washington. Smith Island, which was converted to farmland a century ago, exhibits enormous potential value for habitat restoration and begs for an inclusive process that considers the voices for economic, human, and ecosystem well-being. The resolution of the Smith Island controversy provides an insightful example of how a sustainability framework can be useful in showing that restoration strategies can offer substantial benefits to other lands uses and interests.

"Driving Local Governments to Watershed Governance"

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This article examines two recent developments in watershed protection. First, the growth of ecosystem services research has reframed the manner in which value accrues in natural resources. At the intersection of economics and ecology, the study of ecosystem services has supported the attribution of economic value to ecosystem processes. Second, local governments are participating quite intentionally in watershed management by identifying with particular watersheds, particular watershed features, and particular watershed functions, in ways that other entities lack the institutional capacity to do. These developments are important for watershed protection in ways not previously seen: even if they leave political boundaries intact, when local governments protect watershed functionality, they are acting to preserve natural capital, and natural capital is geographically situated in ways that defy the sanctity of political boundaries.

This article addresses the importance of driving local governments to watershed planning and management by introducing the perspective of ecosystem and watershed services. Part II of this article discusses the complexity of functional watersheds and identifies watershed features that can be categorized in ecosystem services terms as the provisioning, regulating, cultural, and supporting services. By discussing watershed services, this part identifies the valuable ecosystem services in watersheds and the objectives of watershed investments. Part II furthermore explores the nature of watershed planning in the context of existing regulatory, property, and sovereignty ownership schemes for the purpose of identifying the level at which local governments are held to account for watershed investments. This part explores the notion that local governments are so grounded relative to watersheds that the task of identifying and satisfying local needs and parochial perspectives – often thought to impede sound environmental planning – should be considered a primary driver in a collaborative and developing process. Part III of this article discusses the manner in which the ecosystem services perspective illuminates particular local governance needs.

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