Resource Analysis

Recommendations Requiring State & Local

10 RECOMMENDATIONS REQUIRING MAJOR STATE AND LOCAL INITIATIVES

1. 35-ACRE PARCELS

Counties that seek to regulate the subdivision of all land for development purposes, regardless of parcel size, should be required to grant and accommodate an explicit "density right" to landowners at a ratio of 1 residential unit per 35 acres.

Counties have many tools to influence land use patterns. Under state law, counties have the power of zoning and issuing building permits, the power to control the size and use of parcels of land within districts, and the right to grant exemptions to their subdivision regulations. HB 1041 (24-65.1-101 et seq., C.R.S.) identifies 21 "areas of state interest" affecting land use that counties can regulate, regardless of the size of affected parcels.

However, under Senate Bill 35 (30-28-101 et seq., C.R.S.), counties are not allowed to regulate the subdivision of land into parcels of 35 acres or more. This has contributed to the proliferation of rural subdivisions and isolated lots with parcels of 35 acres or more in growth areas of the state. (Another contributing factor is that some counties facing growth do not fully use their existing powers.)

Farmers, ranchers, and other landowners often oppose large lot zoning and other county policies that may decrease the price of land and affect the economic viability of their operation. Gradual inflation of land helps keep agriculture profitable and provides the borrowing equity needed for agricultural producers to weather the up and down cycles of agriculture. Furthermore, land is the "retirement account" for most producers similar to social security, 401(k) plans, and other retirement programs for wage earners.

Recognizing the landowner's "density right" to develop should not override the county's right to direct growth; all the usual tools of zoning, special use permits, etc. remain. But if the county cannot accommodate the landowner satisfactorily in a timely manner, the landowner should be entitled to compensation.

- Introduce state legislation to make this "trade-off" explicit, including the following provisions:
- Limit review items to water and sewer, roads, and other public health and safety issues.
- Establish a definite time limit for county review and decision.
- Establish that the application cannot be denied if the landowner is in compliance.
- Encourage counties to provide additional density incentives if the

landowner provides additional benefits, such as clustering development. (See #2 below.)
- For counties that do not choose to implement such a tradeoff, Senate Bill 35 would remain in effect. That is, such counties would not be allowed to regulate the subdivision of land into parcels of 35 acres or more.

2. SUBDIVISION PROCESS FLEXIBILITY AND CLUSTERING INCENTIVES

Increase the flexibility of county subdivision review processes to maintain productive agricultural lands.

Under Senate Bill 35 (see #1), land may be subdivided in parcels of 35 acres or more without county review; otherwise, review is required. Many farmers and ranchers selling or developing their land find it faster, simpler, and more certain to subdivide the land into 35-acre "ranchettes" and have roads cut for access. Often, the land can no longer be used for agriculture; wildlife and scenic values are affected.

Clustered development can retain much of the agricultural and open space value of the original site. Counties such as Routt and Douglas have adopted faster, simpler review processes to encourage clustering. Using a citizens' committee plan as a guide, Routt County Commissioners recently adopted the Land Preservation Subdivision (LPS) Exemption. The LPS expedites the county review process for cluster developments on all property zoned agricultural/forestry. Property owners who go through LPS are assured a building density of one dwelling unit per 35 acres. A straight density bonus system has also been included.

- Through Great Outdoors Colorado funds and other resources, establish technical resource teams to assist owners of agricultural lands under development pressure to examine their resource use and economic options.
- Encourage counties to follow the principles below:
- Clustering incentives should provide economic opportunity at least as great as the existing "35-acre ranchette" approach.
- Incentives for clustering should provide placement of homesites on marginal agricultural land. Such incentives should encourage the retention of agricultural uses on the remaining land.
- Lot sizes within a cluster should be determined so that health, safety, public services, and environmental concerns are met.
- Give a farmer or rancher a permanent vested right of at least one dwelling unit per 35 acres on the entire property if the landowner establishes a permanent agricultural easement on 80% or more of the land. Keep property taxes on the remaining 20% at an agricultural value until development occurs.

3. DEVELOPMENT RIGHTS PROGRAMS

Establish purchase and/or transfer of development rights programs to compensate farmers and ranchers who keep lands under growth pressure in

agriculture.

Purchase of development rights (PDR) programs compensate agricultural producers by paying them for the right to build on or develop their land. Programs are completely voluntary and provide producers with a way to get cash from their land without borrowing against it or selling it for non-agricultural uses. Programs help keep farmland affordable for the next generation of farmers and ranchers. The community and environment benefit as well.

PDR programs can be funded in many ways. Examples: the city of Boulder has bought development rights of farms and purchased open space with funds from a citywide sales tax ($13 million/year); Boulder County ($6 million) and Jefferson County ($24 million) have similar programs. Other counties are considering similar measures.

Such annual county revenues can be "leveraged" to buy development rights from willing producers at today's prices, paying them over a period of time.

For example, Howard County, Maryland has developed 30-year installment purchase agreements to buy development rights from willing producers. The county "leverages" $3 million per year in real estate transfer taxes to purchase more than $50 million in development rights at 1995 prices. (Annual revenue from an open lands sales tax would work just as well.) The landowner receives the development right value (i.e. the principal) after 30 years, plus semi-annual, tax-exempt interest payments of 8% or more on the principal. The landowner also may sell this installment purchase agreement on the open market at any time.

PDR programs rely primarily on public funds, and can protect only a small fraction of agricultural lands under development pressure. Hence, some counties are studying transfer of development rights (TDR) programs. Here, agricultural producers are compensated for their development rights by willing buyers. In a nutshell, future growth pays for the development rights owned by the landowner.

- Encourage counties with dedicated revenues for open lands to consider using installment purchase agreements to protect agricultural lands.
- Encourage the purchase of development rights instead of fee simple purchase of ag lands as a means of protecting agricultural lands.
- Allow the option of PDR programs to lease development rights that would prohibit development for a finite period of time.
- The state legislature should refer to Colorado voters a constitutional amendment to allow local governments to adopt real estate transfer taxes for the protection of agricultural and other open lands. (Tax revenue would be restricted for use in the county.)
- Allow state and federal tax credits to help fund PDR programs. (See #4 below.)
- The state legislature should study other tax incentives to protect agricultural lands.

4. INCOME TAX CREDITS & CONSERVATION ENTERPRISE ZONES

Provide state and federal income tax credits for activities that protect agricultural lands and other natural resources.

Since 1989, Colorado taxpayers who make monetary contributions to help implement the plan of an economic enterprise zone may claim a state income tax credit of 50% of the value of the contribution, up to a maximum credit of $100,000. In-kind contributions may claim a tax credit of 25%, up to a maximum of $50,000. Credits must be used within six years.

Colorado currently has 16 rural and urban economic enterprise zones with economic and tax incentives. These zones cover 70% of the state's land area and 15% of Colorado's population. Eligibility for establishing an enterprise zone is determined by such factors as declining or low population, employment, and per capita income.

Conservation enterprise zones and conservation tax credits could be established similarly. Eligibility could be based upon such factors as increasing population, declining agricultural land acreage, and/or other natural resource factors. Colorado taxpayers who contribute funds to acquire agricultural easements or otherwise protect the natural resource base in a conservation enterprise zone would receive comparable state tax credits.

For example, suppose a rancher is willing to invest $3,000 to improve riparian conditions. Under this approach, the rancher would send a $3,000 check to the conservation zone administrator, who would in turn purchase the necessary supplies and pay for installation, if necessary. The zone administrator would then send the rancher a state tax credit certificate worth $1,500.

- Enact state legislation to establish conservation enterprise zones and state income tax credits for activities to protect agricultural lands and other natural resources. Local elected officials would designate conservation zone administrators, such as conservation districts, with authority to issue state income tax certificates.
- Support similar federal tax incentives to protect agricultural land and other natural resources.

5. VALUE-ADDED PROCESSING AND ENTERPRISE ZONES

Expand in-state food and fiber manufacturing and by-product processing opportunities.

Colorado produces exceptionally high-quality crops and livestock used for direct consumption or as initial products for further processing. Valued-added processing of agricultural commodities is minimal, except for a few industries such as brewing and meat packing. Expanding food manufacturing and by-product processing supports rural communities, creates jobs, and stimulates the development of support industries.

Complementing private industry activities, the Colorado Department of Agriculture (CDA) conducts workshops on starting a food processing business and manages an annual Agricultural Processing Feasibility Grant Program, funded by the Economic Development Commission. The federally-funded Alternative Agricultural Research and Commercialization Center (AARC), administered locally by CDA, accelerates the development and market penetration of non-food, non feed products from agricultural and forestry materials.

The Colorado Bio-processing Center at CSU supports research on fermentation technology essential to producing ethanol from corn and other feedstocks. CSU is also working with producers to develop value-added baking flours and pasta from millet, an alternate crop.

Enterprise zones (see #4) offer economic and tax incentives for new and existing businesses. For example, a $500 job tax credit is available for each employee hired by a new business ($1,000 for new agricultural processing operations). Existing and new businesses are eligible for other tax credits for investment, health insurance, and research and development.

Colorado enterprise zones have helped to bring some processing plants to the state, such as the $45 million Leprino cheese processing plant that recently moved from Nebraska to Fort Morgan. State tax benefits were a big factor in Leprino's relocation. Statewide, 51 agricultural processing businesses took advantage of the business jobs credit between 1989 and 1994.

- Retain the use of economic enterprise zones in Colorado for regions with sluggish economies.
- Enterprise zone boundaries should not divide contiguous farming units.
- Through state enabling legislation, handlers of agricultural products should be eligible for state income tax credits and other incentives in economic enterprise zones.

6. AGRICULTURAL PROPERTY TAX CLASSIFICATION

Clarify the agricultural land classification for property tax purposes.

Agricultural land in Colorado is taxed on its earning or productive capacity not on its market value. This tax policy is intended to preserve a viable agricultural economy in the state. Many owners of land not classified as agricultural land for tax purposes are understandably interested in qualifying their property as agricultural in order to lower their property taxes.

Several attempts all unsuccessful have been made to tighten the definition of agricultural land for property tax purposes or otherwise separate agricultural and residential uses of land. For example, HB 93-1237 contained minimum acreage and income requirements for a parcel of land

to be considered a farm or ranch for property tax purposes. The bill was supported by almost all farm groups, but did not pass. SB 95-25, also defeated, proposed taxing a one-acre "footprint" underlying any residence on agricultural land at residential rates.

Some owners of parcels who currently receive an agricultural land property tax classification may not meet specific thresholds of acreage and income, and be faced with higher property taxes. Such owners could be offered an agricultural leasing option.

- Modify the state statute on agricultural property tax classification as follows:
- Define minimum acreage and/or income levels for farms and ranches to receive the agricultural land property tax classification.
- Continue the agricultural land property tax classification for parcels of land that do not meet required acreage or income thresholds if the parcel is leased or owned by an agricultural operator who meets acreage and income thresholds and uses the land for agricultural production.

7. PROPERTY TAX CREDITS & FINITE AGRICULTURAL EASEMENTS

Provide property tax credits to protect agricultural lands under development pressure or that provide other natural resource values.

Permanent protection of all agricultural lands under development pressure is impossible: Land is needed for other purposes, buying the development rights of all farmland under development pressure would be extremely costly, and many agricultural producers are reluctant to permanently restrict or eliminate the development potential of their land.

Offering property tax credits for agricultural easements for a specific number of years can be a cost-effective way of protecting agricultural lands as well as future options of landowners.

For example, landowners who decline to sell their development rights could enter into an agreement with the county not to develop their lands for the next 10 years. In exchange, the county agrees to forgo the property tax revenue from the agricultural land. (The foregone tax revenue could be covered by other county revenues, such as an open lands sales tax.)

A "recapture tax" provision could be incorporated into the agreement. If the landowner developed the property, the landowner would pay the county property taxes at the vacant land rate for the past five years, say. To discourage land speculation, the level of back-tax could be based on the length of time the seller (or a family member) owned the land. Recapturing back taxes for developing agricultural land could help slow down agricultural land conversion and provide counties with a revenue source to help maintain its agricultural land base.

- Encourage county governments to consider providing property tax

relief for agricultural lands under development pressure or that provide other important natural resource values.

8. RIGHT-TO-FARM LEGISLATION

Strengthen Colorado's right-to-farm laws and educate people moving in next to ranches and farms about agricultural practices.

As population growth continues to expand into agricultural areas, farming and ranching operations are increasingly likely to be subjected to nuisance suits. Protection from unreasonable complaints will help farming and ranching continue permanently as more people move to the countryside.

A state statute on the Nuisance Liability of Agricultural Operations (35-3.5-101 et seq., C.R.S.) was created in 1981 to protect and encourage the use of ag land. The statute defines conditions under which agriculture is not a nuisance, thereby reducing the threat of frivolous lawsuits from people moving in next to established agricultural operations.

The statute has some limitations: (a) It does not enable counties to implement local ordinances with greater nuisance protection. (b) Agriculture is dynamic and must often adopt new practices and technology to survive; this sometimes can cause friction with neighbors. But under the current statute, nuisance protection provisions "...shall not apply ... when a change in operation would result in a private or public nuisance or when a substantial increase in the size of operation occurs."

- Change Colorado's Right-to-Farm statute to reflect the following:
- Enable counties to adopt ordinances protecting farmers and ranchers from frivolous nuisance suits.
- Establish that a farm or ranch is not a nuisance if it conforms to generally accepted agricultural and management practices.
- For farms and ranches which comply with generally accepted agricultural practices, nuisance protection should continue under such changes as: (a) ownership or size; (b) temporary interruption of farming or ranching; (c) adoption of new technology; and (d) type of farm product being produced. Specific guidelines could be developed by a state-appointed committee, such as the Colorado Agricultural Commission.
- Producers should be allowed to recover legal fees when nuisance suits are settled in their favor.
- Require disclosure of RTF statutes and ordinances in closing documents when real estate next to agricultural operations is sold.
- Consider extending this law and other general nuisance statutes to include agricultural processing activities.

Actions outside of legal changes should include:

- Mediation should be encouraged before going to court.
- Work with realtors and developers to inform buyers of homes near farms and ranches about the importance of agriculture in the county

and the nature of agricultural activities to reduce misunderstanding.

9. AGRICULTURAL ENTERPRISE DISTRICTS

Establish voluntary agricultural enterprise districts that provide incentives to maintain commercial agricultural activity.

Agricultural districts are voluntary groupings of farmers and ranchers who wish to focus on producing food and fiber not development. A district is formed when a group of agricultural producers petition county government to create the district. Members of agricultural districts must agree not to develop their land for a certain period of years.

If a district is approved by a local government, members are eligible for benefits to be defined in a local public process and might include: (a) protection against ordinances that interfere with agricultural activities (see #8); (b) eminent domain restrictions; and (c) protection against special district taxation.

Other possible incentives include: (d) discouragement of public investment in sewer and water lines and other infrastructure (see #10); (e) state income tax credits for investment (see #5); and (f) preferential consideration for state PDR (purchase of development rights) funds (see #3).

Benefits of agricultural districts to county residents include: maintaining agriculture and related employment, preserving open space, and lower taxpayer costs to provide public services.

Since 1971, New York's agricultural districts program has protected 8.5 million acres on 22,000 farms. A number of other states have adopted such programs.

- Enact state enabling legislation to allow counties to permit farmers and ranchers to establish voluntary agricultural districts that would provide incentives to retain lands in agricultural production. Such incentives would be determined through a local public process.

10. INFRASTRUCTURE DEVELOPMENT

Direct growth and infrastructure development to protect productive agricultural lands.

Growth generally follows the location of water and sewer systems, roads, and other public infrastructure. Much of this development is federally-funded. State agencies often provide similar funding or review proposals on such projects.

The federal Farmland Protection Policy Act requires federal agencies to minimize the taking of agricultural land for highway construction and other federal projects. If federal funds are involved in a project, agricultural lands designated prime or unique by USDA's Natural Resources Conservation

Service are to be protected from conversion, or mitigation of the loss is required.

- Projects proposed and reviewed by state agencies should describe potential impacts on productive agricultural lands and identify options to mitigate significant harmful effects on such lands.
- The Governor should issue an Executive Order to implement this.

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