



## MEMORANDUM

**To:** La Plata County Board of County Commissioners and La Plata County Planning Commission  
**From:** La Plata County Attorney's Office  
**Date:** September 10, 2018  
**Re:** La Plata County District (Area) Plans' History and Purpose

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### I. INTRODUCTION

This memorandum provides a summary of the history, purpose, and current status of the County's District (Area) Plans, to clarify their role in guiding future development in La Plata County, and the manner in which they inform the County's existing and proposed zoning plans. As set forth in more detail below, the County Planning Commission has incorporated the District (Area) Plans into the County's Comprehensive Plan. As appendices to the Comprehensive Plan, the District (Area) Plans serve its same purpose (but as to more discrete geographical areas): to "show the county . . . planning commission's recommendations for the development of the territory covered by the plan," by serving as "an advisory document to guide land development decisions."<sup>1</sup>

### II. CURRENT DISTRICT (AREA) PLANS

The La Plata County Comprehensive Plan currently includes the following District (Area) Plans:

Bayfield  
Durango  
Florida Mesa  
Florida Road  
Fort Lewis Mesa  
Junction Creek  
La Posta Road Area  
North County  
Vallecito  
West Durango

The Comprehensive Plan also includes the Animas Valley Land Use Plan ("AVLUP") but, unlike the District (Area) Plans, which are advisory only, the AVLUP is regulatory in nature, having been adopted formally by the Board of County Commissioners ("BoCC") into the County's land use regulations.<sup>2 3</sup>

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<sup>1</sup> C.R.S. § 30-28-106(3)(a). A copy of the La Plata County Comprehensive Plan is available online at [http://lpccds.org/planning/land\\_use\\_codes\\_and\\_plans/2017\\_comprehensive\\_plan](http://lpccds.org/planning/land_use_codes_and_plans/2017_comprehensive_plan).

<sup>2</sup> C.R.S. § 30-28-106(3)(a); Resolution No. 1993-044 ¶ 3.

<sup>3</sup> Because the Animas Valley Land Use Plan ("AVLUP") has been adopted into the County's land use regulations as Chapter 106 of the La Plata County Land Use Code, this memorandum does not discuss its formation and status in the course of examining the District (Area) Plans. However, a series of resolutions creating and amending the AVLUP

Additionally, the County recognizes the Southeast Area, but no corresponding District (Area) Plan has yet been adopted. Thus, development in the Southeast Area remains guided by the more general goals, objectives, and policies set forth in the Comprehensive Plan.

### III. CURRENT PURPOSE AND FUNCTION OF THE DISTRICT (AREA) PLANS

The District (Area) Plans generally contain the following topics:

- Purpose;
- Overview of the area’s general characteristics and any unique history or geography;
- Summary of population, existing land uses, infrastructure, and services;
- Goals and objectives;
- Proposed actions to effectuate the goals and objectives; and
- Advisory land use plans and maps including, in some instances, land use classifications and design guidelines.

Pursuant to C.R.S. § 30-28-106(3)(a) these (and a long list of other, more detailed topics) may be included within the Comprehensive Plan and, by extension, the District (Area) Plans appended to it.

Recent public meetings and correspondence indicates that there exists some confusion about the distinction between our District (Area) Plans, and district planning commissions, which may, under some circumstances, be appointed by the BoCC pursuant to C.R.S. § 30-28-119. For example, at a recent meeting of the County Planning Commission (“PC”), one community member commented that “over the past several months, our committee [the Florida Mesa Land Use Planning Leadership Committee] ha[d] not been assertive in defining [its] organizational role in the land use planning process . . . because of [its] uncertainties concerning statutory authority that ha[d] been delegated to the Planning Districts over time.”<sup>4</sup> However, with that community member’s testimony, the “Florida Mesa Planning District Leadership Committee [went] on record as accepting the authority delegated to [it] by the Board of County Commissioners,” and, “from now forward, [would] positively discharge [its] responsibilities, exercise [its] prerogative, and actively engage with [the PC] in land use planning, zoning, and permitting processes . . . .”<sup>5</sup> Among other things, the community member evinced the Committee’s intent to “publish an updated schedule for revision of the Florida Mesa land use plan, and a policy for how [the Committee] intend[s] to utilize the resources of the county planning staff.”<sup>6</sup>

Although those statements demonstrate a commendable commitment to community engagement, they are inconsistent with the legal framework applicable to the District (Area) Plans. The creation and amendment of the District (Area) Plans occurs as a collaborative process between the

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provide context. *See* Resolution Nos. 1993-044 (adopting the AVLUP together with five “special overlay neighborhood zoning districts: Hermosa Creek, Bruce Lane, Hermosa/Animas, Hermosa West, and Central Animas Valley); 1993-053 (adopting the Bruce Lane Zoning District Regulations); and 2014-28 (decommissioning and deleting references to the AVLUP’s five neighborhood zoning districts).

<sup>4</sup> Planning Commission Regular Meeting, September 6, 2018.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

area's community at large, Planning staff and the PC. The formal role and delegated authority referenced above pertain to that of a district planning commission (separate and distinct from a county planning commission) appointed by the BoCC, and no such district planning commission appointments currently exist. Moreover, the purpose for which a district planning commission may be appointed — to prepare a plan for zoning portions of the County<sup>7</sup> — is inapplicable, as County-wide zoning regulations have been in place since 1978. Clarification is important as this misconception creates a risk that certain of the District (Area) Plans' residents may believe that others have formal authority to act on their behalf.<sup>8</sup> In fact, no official leadership positions exist in the District (Area) Plans, and each community member's point of view carries equal weight and effect.

Although lacking the force of regulation, the District (Area) Plans perform a key function in the compatibility analysis which the County's Performance-based zoning plan requires. For example, to receive a recommendation of approval from the PC, the applicant must establish that that proposed use is compatible with surrounding areas. To do so, they may demonstrate that it comports with the District (Area) Plan's goals, purposes, and any applicable (advisory) classifications or guidelines.

#### **IV. SUMMARY OF THE COUNTY'S LAND USE REGULATIONS AND THE DISTRICT (AREA) PLANS' ROLE — 1971 TO PRESENT**

The County's current District (Area) Plans have evolved over several decades, during which time they have served different purposes in the context of land use and planning. The chronology below provides a broad overview:

##### **A. 1971 – 1977: Appointment of District Planning Commissions and Attempted Enactment of the Model Zoning Resolution**

Prior to the BoCC's appointment of the County Planning Commission ("PC"), and its enactment of County-wide land use regulations, the BoCC began appointing District Planning Commissions pursuant to C.R.S. § 106-2-18 (subsequently relocated to C.R.S. § 30-28-119).<sup>9</sup> As discussed above, those (now defunct) district planning commissions were appointed for the sole purpose of "preparing plans for zoning certain portions of the unincorporated territory within [the] county."<sup>10</sup> Under section 106-2-18 (now section 30-28-119), upon the zoning plans' adoption by the BoCC, the plans assume regulatory effect, and responsibility for their administration transfers to the BoCC.<sup>11</sup>

Pursuant to that purpose, the BoCC contemporaneously executed, on May 30, 1972, a "Model Zoning Resolution," which created a framework for "establish[ing] zoning districts on only parts of the

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<sup>7</sup> C.R.S. § 30-28-119(1).

<sup>8</sup> For example, another community member commented, at the PC's September 6, 2018 meeting, that representatives of the purported "Florida Mesa Planning District Leadership Committee" had represented that community members had to submit comments on that area's plan to them, and that the process did not permit them to address comments directly to the Planning Department.

<sup>9</sup> *E.g.*, the Pine River Planning District (Resolution Nos. 1971-23 and 1972-5); the Fort Lewis Mesa Planning District (Resolution No. 1973-5); the Florida Mesa Planning District (Resolution No. 1973-60); the Eureka Community Planning District (Resolution No. 1974-90);

<sup>10</sup> C.R.S. § 30-28-119(1).

<sup>11</sup> C.R.S. §§ 30-28-119(3)(IV); (4)-(6).

county at a time as opposed to zoning the entire county at one time.” Thus, although the Model Zoning Resolution defined certain zoning districts, e.g., agriculture, rural, commercial, light industry, and heavy industry, it left the creation of area-specific zoning plans (e.g., standards and processes applicable to each zoning district) to the appointed district planning commissions. Some of district planning commissions thus proposed zoning plans, which the BoCC adopted through amendments to the Model Zoning Resolution.<sup>12</sup> Those plans, which identified zoning districts and identified uses allowed or precluded in each, adhered to Euclidean zoning principles.

However, in 1979, the Board of County Commissioners determined that the Model Zoning Resolution, as amended, had never formally been enacted and, thus, there “exist[ed] no vehicle for the Board of County Commissioners to properly enforce restrictions on uses of land within the County . . .”<sup>13</sup> The Model Zoning Resolution, and the district zoning plans it had incorporated, therefore were abandoned.<sup>14</sup>

## **B. 1978-1990: The Land Resource Management Program and Creation of District (Area) Plans**

In place of the Model Zoning Resolution, the BoCC enacted a Land Resource Management Plan (“LRMP”).<sup>15</sup> The LRMP also was an Euclidean zoning plan, prescribing county-wide zoning districts and processes required to permit certain uses within them.<sup>16</sup> Thus, the zoning districts and regulations set forth in the LRMP replaced the district planning commissions’ zoning plans, as incorporated into (and abandoned together with) the Model Zoning Resolution.<sup>17</sup>

## **C. 1990 - Present: The La Plata County Land Use System**

### **1. Adoption of the La Plata County Land Use System**

In 1990 the BoCC repealed the LRMP and adopted the La Plata County Land Use Plan (“LPLUS”),<sup>18</sup> which, as amended, forms the basis of our current La Plata County Land Use Code (“LPLUC”). The LPLUS was a Performance-based zoning plan under which performance standards, applicable to all areas and types of development, were measured according to a scoring system with weighted values assigned to five mapped “Development Districts”: the Corridor District, East District, West District, Federal District and Durango Service Area.<sup>19</sup> Those Development Districts did not correspond either to the prior district planning commissions or subsequent District (Area) Plans.<sup>20</sup> The scoring system and Development Districts subsequently evolved into our current, more qualitative

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<sup>12</sup> E.g. Resolution Nos. 1972-84 (Pine River); 1972-53A (Junction Creek); 1973-42 (Florida Mesa); 1974-127 (Southeast).

<sup>13</sup> Resolution No. 1977-98.

<sup>14</sup> *Id.*

<sup>15</sup> Resolution No. 1978-50.

<sup>16</sup> *Id.* at LRMP § 5.2.

<sup>17</sup> Resolution No. 1977-98.

<sup>18</sup> Resolution no. 1990-39.

<sup>19</sup> *Id.*

<sup>20</sup> In 1994, by Resolution No. 1994-29, the BoCC amended the LPLUS to provide for yet another subset of planning district: the Neighborhood Planning Area. Neighborhood Planning Areas were not district planning commissions and did not implement specific zoning plans; they were intended to function similar to overlays. Only the Crowbar Creek Neighborhood Planning Area was created, but its standards were not carried forward into the current LPLUC.

compatibility analysis, which includes an evaluation of a proposed use's compatibility with the Comprehensive Plan and the pertinent District (Area) Plan.

## 2. Creation of the Current District (Area) Plans

Consistent with the Performance-based zoning scheme prescribed by the LPLUS, the Planning Commission adopted, in 1996 and 1997, a series of resolutions creating seven of the current District (Area) Plans (then designated “master plans,” consistent with the terminology at C.R.S. § 30-28-106) which were, and remain, appended to our Comprehensive Plan.<sup>21</sup> Those resolutions specified that the District (Area) Plans created would “allow for more orderly and predictable growth patterns by serving as a guide to the current [LPLUS] system and addressing the compatibility of land uses.”<sup>22</sup> Further, they clarified that the District (Area) Plans had been “created in conjunction with volunteers from the [districts] providing their ideas, input, and knowledge.”<sup>23</sup> On March 16, 1998, the PC further clarified that those District (Area) Plans were “adopt[ed] and incorporate[ed] . . . into the [LPLUS] as advisory policy documents.”<sup>24</sup>

However, notwithstanding that clarification, the Colorado Court of Appeals ruled, in *Condiotti v. Board of County Commissioners of La Plata County*<sup>25</sup> that the BoCC’s “adoption” of the various District (Area) Plans (still termed “master plans”), rendered them zoning regulations, and not merely advisory documents. Therefore, the BoCC resolved to amend the LPLUC (formerly known as the LPLUS) “to delete all references to the County Master Plans.”<sup>26</sup> Those “master plans” — called, today, District (Area) Plans — together with the subsequently created Fort Lewis Mesa, Durango, and La Posta Road District (Area) Plans,<sup>27</sup> remain advisory documents (unless the BoCC formally includes the Plans, or any portion thereof, in its adopted land use regulations).

## V. CONCLUSION

The ongoing process of updating the County’s Comprehensive Plan by, among other things, updating the District (Area) Plans it incorporates, remains consistent with the process set forth in the Plans’ initial establishment. Volunteers from each area contribute their ideas, input, and knowledge into preparing, in collaboration with the Planning Department and the PC, a plan which sets forth the communities’ goals for the future development of each’s geographical area. Unlike the defunct district planning commissions appointed in the 1970s, the District (Area) Plans do not have formal organization or leadership. Rather, any resident and/or property owner is entitled to participate on equal footing with all others. The District (Area) Plans therefore persist as living documents which inform (but do not dictate) the PC’s and the BoCC’s land use decisions.

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<sup>21</sup> PC Resolution Nos. 1996-006 (Florida Road); 1996-007 (North County); 1996-008 (Florida Mesa (amended by Resolution No. 1997-003)); 1996-009 (Vallecito); 1997-002 (Junction Creek); 1997-004 (West Durango); and 1997-005 (Bayfield).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Resolution No. 1998-013.

<sup>25</sup> 983 P.2d 184 (Colo. App. 1999).

<sup>26</sup> Resolution No. 2000-13.

<sup>27</sup> PC Resolution Nos. 2007-1 (Fort Lewis Mesa — Resolution not recorded; District (Area) Plan recorded at reception no. 1127041); 2013-4 (La Posta Road Area); and 2013-5 (Durango).