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Delta County Planning Commission
501 Palmer Street, Suite 115
Delta, CO 81416

[Sent via email only at DeltaCountyLandUse@deltacounty.com](mailto:DeltaCountyLandUse@deltacounty.com)

Re: Comments on the Delta County Draft Land-Use Code Revisions

Dear Delta County Planning Commission,

I represent the Delta County Citizen Report (“DCCR”), and am writing to provide comments to the third draft of the Delta County Land Use Code (“Draft Code”), which was issued on August 26, 2020. These comments relate to concerns regarding expansion of the “Right to Farm” protections provided by Colorado Revised Statutes § 35-3.5-101 et seq. In a letter on your website related to this most recent draft of the plan, you note that this expansion has garnered a significant number of comments, and yet it does not appear any changes have been made to this provision, specifically Section 7.A.2.

The proposed language in the Draft Code expands the protections already provided in the Right to Farm statutes by including future agricultural operations. This expansion was not contemplated by these statutes. The Right to Farm law was never designed to protect future agricultural operations. This is first demonstrated by looking at § 35-3.5-101, C.R.S. which is the legislative declaration of the policy behind the law:

It is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly recognizes that, *when nonagricultural land uses extend into agricultural areas*, agricultural operations often become the subject of nuisance suits. As a result, a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the state of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further recognized that units of local government may adopt ordinances or pass resolutions that provide additional protection for agricultural operations consistent with the interests of the affected agricultural community, *without diminishing the rights of any real property interests.*” (Emphasis added.)

The County's proposed language goes further to protect non-existing farmers, attempting to create rights for a separate class of would-be farmers who were never intended to be protected by the law. The policy of the law, as clearly stated in the Legislative Declaration of § 35-3.5-101, C.R.S., and reiterated in § 35-3.5-102(2)(a)(I) is to protect existing farmers from nuisance suits brought by non-farm uses when the farmer was there *before*. Delta County's proposed provision in its Land Use Code attempts to protect an entirely new class of farmers – farmers who come *after* nonagricultural activities.

This is of particular concern considering that there are many administrative decisions that would occur without the ability of public comment. Further, it appears that the term "additional protections" which is permitted by C.R.S. § 35-3.5-102(7) is being defined by the County being permitted to broadly expand to future agricultural uses. There are many, much less drastic possibilities for this term, such as something similar to requiring specific plat notes to provide additional protections to agricultural uses. These types of protections are what the statute contemplates, as opposed to an expansion of the Right to Farm statute beyond what was contemplated by the legislature.

As noted above, the legislative intent of the Right to Farm statute is intended to allow protection without diminishing the rights of adjacent landowners. By allowing future, unknown agricultural uses to exist adjacent to existing landowners without any possibility of recourse is a clear diminishment in the expectations that the landowner would have.

The Draft Code specifically notes that the purpose of the code is to "protect the character of existing rural, urban communities and neighborhoods in Delta County." (Section 2.A.2.) Further, in interpreting the Code, the Code notes that:

The freedom to use private property is not just in the owner's interest, but also in the public interest. However, the impacts of the use of private property on surrounding properties, public infrastructure, and/or natural resources is a matter of County concern, and therefore a proper subject of County regulation.

The expansion of the Right to Farm statutes are in complete opposition of this policy in that the rights of a future farmer is considered over potential, unknown impacts that the private landowner will not be able to dispute, and will have no recourse. DCCR requests that this provision be removed, and is prepared to act if it is not.

Sincerely,



Stephanie Rubinstein

Cc: Delta County Citizen Report