

August 21, 2020

Delta County
Elyse Ackerman-Casselberry,
Community & Economic Development Director
501 Palmer St Suite 119
Delta, CO 81416

Re: Supplemental Comments on Delta County Draft Land Use Regulation

Submitted electronically to: DeltaCountyLandUse@deltacounty.com

Dear Elyse,

Thank you for the opportunity to comment on the Draft Land Use Code for Delta County. Please accept these additional supplemental comments (intended as a complement to our comment letter dated July 21, 2020) on behalf of the 600+ members of the Western Slope Conservation Center (WSCC). WSCC has a 43-year history of seeking community-based solutions that protect our natural resources in the North Fork and Lower Gunnison Watersheds. The letter contains various concerns related to WSCC from our members.

Process Concerns

WSCC is concerned that the County is rushing to complete the land use code revision process without adequate time for the public to thoroughly review the draft(s). The current draft isn't complete. Two short public comment periods over the summer with a total of 33 days for the public to review this 172-page document is inadequate considering that late summer is an extremely busy time for many (especially those involved in agriculture) to review a document and engage in an important, complex process that may impact their properties or economic livelihoods. The comment periods are also happening while many are trying to get kids back to school during the uncertainty of a global pandemic.

Recommendation: Extend the comment period to 60 days to allow the public adequate time to review and comment on the final draft plan.

Water Quality Protection Issues

Water quality has been a high priority for WSCC since its inception. At 20 years of testing, WSCC currently has the second longest continuous water quality testing

program in the State of Colorado addressing the North Fork of the Gunnison River and its tributaries.

WSCC is concerned with the lack of specificity in the proposed regulations for stormwater control at intensive agricultural operations. On page 82 in Chapter 4, Section 7, Environmental Quality the title of Part B is “Stormwater Management, Grading, Erosion and Sediment Control,” but there’s nothing in the section about grading, erosion, and sediment control.

WSCC suggests that language be added to this section specifying how erosion will be prevented and sediment controlled at sites during and after construction to protect nearby streams and properties. Additionally, in Subsection 1 of this section WSCC suggests replacing the “modified civil rule law” language with language to the effect “All developments are required to comply with state and federal stormwater regulations.” We question the need for Delta County to have any additional stormwater regulations. Also, in Section B.2 (page 82), WSCC suggests all proposed construction in the county (not just limited or conditional uses) should, prior to construction, have to design a plan to reduce the discharge of pollutants in stormwater that emphasizes pollution prevention over active treatment of stormwater.

The Right to Farm language in Section 7, Environmental Quality, Section A(2) on page 82 does not appear to be an Environmental Quality factor and we suggest it might better be located in Section 5, (Agricultural, Natural, and Cultural Resources), Section B (Agricultural Operations and Prime Agricultural Soils), Subsection 2 (Impacts). It would seem to fit nicely with the following Subsection 5 language about the Plot Note reference to a Right to Farm disclaimer.

We also suggest the Intensive Agriculture Chapter 2 (Zoning Districts and Land Use) Section 5 (Limited Use Approval Standards) could have a subsection (perhaps B.1.b) stating that all such operations must comply with state and federal animal and livestock feeding regulations.¹

WSCC suggests perhaps a separate section to specifically deal with the unique set of challenges presented by chicken house operations addressing solid waste storage, setbacks from water bodies, and downslopes above such water bodies. WSCC suggests that the setback for chicken manure storage from water bodies and downsloping surfaces above water bodies be increased to 500 feet and include specific stormwater erosion control measures, consistent with the state policy that counties can adopt more stringent measures than state guidelines provide.

¹ <https://www.colorado.gov/pacific/cdphe/animal-and-livestock-feeding-operations-general-information> and <https://www.colorado.gov/pacific/cdphe/animal-and-livestock-feeding-regulations>

Right to Farm Issues

Agriculture is central to the economy and way of life in Delta County. We should do whatever we can to support the farmers and ranchers so that this industry can remain and expand, especially as coal jobs have declined. However, the Right to Farm language in Section 7.a.2.b goes too far and fails to protect private property rights of neighboring County residents. Granting immunity for nuisance lawsuits to any future agricultural operation fails to adequately protect neighbors and could deprive residents of the full use and enjoyment of their property. State statutes that protect existing farming operations from complaints from new residential development are adequate, and should be used instead of what is written.

Recommendation: Strike the following language from Section 7.a.2.b:

Pursuant to the authority granted by C.R.S. § 35-3.5-102(7), the protection against nuisance suits that is created by C.R.S. § 35-3.5-102(2) (a) is expanded to uses in the agriculture land use category regardless of when they are established.

Concentrated Animal Feeding Operations

WSCC is concerned that there are not adequate requirements for assessing the site-based and cumulative impacts of CAFOs, and also that they are exempted from the current “Conditional Review” that requires public and neighbor input. CAFOs and other large or potentially controversial developments should be subject to the most stringent public scrutiny and process. CAFOs should not be exempted from the current “Conditional Review” that requires public and neighbor input.

Additional Concerns

- The Rural Heavy Industry zoning (for example rock crushing or use of explosives) does not require the conditional review (C), but is instead proposed to be downgraded to a “Limited Use” permit that does not require public meetings or review. A public process should be required for such zoning.
- Hazardous Waste Dumps would be allowed on parcels over 35 acres under the proposed regulations. This could include potentially fracking waste products or radioactive waste materials. The County should consider what types of

hazardous wastes would be allowed or not, and place some additional restrictions, as appropriate, based on the type of waste.

- In the plan, the Bowie Loadout property and several others at the entry to the North Fork and base of Garvin Mesa are proposed to be zoned as “Industrial/Commercial,” which would allow oil and gas support services and other heavy industry to develop these sites. There is a long history of residents opposing industrial development on that property. WSCC urges the County to include public input in the zoning process for these particular properties.
- Oil and Gas support services, including fracking fluid storage, heavy equipment, etc. is proposed to be downgraded from the current “Conditional Use” review that requires neighbor and public input, to “Limited Use” permit, that does not require public review, for all zones except Industrial/Commercial. In the Industrial/Commercial zone, Oil and Gas support services are proposed to be an “A - Allowed by right”, without any review, no permits, no neighbor notices, no public input at all. All oil and gas support services should be subject to public notice and review, at a minimum.
- Wireless and Cell towers could be built almost anywhere without public notice or input, or even without input from the landowner if it is adjacent to a county road. You could wake up one morning with a large 5G cell or wifi tower at the end of your driveway on your property, adjacent to the county road, without any notice, no public input, no agreement with the landowner. While a private property owner could invite a cell company to put up a tower for the income, impacts on neighbors must be considered. While the evidence is disputed, there is enough solid evidence of health concerns resulting from these towers that the neighbors must be informed whenever an activity has impact, in this case aerial, beyond the border of the private property.
- Commercial and Rural Industrial land uses are lumped into the same zone, so a real estate office, strip mall or retail store will have the same rules as Heavy Industry that has noise, dust, explosives, dangerous chemicals, etc. Commercial use should be a separate category with its own rules since it is fundamentally different from Rural Industrial use.
- Many decisions and judgement calls and wide latitude are given to an unelected “director” who may make decisions that are inconsistent, arbitrary or have the appearance of favoritism. This runs counter to the overarching stated goal to “make regulations more fair and predictable”. The County Planning committee could be consulted for such decisions to avoid the appearance of bias.

- There is no consideration of cumulative impacts of ANY type of development. The plan should include the cumulative impacts of existing development in the county as a baseline and develop mechanisms to monitor, and as necessary limit, cumulative impacts of various types of development.
- There should be mechanisms to assure that Colorado Parks and Wildlife (CPW) recommendations are enforced when it comes to protecting wildlife corridors and habitat. There are no maps to inform a landowner or potential landowner that they are in an area with special wildlife considerations. We strongly urge the county to work with CPW to provide a keyed map designating wildlife corridors and habitat within the county and adjacent lands and contacts for resources that will aid in avoiding harm or interfering with the use of these lands.

Respectfully,



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