

DELTA COUNTY PLANNING COMMISSION

**Delta County Board of County Commissioner's Room
560 Dodge St., Delta, CO 81416
Wednesday, October 26, 2022 @ 5:30 p.m.**

**Tom Kay, Chair
Tate Locke, Vice-Chair
Carl Holm, Director**

Agendas and attachments are available on our website at:

<https://www.deltacounty.com/725/Agendas-and-Minutes>

To be notified when new agendas and minutes have been published, sign up on the "Notify Me" page and manage your notification preferences (email, text, or both).

Instructions for Public Participation via Zoom:

The public can join the meeting remotely by registering in advance of the meeting at:
<https://us02web.zoom.us/meeting/register/tZUpfuiuDgsEtDfRLf9jxoLnISzt9Y4S0IP>
After registering, you will receive a confirmation email containing information about joining the meeting.

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

DISTRICT 1

Cindy Watson
Steve Schrock
Steve Shea
Vacant, Associate

DISTRICT 2

Layne Brones
Tate Locke, Vice Chair
Hardy Hutto
Vacant, Associate

DISTRICT 3

Jacob Gray
Tom Kay, Chair
Kate Darlington
David Marek, Associate

A. MEETING MINUTES

1. Regular Planning Commission meeting of:
 - a. **October 12, 2022**RECOMMENDATION: Approve the action minutes as presented.

B. PUBLIC HEARING ITEMS

Public Hearing Items are noticed and open for public comment.

1. 2022 Land Use Code Update

Continued from October 12, 2022. Public Hearing to consider the Public Draft of the 2022 Delta County Land Use Code Update (Released 9/21/2022).

RECOMMENDATIONS: Staff recommends that the Planning Commission:

- a. Continue the public hearing on proposed changes; and
- b. Provide direction to staff for finalizing the Draft LUC.

CERTIFICATION OF POSTING

On October 19, 2022 at 1:15 PM, Kim Henderson did post the above AGENDA as public notice of the October 26, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

C. DEPARTMENT REPORT

D. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Commission to comment, request, or refer a matter that is not on the agenda for future consideration.

ADJOURNMENT

Next Meeting: Wednesday, November 16, 2022 at 5:30 pm in Delta, CO.

CERTIFICATION OF POSTING

On October 19, 2022 at 1:15 PM, Kim Henderson did post the above AGENDA as public notice of the October 26, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.



**DELTA COUNTY PLANNING COMMISSION MEETING MINUTES
DELTA COUNTY BOARD OF COUNTY COMMISSIONER'S ROOM
560 Dodge Street., Delta, CO 81416
October 12, 2022**

Chair Tom Kay called the meeting to order at 5:30 p.m. in the Delta County Board of County Commissioner's Room.

ROLL CALL

Planning Commission Members in Attendance:

Tom Kay	Kate Darlington
Steve Schrock	Steve Shea
Jacob Gray	Layne Brones
David Marek (Associate)	Cindy Watson

Absent Members:

Tate Locke
Hardy Hutto

With all member(s) present from District 3, David Marek (Associate) can participate but is not able to vote.

Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Community Development Planner I, Angie Kemp
Delta County Community Development Administrative Assistant, Kim Henderson
Delta County Code Compliance Officer, Everett Neil
Delta County Administrator, Robbie LeValley

A. MEETING MINUTES

1. Regular Planning Commission meeting of:
 - a. September 14, 2022
 - b. September 19, 2022

RECOMMENDATION: Approve the action minutes as presented.

Cindy Watson moved to approve the minutes as presented. Layne Brones seconded the motion.

Motion carried unanimously.

B. PUBLIC HEARING ITEMS

1. Land Use Code Update
Public Hearing to consider the Public Draft of the Delta County Land Use Code Update (Released 9/21/2022).
RECOMMENDATIONS: Staff recommends that the Planning Commission take public testimony on proposed changes and provide direction to staff.

The Planning Commission heard from members of the public.

Chuck Cherek addressed the Planning Commission regarding protecting neighbors from being impacted by a project, specifically as it related to undergrounding transmission lines with solar projects.

Martin Horvath addressed the Planning Commission regarding zoning designations. He advocated to return to lot density averaging, relating it to his family's property on Rogers Mesa. It was explained why the County moved away from density averaging to the Land Use Code (LUC), and how his particular case could work under the LUC.

Eli Wolcott (via Zoom) noted that he was losing his voice so he would submit written comments.

Randy Wilmore was present to address comments submitted in writing to the Planning Commission in regards to Variances, Boundary Line Adjustments, Parcels split by Dedication in Fee Title, Application Review



Process, Pre-application meetings, Setbacks, Subdivision Regulations, Building Envelopes and Stewardship Areas.

The Planning Commission had a discussion regarding Boundary Line Adjustments and the goal of the Land Use Code was to make things more predictable. Boundary Line Adjustments should have a separate category and not be included in the Subdivision Category. The Planning Commission clarified that a Boundary Line Adjustment is not a subdivision and should not be required to show all items that are required in a Subdivision (road center lines, house/feature). The Boundary Line Adjustment plats should include any existing easements, irrigation headgates and septic/leach fields.

Planning Director, Carl Holm provided clarification on items noted in the written questions/comments from Wilmore and Company (dated 11 October 2022):

- a. Is the administrative variation to lot size outside of the administrative modification and variation regulations? Does creating a lot smaller than 2.5 acres require a variance?
Yes. Currently the LUC requires all lots smaller than the minimum to go to the BoA. Proposed changes would create criteria where the Director could approve a variance to lot size. If it does not meet any one of the criteria, it must go to the Board of Adjustments. Delta County created this for flexibility, but that does create less certainty. Other jurisdictions do not allow variance to lot size, must meet the minimum (more certainty).
- b. Is a parcel split by dedication in Fee Title by preexisting conditions or can it also include new dedication?
It can be either way. If land was (or is) dedicated by Fee Title and accepted, it would effectively split the property and create two legal parcels. A road petition or easement does not meet that qualification. If there is a question on if there is a fee title or not, Planning will consult the County Attorney.
- c. Why is a BLA subject to development regulations (e.g. setbacks)?
It was agreed that a BLA is not a subdivision. However, modifying a property line is development that is subject to the Land Use Code standards (e.g. setbacks). There was discussion what should or shouldn't be require for a BLA. It was suggested that Mr. Wilmore provide specific suggestions in this regard.
- d. Does a fee need to be charged for a pre-application?
Under the current code, a pre-application is required for every application. Proposed changes would take out the requirement, but allows an applicant to request a meeting or if the Director feels all Land Use Departments need to discuss an issue that may have been discovered. Planning also is able to meet with potential applicants to go over their plans before they submit an application (no fee).
- e. If there is a BLA following an existing fence line, there might be a non-residential building that does not meet setbacks.
At this point, the LUC does not distinguish between residential and non-residential structures. The Admin Modification process affords the Director to grant a minor variance up to 25%. Simply exempting non-residential buildings opens a door for people to build first and then process a BLA. There needs to be thought on how to balance structures like barns from new structures, but that requires some level of review. A different setback could be created for a non-residential buildings (e.g., barn, shed), fences would be exempt from the setback requirement.
- f. Request an example where reduction of setbacks is not used to change requirements of Chapter 4.
The example is requirement for a 10-foot setback for parking in Chapter 4. An Administrative Modification could not be granted by the Director for this standard.
- g. Can a Site/Sketch Plan be submitted for a variance before hand so the applicant can decide if they want to move forward?
There have been complaints about the process taking too long so the LUC update affords the ability for the BoA to hear the variance and Minor Plat together, avoiding a separate, subsequent action by the Director on the Minor Plat. If someone wants to submit a Site Plan and see if the variance is approved first, they can. Alternatively, they can apply for both the variance and Minor Plat by submitting a Sketch Plan...provided there is adequate detail for considering the subdivision. That Sketch Plan could be conditioned with Final Plat requirements.
- h. No direct access to lots less than 5 acres from a county road in a standard subdivision (3+ lots)?



Under the existing LUC, lots fronting any County road could not take direct access. The update proposes that the lots could have direct access as long as it is on a local road, but not a collector or arterial road. If the lots front a collector or arterial, then they require a shared access. That access does not need to be a dedicated County road, but does need to be constructed to County standards with appropriate easement(s) and maintenance agreement(s). It was determined that this relies on classification rather than existing function/use of a road.

i. Building Envelopes/Stewardship Areas

The Planning Commission had a lot of discussion around this. At this point, we landed with 1 acre building envelopes and substantial area for Stewardship Areas based on projects that we reviewed, recognizing that the update includes more options for rezoning. Language that was adopted with the LUC does read like a conservation easement. However, a clustered subdivision is an option (not forced) and the point is to provide some sort of flexibility in exchange for removing density and lot size requirements. Putting the land into a conservation easement for the tax benefit would meet the requirement for financial surety and long-term maintenance. In exchange, they can get more, smaller lots. The LUC does require designating Stewardship Areas as tracts. The goal/intent is to make it clear who is responsible to manage the Stewardship Area and what the restrictions are. So that it continues to operate as anticipated even if the property changes ownership. The implementing practice has been to make sure Stewardship Areas are identified and clearly mapped on the Plat, not requiring designation as a tract. In addition, we have been requesting a plat note regarding limitation on use of that area.

The PC recognized that this may need to be a discussion for another update, not part of this one.

j. Acreage summary is redundant and does not need to occur when in the summary table.

Staff agree that we do not want, need, to create redundancy. Staff noted that it was not clear where this issue came from in the LUC, so requested Mr. Wilmore to provide more info about where the issue arises from.

k. Staff agreed that the Name of the Treasurer being listed on the plat is not needed.

l. Plat Note 8 has gotten longer. Planning noted that they will speak with the County Attorney on whether it needs to include entire list of Right to Farm.

m. Boundary Line Adjustment definition

Staff agreed to remove the "less than 35-acres" off the end of the definition.

The PC recognized a letter received from Schumacher & O'Laughlin, LLC (Attorneys at Law) on behalf of Citizens for a Healthy Community (CHC) with regards to renewable energy facilities. This letter was referred to the County Attorney to address the legal arguments.

The PC requested Planning bring back possible changes to the sections discussed from the Wilmore and Company letter to the next meeting. In addition, Mr. Wilmore was encouraged to suggest specific language changes if desired following the discussion.

C. DEPARTMENT REPORT

Planning Director, Carl Holm informed the Planning Commission of the following:

1. The Board of County Commissioners will be reviewing the Delta Paving Gravel Pit on October 18th. This was continued from the September 20, 2022 meeting.
2. The Board of County Commissioners will be reviewing PLN22-048/Mazurie Preliminary Plat on October 18th.
3. The Board of County Commissioners approved the Armstrong-Final, Corona-Final, Victorian-Final and Brown-Preliminary subdivisions as well as the Ehlers rezone per PC recommendations.
4. All pre-Land Use Code projects have cleared but one which is SUB20-010/Tribble Subdivision. This application is pending a signed Access Maintenance Agreement.
5. Escrow Accounts have been closed out with approximately 6 accounts remaining.
6. The Junk/Rubbish Ordinance update has been adopted. Relate to that, Planning developed SOPs for code compliance that can be presented at a later PC meeting.
7. A Department Status Report was created for all Land Use Departments (Planning, Engineering, GIS, Env Health) to coordinate and better streamline the review process.
8. The Planning Department Budget meeting is scheduled for October 21, 2022. Special requests include a permitting database/process program and matching funds for an affordable housing grant.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

In addition, we are asking to continue preparation of a Natural Resources Coordination Plan that was planned for 2022 but did not happen with other priorities.

9. County Administrator Robbie LeValley provided an update on the County Surveyor. The Board of County Commissioners will be appointing a County Surveyor since there is no one on the ballot and Jesse Messenger is not interested to continue.

D. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

Chair Tom Kay requested Planning send a notice to the Planning Commission members regarding the Delta County Quarterly Economic Update.

ADJOURNMENT

The next meeting will be held on October 26, 2022 at 5:30pm in Delta, CO.

Meeting adjourned at 7:38 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT



STAFF REPORT

Delta County Planning Commission

Delta County Administrative Building
560 Dodge Street, Delta, CO 81416

Wednesday, October 26, 2022 @ 5:30 p.m.

2022 Land Use Code Update

Continued from October 12, 2022. Public Hearing to consider Public Draft 2022 Land Use Code Update.

RECOMMENDATION:

Staff recommends that the Planning Commission:

- a. Continue the Public Hearing on the 2022 LUC Update; and
- b. Provide direction to Staff for finalizing the draft LUC.

Edits will be incorporated into a Final Draft that will be considered for certification on November 16, 2022.

Report prepared by: Carl P. Holm, AICP, Planning Director

SUMMARY/DISCUSSION:

On October 12th the PC held a public hearing and received comments on the Public Draft LUC Update. Staff presented two written comments from 1) Wilmore and Company (received via email 09:04 on 10/11/22) and 2) Schumacher & O'Loughlin LLC, attorney representing Citizens for a Healthy Community (received via email 16:41 on 10/12/22).

Comments from two individuals were presented at the meeting. Mr. Eli Wolcott attended via Zoom and noted he planned to submit written comments (nothing received as of writing this report). Following the meeting Ms. Gayle Montelin submitted comments (received via email 16:47 on 10/17/22).



Comments received to date have been **attached** for reference. Comments received after posting this agenda will be forwarded to the PC separately.

At the last hearing, the PC specifically discussed questions/comments submitted by local surveyors where Mr. Randy Wilmore was present for this discussion. Draft PC minutes are attached that attempt to capture all of the comments/discussion for the record (versus the typical action minutes). In addition, staff sent a follow up letter to Mr. Wilmore on October 17th (**Attached**). This letter includes some items where staff agreed to make changes, see "Recommended Changes" section below and follow up letter responding to the surveyors.

Staff was asked to follow up on a couple items:

- Standard Plat note relative to Ag protection. Staff consulted the County Attorney and we developed some alternative (shorter) language. See "Recommended Changes" section below modifying "Standard Notes" in Chapter 12.
- Letter from attorney for CHC addressing renewable energy facilities. Staff requested a written opinion from the County Attorney in response. This will be provided to the Commissioners when available.
- Consider language for how to address existing structures with a Boundary Line Adjustment (BLA). See "Recommended Changes" section below modify "Bulk Standards" in Chapter 3.

On October 13th, the Board of Adjustment (BoA) held a public hearing on the Public Draft LUC Update. Generally, the BoA supported the proposed LUC with what was discussed by the PC, including having more discussion about Stewardship Areas and Legacy Lots - subsequently, not part of this update. Staff presented a summary of the discussion with the PC on 10/12. Staff presented PC discussion on the surveyor letter in the manner as outlined in the follow up response (**Attached**). The BoA noted that they would not recommend changing the setback for non-residential (non-habitable) structures as part of a BLA, and they felt reviewing BLAs was pertinent at this point, especially when structures are involved. They noted that simply moving a property line to a fence line can cause issues like there being inadequate space to maintain an irrigation ditch.

In addition, staff sent the Public Draft to each of the municipalities. We held informal (staff) meeting between 10/14 and 10/20 with an emphasis on the IGAs (land use).

RECOMMENDED CHANGES

Based on comments received to date, staff suggests making the following changes from the Public Draft:

- Modify Chapter 3, Section B.2 (Bulk Standards).

Setbacks. All buildings and structures shall be setback:

- b. 15 ft. from all other (interior) property boundaries; however, non-habitable, accessory structures not suitable for living, sleeping, eating or cooking, as determined by



the Director, may be setback 5 feet from interior property boundary (e.g., carport, storage building, workshop, garage, shed, barn); and

- Modify Chapter 7, Section 2.A.2 (Incomplete Applications)
FROM “materials requested at the pre-application conference” TO “materials requested following the pre-application conference” to clarify it applies to materials (including fees) requested in the *follow up* letter, not at the pre-application stage.
- Modify Chapter 12, Section 5.G (Certificate of Taxes Paid)
FROM “I, ~~[Insert Applicable Name]~~, ~~Treasurer and Public Trustee of the County of Delta, State of Colorado~~ hereby certify” TO “I, the undersigned, hereby certify”
- Modify Chapter 12, Section #.I (Standard Notes)
~~8. — NOTICE TO LOT PURCHASERS. As of the date of this Final Plat, adjacent property is used for agricultural purposes. The land within this plat may be impacted by agricultural activities, including but not limited to noise from tractors and equipment; slow moving farm vehicles on rural roads; dust from animal pens, field work, harvest and gravel roads; odor from animal confinement, silage, and manure; smoke from ditch burning; flies and mosquitoes; hunting and trapping activities; shooting sports; legal hazing of nuisance wildlife; and the use of pesticides and fertilizers in the fields, including the use of aerial spraying.~~
8. NOTICE TO LOT OWNERS: The lots identified on this plat are located in an agricultural area and are subject to the Nuisance Liability of Agricultural Operations Law as well as the Delta County Right to Farm and Ranch Policy.
~~11. — All development in Delta County is subject to the Delta County Right to Farm and Ranch Policy, adopted as Resolution 99-R-020 by the Board of County Commissioners on September 27, 1999 (as amended).~~
- Modify Chapter 14, Section 2 (Definitions):
Boundary Line Adjustment means an adjustment or revision of established, undisputed, existing boundary lines between parcels or lots less than 35 acres, where such adjustment does not result in creating an additional parcel/lot ~~less than 35 acres~~.

FUTURE CONSIDERATIONS

During the PC discussions, a couple items have come up where the PC noted the desire to have further subsequent discussion, but not to hold up this update:

- Legacy Lots. Exception for splitting off a lot from large land holdings to encourage keeping larger parcels intact.
- Stewardship Areas. Flexibility for delegating responsible party and how it is managed.
- Zoning Maps. Consider application of new zoning designations.

ATTACHMENTS

- DRAFT PC minutes (10/12/22)
- Follow Up Letter to Surveyors (10/17/22)
- Comment letters



**DELTA COUNTY PLANNING COMMISSION MEETING MINUTES
DELTA COUNTY BOARD OF COUNTY COMMISSIONER'S ROOM
560 Dodge Street., Delta, CO 81416
October 12, 2022**

Chair Tom Kay called the meeting to order at 5:30 p.m. in the Delta County Board of County Commissioner's Room.

ROLL CALL

Planning Commission Members in Attendance:

Tom Kay	Kate Darlington
Steve Schrock	Steve Shea
Jacob Gray	Layne Brones
David Marek (Associate)	Cindy Watson

Absent Members:

Tate Locke
Hardy Hutto

With all member(s) present from District 3, David Marek (Associate) can participate but is not able to vote.

Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Community Development Planner I, Angie Kemp
Delta County Community Development Administrative Assistant, Kim Henderson
Delta County Code Compliance Officer, Everett Neil
Delta County Administrator, Robbie LeValley

A. MEETING MINUTES

1. Regular Planning Commission meeting of:
 - a. September 14, 2022
 - b. September 19, 2022

RECOMMENDATION: Approve the action minutes as presented.

Cindy Watson moved to approve the minutes as presented. Layne Brones seconded the motion.

Motion carried unanimously.

B. PUBLIC HEARING ITEMS

1. Land Use Code Update
Public Hearing to consider the Public Draft of the Delta County Land Use Code Update (Released 9/21/2022).
RECOMMENDATIONS: Staff recommends that the Planning Commission take public testimony on proposed changes and provide direction to staff.

The Planning Commission heard from members of the public.

Chuck Cherek addressed the Planning Commission regarding protecting neighbors from being impacted by a project, specifically as it related to undergrounding transmission lines with solar projects.

Martin Horvath addressed the Planning Commission regarding zoning designations. He advocated to return to lot density averaging, relating it to his family's property on Rogers Mesa. It was explained why the County moved away from density averaging to the Land Use Code (LUC), and how his particular case could work under the LUC.

Eli Wolcott (via Zoom) noted that he was losing his voice so he would submit written comments.

Randy Wilmore was present to address comments submitted in writing to the Planning Commission in regards to Variances, Boundary Line Adjustments, Parcels split by Dedication in Fee Title, Application Review



Process, Pre-application meetings, Setbacks, Subdivision Regulations, Building Envelopes and Stewardship Areas.

The Planning Commission had a discussion regarding Boundary Line Adjustments and the goal of the Land Use Code was to make things more predictable. Boundary Line Adjustments should have a separate category and not be included in the Subdivision Category. The Planning Commission clarified that a Boundary Line Adjustment is not a subdivision and should not be required to show all items that are required in a Subdivision (road center lines, house/feature). The Boundary Line Adjustment plats should include any existing easements, irrigation headgates and septic/leach fields.

Planning Director, Carl Holm provided clarification on items noted in the written questions/comments from Wilmore and Company (dated 11 October 2022):

- a. Is the administrative variation to lot size outside of the administrative modification and variation regulations? Does creating a lot smaller than 2.5 acres require a variance?
Yes. Currently the LUC requires all lots smaller than the minimum to go to the BoA. Proposed changes would create criteria where the Director could approve a variance to lot size. If it does not meet any one of the criteria, it must go to the Board of Adjustments. Delta County created this for flexibility, but that does create less certainty. Other jurisdictions do not allow variance to lot size, must meet the minimum (more certainty).
- b. Is a parcel split by dedication in Fee Title by preexisting conditions or can it also include new dedication?
It can be either way. If land was (or is) dedicated by Fee Title and accepted, it would effectively split the property and create two legal parcels. A road petition or easement does not meet that qualification. If there is a question on if there is a fee title or not, Planning will consult the County Attorney.
- c. Why is a BLA subject to development regulations (e.g. setbacks)?
It was agreed that a BLA is not a subdivision. However, modifying a property line is development that is subject to the Land Use Code standards (e.g. setbacks). There was discussion what should or shouldn't be require for a BLA. It was suggested that Mr. Wilmore provide specific suggestions in this regard.
- d. Does a fee need to be charged for a pre-application?
Under the current code, a pre-application is required for every application. Proposed changes would take out the requirement, but allows an applicant to request a meeting or if the Director feels all Land Use Departments need to discuss an issue that may have been discovered. Planning also is able to meet with potential applicants to go over their plans before they submit an application (no fee).
- e. If there is a BLA following an existing fence line, there might be a non-residential building that does not meet setbacks.
At this point, the LUC does not distinguish between residential and non-residential structures. The Admin Modification process affords the Director to grant a minor variance up to 25%. Simply exempting non-residential buildings opens a door for people to build first and then process a BLA. There needs to be thought on how to balance structures like barns from new structures, but that requires some level of review. A different setback could be created for a non-residential buildings (e.g., barn, shed), fences would be exempt from the setback requirement.
- f. Request an example where reduction of setbacks is not used to change requirements of Chapter 4.
The example is requirement for a 10-foot setback for parking in Chapter 4. An Administrative Modification could not be granted by the Director for this standard.
- g. Can a Site/Sketch Plan be submitted for a variance before hand so the applicant can decide if they want to move forward?
There have been complaints about the process taking too long so the LUC update affords the ability for the BoA to hear the variance and Minor Plat together, avoiding a separate, subsequent action by the Director on the Minor Plat. If someone wants to submit a Site Plan and see if the variance is approved first, they can. Alternatively, they can apply for both the variance and Minor Plat by submitting a Sketch Plan...provided there is adequate detail for considering the subdivision. That Sketch Plan could be conditioned with Final Plat requirements.
- h. No direct access to lots less than 5 acres from a county road in a standard subdivision (3+ lots)?



Under the existing LUC, lots fronting any County road could not take direct access. The update proposes that the lots could have direct access as long as it is on a local road, but not a collector or arterial road. If the lots front a collector or arterial, then they require a shared access. That access does not need to be a dedicated County road, but does need to be constructed to County standards with appropriate easement(s) and maintenance agreement(s). It was determined that this relies on classification rather than existing function/use of a road.

i. Building Envelopes/Stewardship Areas

The Planning Commission had a lot of discussion around this. At this point, we landed with 1 acre building envelopes and substantial area for Stewardship Areas based on projects that we reviewed, recognizing that the update includes more options for rezoning. Language that was adopted with the LUC does read like a conservation easement. However, a clustered subdivision is an option (not forced) and the point is to provide some sort of flexibility in exchange for removing density and lot size requirements. Putting the land into a conservation easement for the tax benefit would meet the requirement for financial surety and long-term maintenance. In exchange, they can get more, smaller lots. The LUC does require designating Stewardship Areas as tracts. The goal/intent is to make it clear who is responsible to manage the Stewardship Area and what the restrictions are. So that it continues to operate as anticipated even if the property changes ownership. The implementing practice has been to make sure Stewardship Areas are identified and clearly mapped on the Plat, not requiring designation as a tract. In addition, we have been requesting a plat note regarding limitation on use of that area.

The PC recognized that this may need to be a discussion for another update, not part of this one.

j. Acreage summary is redundant and does not need to occur when in the summary table.

Staff agree that we do not want, need, to create redundancy. Staff noted that it was not clear where this issue came from in the LUC, so requested Mr. Wilmore to provide more info about where the issue arises from.

k. Staff agreed that the Name of the Treasurer being listed on the plat is not needed.

l. Plat Note 8 has gotten longer. Planning noted that they will speak with the County Attorney on whether it needs to include entire list of Right to Farm.

m. Boundary Line Adjustment definition

Staff agreed to remove the "less than 35-acres" off the end of the definition.

The PC recognized a letter received from Schumacher & O'Laughlin, LLC (Attorneys at Law) on behalf of Citizens for a Healthy Community (CHC) with regards to renewable energy facilities. This letter was referred to the County Attorney to address the legal arguments.

The PC requested Planning bring back possible changes to the sections discussed from the Wilmore and Company letter to the next meeting. In addition, Mr. Wilmore was encouraged to suggest specific language changes if desired following the discussion.

C. DEPARTMENT REPORT

Planning Director, Carl Holm informed the Planning Commission of the following:

1. The Board of County Commissioners will be reviewing the Delta Paving Gravel Pit on October 18th. This was continued from the September 20, 2022 meeting.
2. The Board of County Commissioners will be reviewing PLN22-048/Mazurie Preliminary Plat on October 18th.
3. The Board of County Commissioners approved the Armstrong-Final, Corona-Final, Victorian-Final and Brown-Preliminary subdivisions as well as the Ehlers rezone per PC recommendations.
4. All pre-Land Use Code projects have cleared but one which is SUB20-010/Tribble Subdivision. This application is pending a signed Access Maintenance Agreement.
5. Escrow Accounts have been closed out with approximately 6 accounts remaining.
6. The Junk/Rubbish Ordinance update has been adopted. Relate to that, Planning developed SOPs for code compliance that can be presented at a later PC meeting.
7. A Department Status Report was created for all Land Use Departments (Planning, Engineering, GIS, Env Health) to coordinate and better streamline the review process.
8. The Planning Department Budget meeting is scheduled for October 21, 2022. Special requests include a permitting database/process program and matching funds for an affordable housing grant.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

In addition, we are asking to continue preparation of a Natural Resources Coordination Plan that was planned for 2022 but did not happen with other priorities.

9. County Administrator Robbie LeValley provided an update on the County Surveyor. The Board of County Commissioners will be appointing a County Surveyor since there is no one on the ballot and Jesse Messenger is not interested to continue.

D. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

Chair Tom Kay requested Planning send a notice to the Planning Commission members regarding the Delta County Quarterly Economic Update.

ADJOURNMENT

The next meeting will be held on October 26, 2022 at 5:30pm in Delta, CO.

Meeting adjourned at 7:38 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT

Re: LUC Proposed Revisions

1 message

Carl Holm <cholm@deltacounty.com>

Mon, Oct 17, 2022 at 12:50 PM

To: Kris Crawford <kris@wilmorelandsurveying.com>

Cc: Engineering - Kate Kelly <kkelly@deltacounty.com>, Angie Kemp <akemp@deltacounty.com>, Tim McCracken <tmccracken@deltacounty.com>, "rlevalley@deltacounty.com" <rlevalley@deltacounty.com>, "jbaier@deltacounty.com" <jbaier@deltacounty.com>, Debbie Griffith <debbieg@deltacounty.com>, "jgeorge@deltacounty.com" <jgeorge@deltacounty.com>, County Surveyor <surveyor@deltacounty.com>, Randy Wilmore <randy@wilmorelandsurveying.com>, "kenschaaaf@itcresources.us" <kenschaaaf@itcresources.us>, "miketwamley@aol.com" <miketwamley@aol.com>, Tom Kay <northforkorganics@gmail.com>, "khenderson@deltacounty.com" <khenderson@deltacounty.com>

Randy

Thank you for attending the PC meeting and engaging in that discussion. I've attached a summary following that discussion.

The next hearing on the LUC at the PC is 10/26. I am asking them to provide direction for any changes from the Public Draft LUC.

Carl P. Holm, AICP
Director of Community Development and Natural Resources
Phone (o): 970-874-2105
Email: cholm@deltacounty.com

On Tue, Oct 11, 2022 at 9:04 AM Kris Crawford <kris@wilmorelandsurveying.com> wrote:

To All Parties Involved,

Here is a commentary on the proposed Land Use Code revisions as set forth by the Delta County Planning Department. This is a joint review by all professional land surveyors within Wilmore and Company Professional Land Surveying, but is not intended to be finite in its content. We have tried to bring forth questions and concerns to further clarify the LUC and ensure we have a document that is fully understood as the county moves forward with its oversight within the LUC. Please review and add comments to any items necessary so that they may be discussed at the meeting on October 12th.

Thanks,

Kris Crawford, PLS



Defining Boundaries

WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

www.wilmorelandsurveying.com

KRIS CRAWFORD

Chief of Surveys
PLS 38255

406 Grand Avenue
P.O. Box 1652
Paonia, Colorado 81428

970.527.4200 PHONE
970.527.4202 FAX
970.314.1009 CELL

EMAIL
kris@wilmorelandsurveying.com

NOTICE: This email transmission from the County of Delta, and any documents, files, or previous email messages attached to it, are intended solely for the individual(s) to whom it is addressed and may contain information that is confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any unauthorized review, forwarding, printing, copying, distribution, or use of this transmission or the information it contains is strictly prohibited. A misdirected transmittal of this email does not constitute waiver of any applicable privilege. If you received this transmission in error, please immediately notify the sender and delete the original transmission and its attachments. Notwithstanding the foregoing, sender and receiver should be aware that all incoming and outgoing emails may be subject to the Colorado Open Records Act, C.R.S. 24-72-200.1 et seq. Thank you.



Follow Up to LUC Questions from Surveyors.docx

118K



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

Carl Holm, AICP
Community Development &
Natural Resources Director

October 17, 2022

SUBJECT: Proposed Land Use Code Commentary

Thank you for your questions/comments. This is intended to provide initial feedback on the commentary dated 11 October 2022. This response groups by topics versus by chapter and paraphrases the more specific question for reference. This is intended to reflect the discussion at the PC meeting on October 12th. You are welcome (encouraged) to provide suggested changes based on the conversation with the PC and this response. I have included “follow up” notes where I identified specific items.

Variances/ Admin Modification

Is the administrative variation to lot size outside the Administrative Modification and Variance regulations? - Chapter 3

Does creating a lot smaller than 2.5 acres require a variance? - Chapter 3

Example where reduction of setback is not used to change requirements of Chapter 4. – Chapter 8

Can a Site/Sketch Plan be submitted for a variance beforehand so applicant can decide if they want to move forward? - Chapter 12

Currently under the LUC, any standard that is not met requires a variance by the BoA. The Admin Mod is limited to setbacks is less than 25 % reduction.

The LUC Update includes proposed criteria establishing when a lot size variance can be approved administratively by the Director. If the Director finds that the criteria are met, it can be approved by the Director. It would be a discretionary action so could be conditioned. A project that does not meet those criteria would require a variance by the BoA. If the lot is less than 2.5 acres, or if it is zoned A5, etc. then the variance goes to the BoA. Most codes do not include such a variance process, must meet the minimum lot size (provides certainty). This variance to lot size language was include for Delta County to create flexibility, which also creates uncertainty.

Note that the Admin Mod language existing in the current LUC has not changed in the proposed update. Chapter 4 includes standards for Site Layout, Access, Parking, Utilities, etc. that apply other types of setbacks. An example could be where the 10-foot parking setback requirement (Chapter 4, Section 3.D.2) would not be met with granting a minor modification. In other words, that parking setback cannot be varied through a minor modification. It would require consideration by the BoA.

There have been complaints about processing times. In response, the LUC update affords the ability to consolidate the process where the BoA would consider both the variance and the Plat

concurrently. A Sketch Plan can be submitted for an initial consult or with a pre-application to assess if the application wants to move forward. A Sketch Plan, with enough detail, could be presented to the BoA with the variance where it would be conditioned for a Final Plat.

FOLLOW UP

You could propose modifications to the criteria for an admin variance to lot size.

Boundary Line Adjustments

Why is a BLA subject to development regulations (e.g., setbacks)? - Chapter 3

If a BLA follows an existing fence line, it may it may be closer than the setback for a non-residential building. – Chapter 8

Why is BLA included with other types of development (Minor Plan, Replat, Preliminary Plat when they are different? - Chapter 12

Agree that BLA is not a subdivision from a surveying perspective, and is not subject to the same level of standard for the survey work as a subdivision. While a BLA does (can) not create a new lot, it revises the configuration of lots by moving at least one property line. As such, it would be subject to development review to assess meeting applicable development standards such as setbacks and septic.

We are looking at the how the *revised* property line complies with the land use code. If the revised property line creates/expands a nonconforming condition, then a variance is required. Chapter 11 of the LUC speaks to reducing the number of nonconformities, including modification of development (e.g., BLA). If there are existing nonconforming conditions relative to property lines that are not changing, we will make note of those conditions but no variance would be required since there is no modification to that nonconformity.

At this point, the LUC does not distinguish between residential and non-residential structures. The Minor Modification affords limited authority (25%) for administrative review. If it exceeds that threshold, then a variance is required (BoA). Giving a blanket exception for pre-existing structures affords that ability to build and then ask for a BLA. Typical fences (up to 6 feet) are not subject to setbacks (exception).

FOLLOW UP:

There has been discussion about establishing a different setback standard for non-habitable structures with no plumbing. Setbacks are in Chapter 3, Section B.2 (Bulk Standards). If a non-habitable structure setback is 5 feet, then the Director could approve an Admin Mod for 4 feet (25% reduction).

Another option could be language that authorizes the Director to assess and grant a possible Admin Mod if the structure meets certain criteria. Establishing appropriate criteria could be challenging.

Please provide suggestions for what should (septic, setbacks, easements, irrigation/head gates), should not (centerline of roads, all features), be required for a BLA...different from a subdivision. See Chapter 12, Section 2.A.3.2 where we tried to make this distinction. Maybe this is more applicable to the application forms (checklist) versus the LUC?

Fee Title Split

Is a parcel split by dedication in Fee Title for pre-existing conditions or can it also include a new dedication? – Chapter 3

Either. However, a [public] entity must accept the dedication (County for roads, BoR for waterlines, railroads, etc.). Determining Fee Title is a factual matter (excludes easements and road petitions), and Planning will consult with the County Attorney if needed. Once it is established (agreed) that the land was dedicated and accepted in Fee Title, then creating legal parcels is done through a Boundary Survey – not subject to [further] County review.

FOLLOW UP:

None identified

Pre-Application

Does a fee need to be charged for a pre-application? – Chapter 7

Under the LUC as adopted, a formal pre-application is *required unless waived* by the Director. Proposed changes remove that as a requirement; however, that is still an option if desired by the applicant, or if the Director feels there is value to have a pre-application meeting. For example, there have been cases where an application did not come in ahead and there appears to be issues that we want to discuss...possibly present/consider options.

A fee is charged if there is a formal pre-application meeting where all land use departments are included for the staff time involved, including the follow up letter. However, we are trying to convey that anyone can come in with a sketch prior to submitting an application for an informal review/consultation (no fee) – See “Informal Consultation language (Chapter 7, Section 1.A.6).

FOLLOW UP:

Modified the Incomplete Applications standards FROM “ ... materials requested **at** the pre-application conference ...” TO “ ... materials requested **following** the pre-application conference ...” to clarify materials requested in the *follow up* letter (Chapter 7, Section 2.A.2).

Subdivision Design

No direct access where lots are less than 5 acres (Standard Subdivision)? - Chapter 12

Note this was simply moved from Chapter 4 to what is now the Subdivision regulations in Chapter 12. The only change being proposed is specifying where the lots front a collector or arterial road, excluding local roads (as was previously required). The intent is to minimize access on higher capacity roads. If the lots front a local road, they can have direct access. This aligns better with the Road & Bridge standards where access needs to be from the lower classification road. If the lots front a collector or arterial road, a shared access is required. This does not need to be a dedicated public road, can be an easement.

There was a follow up question about considering the road use versus the classification.

FOLLOW UP:

None identified

Acreage Summary Table? - - Chapter 12

I am not sure where the language is that you are referring to. That said, I generally support removing redundancy unless there is a good reason (need) for it.

FOLLOW UP:

Please provide where/how you are reading this redundancy

Name of Treasurer required? - Chapter 12

FOLLOW UP:

Agree to remove “[Insert Applicable Name]”

Plat Note 8, lengthy? - Chapter 12

Note this language was simply moved from Chapter 4 (Section 5.B) to what is now the Subdivision regulations in Chapter 12. I do not know why this language was made part of the 2021 LUC.

FOLLOW UP:

Sent email to County Attorney, understand they participated in drafting this language.

Clustered Subdivision

Building Envelopes required with a Clustered Subdivision? - Chapter 12

The Planning Commission had a lot of discussion around this. At this point, we landed with 1 acre building envelopes and substantial area for Stewardship Areas based on projects that we reviewed. The intent is to provide more definition to a clustered subdivision design, recognizing that there are also options to rezone

Stewardship Areas v Conservation Easement v Tract and Financial Surety? - Chapter 12

Language that was adopted with the LUC does read like a conservation easement. However, a clustered subdivision is an option (not forced) and the point is to provide some sort of flexibility in exchange for removing density and lot size requirements. Putting the land into a conservation easement for the tax benefit would meet the requirement for financial surety and long-term maintenance. In exchange, they can get more, smaller lots.

The LUC does require designating Stewardship Areas as tracts. The goal/intent is to make it clear who is responsible to manage the Stewardship Area and what the restrictions are. So that it continues to operate as anticipated even if the property changes ownership. The implementing practice has been to make sure Stewardship Areas are identified and clearly mapped on the Plat,

not requiring designation as a tract. In addition, we have been requesting a plat note regarding limitation on use of that area.

FOLLOW UP:

If you have some suggestions for changes that accomplish this goal and address your concerns, please let me know. Note that with the proposed new zoning designations (RES-2.5 and RES-1.0), there is more opportunity to consider a zone change for 2.5 or 1.0 acre lots, depending on the area and available infrastructure (e.g. water). A rezone will consider conditions of the site and surrounding area to avoid spot-zoning. The PC also recognized that there could/should be a follow-up process to review/amend the zoning maps.

The PC talked about looking at possibly removing the specifics and allow options to consider (e.g., covenants), but that might need to be a subsequent LUC amendment...at this point.

Definitions

Suggest revising BLA definition? – Chapter 14

FOLLOW UP:

Agree to revise BLA definition as suggested to read as follows:

***Boundary Line Adjustment** means an adjustment or revision of established, undisputed, existing boundary lines between parcels or lots less than 35 acres, where such adjustment does not result in creating an additional parcel/lot less than 35 acres.*

The next PC hearing is Wednesday, October 26th. Please submit comments ahead of that date if you wish to have changes considered. With a zoning code, the PC sends a certified copy to the BoCC. If the BoCC makes any substantive changes, they must return it to the PC for consideration.

Respectfully,

Carl P. Holm, AICP

Director of Community Development and Natural Resources

LUC Proposed Revisions

1 message

Kris Crawford <kris@wilmorelandsurveying.com>

Tue, Oct 11, 2022 at 9:03 AM

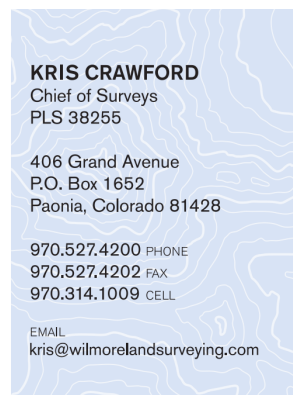
To: Carl Holm <cholm@deltacounty.com>, Engineering - Kate Kelly <kkelly@deltacounty.com>, Angie Kemp <akemp@deltacounty.com>, Tim McCracken <tmccracken@deltacounty.com>, "rlevalley@deltacounty.com" <rlevalley@deltacounty.com>, "jbaier@deltacounty.com" <jbaier@deltacounty.com>, Debbie Griffith <debbieg@deltacounty.com>, "jgeorge@deltacounty.com" <jgeorge@deltacounty.com>, County Surveyor <surveyor@deltacounty.com>, Randy Wilmore <randy@wilmorelandsurveying.com>, "kenschaaaf@itcresources.us" <kenschaaaf@itcresources.us>, "miketwamley@aol.com" <miketwamley@aol.com>, Tom Kay <northforkorganics@gmail.com>, "khenderson@deltacounty.com" <khenderson@deltacounty.com>

To All Parties Involved,

Here is a commentary on the proposed Land Use Code revisions as set forth by the Delta County Planning Department. This is a joint review by all professional land surveyors within Wilmore and Company Professional Land Surveying, but is not intended to be finite in its content. We have tried to bring forth questions and concerns to further clarify the LUC and ensure we have a document that is fully understood as the county moves forward with its oversight within the LUC. Please review and add comments to any items necessary so that they may be discussed at the meeting on October 12th.

Thanks,

Kris Crawford, PLS



COMMENTARY on LUC Proposed Revisions 11 October 2022 Signed.pdf

262K



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

11 October 2022

Proposed Land Use Code Commentary

This is a preliminary commentary on the proposed changes to the Land Use Code as put forth by the Delta County Planning Department. The intent of this commentary is to develop further understanding and clarification of matters within the proposed Land Use Code. Further clarification may be needed upon discussion and explanation of the Land Use Code and the questions/comments brought forth in this commentary.

Chapter 3: Lots, Buildings and Structures

: A variation to lot size can be administered to one additional lot by the Director. Is this outside of the Administrative Modifications and Variance regulations as set forth later within the LUC?
Regulation states that it must be part of A-35 or A-20 zoning, and must conform to RES-2.5 standards. Does this mean that creating a smaller parcel than 2.5 acres still requires a variance?

: Boundary Line Adjustment does not create non-conforming setbacks.
This was discussed at length within meetings held by the county and local surveyors as to the effect it has on parcels pursuing a BLA. Was there any consideration given to advice provided at those meetings in regards to situations that commonly arise, creating this non-conformity? Why are BLA considered a part of a development process and subject to the same strenuous regulations? Reconfiguration of boundary lines does not create/develop any new parcels. BLA are not under regulations of zoning acreages, so why are they under other regulations established for developments? It appears that the Variance process will still be a large role in the BLA process to accommodate the desires of the land owners.

: Parcel split by Dedication in Fee Title.
Is this for pre-existing fee simple ownership or is the county allowing dedication of a county road that currently splits an existing parcel, creating two parcels by natural division? Who determines whether the ownership is fee simple or simply easement/right of way/etc?

Chapter 7: Standardized Application Review Process

: Section B.1.a states A pre-application meeting is an opportunity for the potential applicant to meet with County Staff BEFORE filing an application. However, Section B.2 states The Director will determine if a pre-application meeting is required based upon the Development Application. These seem contradictory to each other. One allows a meeting to see if the proposed applicant wants to proceed, while the other mandates the



Defining Boundaries

WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

applicant submit an application (complete with fees) before they can meet and determine if they wish to proceed. Many applicants may not want to pursue their process after speaking with the Director and understanding all the steps. Do we really need to charge them a fee and fill out a complete application to do so?

Chapter 8: Review Processes/Section 4-Administrative Modifications

: The Director shall have authority to Administratively approve modifications to setbacks. Reductions to setbacks may not be more than 25% of the requires setback. This would only allow for the majority of modifications to change by 3.75-6.25 feet. Whereas this may be useful in some instances, most issues requiring a setback change will be over the 25% allowed, thus still requiring a Variance process. Many BLA situations arise from fences that are close to existing non-residential buildings, much closer than what be allowed by an Administrative Modification.

: The reduction of setback is not used to change requirements within Chapter 4. Would that require a Variance process? Can you give examples of what this is referring to for clarity?

Chapter 12: Subdivision Regulations

: Minor Plats, Replats, Boundary Line Adjustments and Preliminary plats shall demonstrate compliance with the code. Why are BLA lumped into Development processes when they are clearly different than all other items listed?

: Administrative Review Process requires a Plat to be submitted with application for Minor Plats, Replats and Boundary Line Adjustments. It further states that upon review, the Director can send it to the Board of Adjustments for consideration of a Variance. In the survey realm, submitting a Plat means that you have been on site and collected all boundary evidence needed, researched all necessary documents related to the parcel, and created a drawing in format, content and accuracy to fit the requirements of Delta County. If a Variance process is needed, would it not be pertinent to submit a site plan/sketch plan beforehand, alleviating possible excessive cost to the applicant should they not be able to move forward with their development or BLA?

: Lot design states that if lots are smaller than 5 acres within a Major Subdivision, that direct access onto a collector or arterial road will not be allowed. If an applicant wishes to do a 3 lot subdivision where all lots have frontage on the road, they won't be able to do so? They will have to build a road to county specs? Will this have to be dedicated or simply an easement/right of way across the lots? This would appear to make design parameters difficult.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

Defining Boundaries

: Stewardship Areas and private roads shall be tracts. I understand the road being a tract if it is dedicated to the county, but what if it is not, but is simply an easement/right of way? Previously Stewardship Areas have been part of a Lot, retaining the majority of the agricultural land. Is the county now wanting these to be their own entities? If they are tracts, are they owned by all the lots within the subdivision? Do they require deeds to ensure fee simple ownership? Would this potentially mean that the only area a lot owned could be the Building Envelope within the entire parcel? If the Stewardship Area is a tract, why is there a need for a building envelope?

: Building Envelopes shall not exceed one (1) acre of the Stewardship Area in a Cluster Subdivision.

If the Stewardship Area is a tract, why do we need a building envelope. If a building envelope is necessary, shouldn't it be sized accordingly with the size of the Stewardship Area? If there are 50 acres of agricultural land within the Stewardship area, there may be a need for more space than one acres to accommodate the necessary agricultural buildings/improvements for the use of said land. It seems rather restrictive to limit this size by one-size fits all regulation.

: Long-term Maintenance of Stewardship Areas require financial surety.

If the Stewardship Area is part of a Lot, why would the other lots bear any responsibility to pay for it's maintenance? If the Stewardship Area is a tract, would an HOA be required to collect fees? How would the lots split the cost and what would each lot receive as a benefit of being part owner of the Stewardship Area? If it is a large agricultural tract, do they each get a space to farm/ranch? What if lot owners don't want to farm/ranch or partake in the activities allowed on the Stewardship Area?

: Use of the Stewardship Area is for ecological, agricultural, recreational, and other activities consistent with the objectives of the Stewardship Area.

This sounds very much like a Conservation Easement. Why would the parcel owner not take advantage of the tax benefits and safety of a true Conservation Easement if they wished to be regulated by these rules and preserve the ground? This almost seems like a forced Conservation Easement, that some land owners may see as taking away their future potential for development at a later date.

: Requiring the acreage of the parcel within the dedication of the plat seems redundant. The acreage shows up on the drawing and within the Acreage Summary Table.

: Requiring the name of the Treasurer to be part of the Certificate of Taxes Paid seems unnecessary. This name is constantly changing over time and is stated at the end of the certification when they sign their approval. This is also not a requirement on any other certification for any other department signatures.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

Defining Boundaries

: Plat note 8 appears to have become rather lengthy. Is there a reason this needed further examples within the note, rather the original note that current exists? The new note also omits the statement pertaining to lawsuits except in the case of gross negligence. Are these reasons now considered plausible reasons for a lawsuit at any time?

Definitions:

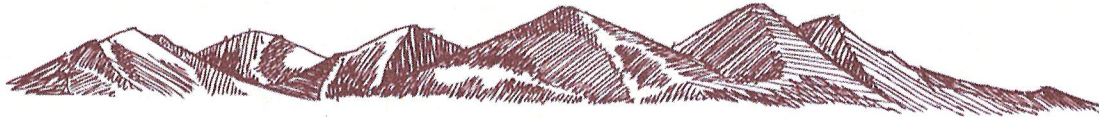
: Boundary Line Adjustment-an adjustment or revision of established, undisputed, existing boundary lines between parcels or lots, where such adjustment does not result in creating an additional parcel/lot less than 35 acres.

Perhaps the reference to "less than 35 acres" should be in the first part of the definition to clarify that this only pertains to parcels under 35 acres. Stating that a BLA cannot create a parcel or lot under 35 acres is not necessary, as a BLA is unable to create a parcel of any size, and that would be deemed a subdivision.

Thank you for reviewing the commentary of the proposed Land Use Codes as analyzed by Wilmore and Company Land Surveying. We hope to receive clarification and full understanding of the proposed changes, as well as assist in creating a valuable working Land Use Code for the future of Delta County.


Randy A. Wilmore
PLS25972


Kris Crawford
PLS38255



Schumacher & O'Loughlin, LLC

~Attorneys at Law~

232 W. Tomichi Ave., Suite 204
Gunnison, CO 81230
Phone: 970.641.4900
Fax: 970.641.5005
www.gunnisonlaw.net

October 12, 2022

Jon Schumacher, Partner
Michael O'Loughlin, Partner
Chris Mochulsky, Associate

SENT VIA EMAIL:

Delta County Board of County Commissioners
Wendell Koontz, wkoontz@deltacounty.com
Mike Lane, mlane@deltacounty.com
Don Suppes, dsuppes@deltacounty.com

Delta County Planning Commission
planningcommission@deltacounty.com

RE: Land Use Code Revisions – Protections for Renewable Energy Facilities

Dear Commissioners:

This comment is submitted on behalf of Citizens for a Healthy Community (“CHC”) with regard to the September 21, 2022, Delta County Land Use Code (“LUC”) revision public draft (“Public Draft”). In revising the LUC, Delta County is establishing standards for renewable energy facilities. This comment addresses certain statutory protections for renewable energy facilities, specifically set forth in C.R.S. § 38-30-168(1)(a). The LUC must incorporate the renewable energy protections in C.R.S. § 38-30-168(1)(a).

C.R.S. § 38-30-168(1)(a) provides:

A covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a renewable energy generation device is void and unenforceable.

When interpreting a statute, statutory words and phrases are given their plain and ordinary meanings consistent with the legislature's intent. *In re Howard*, 487 P.3d 1218, 1221 (Colo. App. 2020). “If a statute is clear and unambiguous on its face, then we need not look beyond the plain language.” *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004). Importantly, words are not added or subtracted from a statute. *McBride v. People*, 511 P.3d 613, 617 (Colo. 2022).

The plain language of C.R.S. § 38-30-168(1)(a) is unambiguous. It provides that an “instrument” cannot contain any “restriction, or condition” that “effectively prohibits or restricts the installation or use of a renewable energy generation device.”¹

¹ Renewable energy generation device, as used in C.R.S. § 38-30-168(1)(a), means solar, wind, and/or geothermal. Renewable energy facility, as used in the LUC, means solar, wind, and/or geothermal. *See* LUC, Sec. 4.G.

“Instrument” means a “written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate.” Black’s Law Dictionary (11th ed. 2019), instrument. “An ‘instrument’ seems to embrace contracts, deeds, statutes, wills, Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, bye-laws, whether in writing or in print, or partly in both; in fact, any written or printed document that may have to be interpreted by the Courts.” Edward Beal, *Cardinal Rules of Legal Interpretation* 55 (A.E. Randall ed., 3d ed. 1924).

Delta County’s LUC is a written legal document that defines rights, duties, and entitlements – it is a set of rules and regulations that govern land use and development rights in Delta County, which may have to be interpreted by the courts. As such, the LUC is an “other instrument” within the meaning of C.R.S. § 38-30-168(1)(a). The LUC, as an instrument, cannot contain restrictions or conditions that effectively prohibit or restrict renewable energy facilities, including solar, wind, and/or geothermal.

The Colorado Supreme Court recently issued an opinion in *McBride v. People* on statutory interpretation that is instructive in this matter. The statute at issue in *McBride* was C.R.S. § 42-4-206(1), which states in pertinent part that every motor vehicle must be equipped with taillights “which, when lighted... emits a red light plainly visible from a distance of five hundred feet to the rear.” *McBride*, 511 P.3d at 617. The Defendant in *McBride* was pulled over because his taillight had a crack in it and was emitting both red and white light. *Id.* at 614. The People argued that pursuant to C.R.S. § 42-4-206(1), a taillight must shine only red light. *Id.* at 615. The Defense argued that so long as red light is visible, there is no statutory prohibition to a taillight illuminating white. *Id.*

The *McBride* court noted that its job is not to add or subtract words to a statute – if the statute is plain and unambiguous, there is no need to look further. *Id.* at 617. With that, the court reasoned that if the General Assembly wanted C.R.S. § 42-4-206(1) to mean that a taillight must shine “only” red light, it could have added the word “only.” *Id.* Because the plain language of the statute did not preclude a taillight from emitting white light, the Court held that a taillight could emit white so long as red was visible from five hundred feet to the rear. *Id.*

In interpreting C.R.S. § 38-30-168(1)(a), a court would read the statute as written, and find that the LUC is an instrument that cannot contain conditions or restrictions that effectively prohibit or restrict renewable energy facilities.

The Public Draft seeks to restrict development of renewable energy facilities on agricultural land, to the point of prohibition through denial of a Conditional Use permit in contravention of C.R.S. § 38-30-168(1)(a). While the county has the authority to regulate renewable energy facilities to ensure protection of public health, safety and the environment, it does not have the authority to prohibit such facilities or restrict the siting of those facilities away from agricultural lands. Therefore, CHC recommends the following change to the Public Draft:

1. TABLE 2.b Land Use by Zoning District. Below is a screenshot of the County’s proposed changes to Renewable Energy Facilities in Table 2.b Land Use by Zoning District, which prohibits a Commercial Scale Facility in the newly proposed Residential (RES) zoning district, as indicated by the “—” in the last column:

Renewable Energy Facility (Personal Scale):	A	A	A	A	A
Renewable Energy Facility (Commercial Scale):	C	C	C	L ⁿ	—

The “—” in the last column must be changed to either C or Lⁿ to indicate conditional or limited use review.

2. Chapter 2, Section 4.G 1. **Renewable Energy Facilities.** The purpose and intent of this Section is to define reasonable standards for placement, design, monitoring, and modification of a commercial- scale Renewable Energy Facility (solar, wind, geothermal) for the protection

of public health, safety, and general welfare in the County in accordance with applicable State and Federal laws and regulations. Applicable standards and conditions of approval shall not serve to ~~prohibit or restrict the use or installation of Renewable Energy Facilities. treat a Renewable Energy Facility applicant differently than any other development applicant.~~

Reasoning: CHC appreciates the County's efforts to ensure that renewable energy receives non-discriminatory treatment, but because of the language in C.R.S. § 38-30-168(1)(a), renewable energy facilities are inherently treated differently than other development applications because they cannot be effectively prohibited or restricted. As such, the proposed change incorporates the statutory language that standards and conditions of approval cannot prohibit or restrict the use or installation of renewable energy facilities.

3. Chapter 2, Section 4.G.1. *Standards and Limitations*. A commercial-scale Renewable Energy Facility shall be approved if it meets applicable standards set forth in this Section and Conditional Use Approval Standards in LUC Chapter 8, Section 2, unless a significant adverse impact to public health, safety, environment, wildlife, ~~or agricultural land~~ is demonstrated and cannot be avoided or mitigated.

Reasoning: The language "or agricultural land" gives preference to agricultural land over renewable energy facilities, and can be used to deny a renewable energy facility in contravention of C.R.S. § 38-30-168(1)(a). While CHC understands that the County can regulate the design and location of renewable energy facilities, those regulations cannot prohibit or restrict the use or installation of renewable energy facilities.

4. Chapter 2, Section 4.G.1.c1. *Protection of Agricultural Lands*. ~~The energy facility shall not have a significant adverse impact on agricultural lands or agricultural operations.~~ Commercial scale projects should ~~seek to~~ avoid impact to soils identified by Natural Resources Conservation Service (NRCS) as prime farmland or farmland of statewide importance. Where a project is located on agricultural designated lands, the project shall include an Agricultural Management Plan that adequately demonstrates continuation of Agricultural operations given the site conditions.

Reasoning: For the same reason in the preceding paragraph, the County's regulations cannot prohibit or restrict renewable energy facilities on agricultural lands. The current language in the Public Draft allow for prohibition of a renewable energy facility on agricultural land.

There are other provisions, which clearly treat renewable energy facilities differently from other development including bonding (Securities or Financial Security), decommissioning and abandonment. CHC urges the County to carefully review these proposed revisions to ensure that they do not act to effectively prohibit or restrict renewable energy facilities, especially when the same requirements are not required of other development applications.

Based on the foregoing, CHC urges Delta County to ensure that its LUC revisions comply with state law and do not contain conditions or restrictions that would effectively prohibit or restrict the use and installation of renewable energy facilities.

Regards,



Chris Mochulsky
Attorney for Citizens for a Healthy Community

CC: John Baier, jbaier@deltacounty.com
Robbie LeValley, rlevalley@deltacounty.com
Carl Holm, cholm@deltacounty.com
Natasha Léger, natasha@chc4you.org

LUC comments

1 message

Jon Montelin [REDACTED]

Fri, Oct 14, 2022 at 4:47 PM

To: "planning@deltacounty.com" <planning@deltacounty.com>

To the Planning Commission:

You asked for comments. I have a few.

1. A statement at the beginning of the LUC says "The right to develop and improve private property **does not** include the right to physically damage or adversely impact neighboring land owners...". It seems that this has already been broken by this Commission. It appears that this is subjective in your eyes, but it needs to be understood as it exactly states. (emphasis mine)
2. You have chosen to change the A5 definition taking out the "small scale agriculture". Why? We have a small scale agricultural project in our A5 designated zone where we live. Does this mean that we cannot continue with this or that someone who is located in this designation cannot practice any agricultural endeavor? Perhaps you need another classification to designate parcels below a certain lot size.
3. Along those same lines, you designate A5 as "large lot residential". This should then be protected from commercial/industrial projects being established in or nearby. In the charts, you say that you can permit renewable energy (commercial scale) under a "C" conditional permit. And what about a landfill or a racetrack or any industrial project? The language you have chosen to use to designate where commercial should be allowed is wrong. It reads "...most of the other zoning districts allow for multiple land uses and sufficient flexibility such that a wide range of **commercial** land uses may be located almost **anywhere** where adequate services can be provided, and standards of the Code can be met." (emphasis mine) This should not apply to A5 residential areas period. Because you have allowed this, we have a trucking company next door to us in a subdivision. There are 6-7 trailers and several semi-tractors operating every day and I know they never went to you for approval. The covenants of the subdivision do not allow for this, but apparently, it's okay as far as you are concerned because it fits the "Code". We feel like we live in an industrial park. Things like this should not be allowed, but here in Delta County it goes on. Why?

Are there any guidelines for compatibility? It does not appear that way in looking over your zoning areas and the wording in the LUC document.

Are public comments even taken into consideration?

Thank you for your time.

Gayle Montelin

[REDACTED]
Delta, CO

Sent from [Outlook](#)