

Evaluation of County Regulatory Processes and Recommendations for Land Use Planning and Governmental Reform

La Plata County, Colorado

Prepared for:
Landowners of La Plata
361 S. Camino Del Rio #220
Durango, CO 81303

For use by:
County Land Use Planning Districts
Water Conservancy, Conservation, and Irrigation Districts



“Complex Problems Solved Well”

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EXECUTIVE SUMMARY

Land use planning is an advisory governmental function whose objective is to forecast future infrastructure requirements in the incorporated regions of Colorado counties. As support documents prepared by local governments, land use plans, mineral master extraction plans, and associated documents must contain the scientifically based cultural and economic data necessary to positively advise, inform, and promote physical development in rural areas.

Over the last 30 years, land use planning and regulatory activities in La Plata County, Colorado have been the subject of ongoing controversy. Numerous attempts aimed at comprehensive [master] plans have been turned away by the public; permit approval times are increasing despite a decline in building applications; district land use planning efforts are heavily controlled by county planning department staff; and the public, elected officials, and county staff alike appear equally frustrated with the process.

Here, we investigate the reasonableness of the La Plata County land use policy by first establishing the priorities of water, agriculture, and minerals extraction found Article XVI of Colorado's constitution. Using the constitutional priorities as a foundation, we then place the history, culture, and economic import of first order industries in context of appropriate land use policy and regulatory activities.

One central issue is the merging of land use planning concepts with permitting policies and county's building code for construction activities. Although related, for regulatory and policy purposes, building permit and approval processes should be separated from future land use planning for physical infrastructure.

A substantial percentage of the county land area (39%) falls under the jurisdiction of federal and tribal governments, effectively rendering those lands unavailable for imposition of county land use planning or regulatory policies. Similarly, approximately 66% of the county land area falls within the control areas of five quasi-governmental water conservancy and water irrigation districts who have specific and preeminent CRS Title 37 delegated authority over lands, watercourses, and watersheds. These districts have a fundamental interest in county regulatory programs, and in some instances county policies and land use programs are jurisdictionally subordinate.

For reasons outlined in this report, we conclude that the existing La Plata county land use planning and regulatory system to be jurisdictionally fragmented and unreasonable exercise of police power requiring reform. To that end, bottom-up reforms are proposed in the context of existing systems, constitutional priorities, and over 100 years of statutory law.

PREFACE

Since the 1930s, prolific expansion of American administrative government has transitioned power away from citizenry, concentrating power at higher levels of government.

Two contrasting philosophies lie at the center of this shift. The first sees government as a servant, a formable tool, and a facilitator to ensure the security of individual natural rights. The second, a collectivist view, sees government as the primary gatekeeper of resources, a manager of behaviors, and an overseer for universal equity.

We see tension between these views in the outworking of land use and regulatory policy where the first affirms the adequacy of personal responsibility, and the second holds that individual decision-making is inadequate - requiring government intervention and control.

At the epicenter lies utilization of land, water, minerals, and private property.

We chose not to address the symptomatic signs of governmental dysfunction or to ascribe intent here, but rather to focus on a hierarchy of law beginning with three priorities found in Article XVI of the Colorado State Constitution: water, agriculture, and minerals extraction. We then trace those priorities through 100 years and six (6) titles of Colorado law, documenting the prerogatives, responsibilities, and limits of multiple governmental entities in the county who have a significant stake in land use planning and governmental administration.

In this landmark work, we propose a bottom-up process for reform in the context of La Plata County's history, using authorities delegated to the water conservancy, irrigation and planning districts by district courts and the La Plata Board of County Commissioners. We do build on other initiatives where county governments have successfully used their Tenth amendment authority as a check on federal initiatives, but with one distinction: this will be the first time quasi-governmental political subdivisions at the *subcounty* level have been mobilized to effect reform.

Because the genius of American constitutional and statutory system places power in the hands of citizenry, the significance of a program that can effect appropriate change in administrative government without judicial action or legislative intervention cannot be minimized. Perhaps more importantly, the framework, methods, and concepts herein may be used as a template whenever higher governments are non-responsive, have engaged in tyranny, or otherwise requires external reform.

1 **1.0 BACKGROUND**

2 *1.1 Introduction -*

3 1.1.1 Purpose, Summary of Issues, and Approach

4 The American system of government is founded upon the principle that power and
5 consent is delegated from the people to their government; that the people exchange
6 some level of personal freedom in return for collective, consistent, and reasonable
7 protection from their government. Delegation principles enshrined in the national
8 and state constitutions presuppose a bottom-up flow of power that originates with
9 the constitution, is codified by legislatures in the form of statutes, and then is
10 delegated to local governments.

11 This inquiry examines the history, effectiveness, and reasonableness of the police
12 powers exercised by La Plata County, Colorado in its land use planning and
13 regulatory activities. We specifically focus on the question of whether there is a
14 reasonable and rational connection between land use planning and regulatory
15 activities, and whether the county’s use of its authority contains discernable bright-
16 lines that protect the prerogatives of other governments within county boundaries.

17 Our approach employs the foundational priorities in Article XVI, Sections 6 and 7
18 of the Colorado Constitution, and then applies statutes from six titles of the
19 Colorado Revised Statutes (CRS Title 37,¹ Title 35² Title 34,³ Title 30⁴, Title 29⁵
20 and Title 24⁶) to four classes of overlapping jurisdictions within the boundaries of
21 La Plata County:

- 22 1) Federal agencies;
- 23 2) Sovereign nation tribal governments;
- 24 3) Water conservancy and water irrigation districts; and,
- 25 4) Land use planning districts.

26 The Colorado Constitution prioritizes ongoing and permanent access to
27 appropriated state waters for domestic, agrarian, and mineral-extractive uses.
28 These Article XVI prerogatives, and the subordinate statutes and land use
29 regulations derived from them, create a jurisdictional hierarchy that must be
30 considered by counties as part of land use planning and regulatory processes.

¹ [CRS §§37-1-101 through 37-98-104 et seq. Water and Irrigation. Conservancy Law of Colorado.](#)

² [CRS §§35-1-101 through 35-81-102 et seq. State Department of Agriculture Act of 1949.](#)

³ [CRS §§34-1-101 through 34-64-107 et seq. Mineral Resources.](#)

⁴ [CRS §§30-28-101 through 30-28-139 et seq. Government - County - County Planning and Building Code.](#)

⁵ [CRS § 29-20-104 Powers of Local Governments.](#)

⁶ [CRS §§24-1-101 through 24-115-118 et seq. Administrative Organization Act of 1968.](#)

31 In La Plata County, the lands, watershed, and infrastructure of water conservancy
32 and water irrigation districts that convey water fall under the purview of Article
33 XVI prerogatives. Similarly, the vast land areas occupied by federal agencies and
34 sovereign, Native American tribal government also receive water resource
35 protection from Article XVI:

36 **COLORADO CONSTITUTION, ARTICLE XVI**
37 **MINING AND IRRIGATION**

38 Section 6. *Diverting unappropriated water priority*
39 *preferred uses. The right to divert the*
40 *unappropriated waters of any natural stream to*
41 *beneficial uses shall never be denied. Priority of*
42 *appropriation shall give the better right as between*
43 *those using the water for the same purpose; but*
44 *when the waters of any natural stream are not*
45 *sufficient for the service of all those desiring the use*
46 *of the same, those using the water for domestic*
47 *purposes shall have the preference over those*
48 *claiming for any other purpose, and those using the*
49 *water for agricultural purposes shall have*
50 *preference over those using the same for*
51 *manufacturing purposes.*

52 and,

53 Section 7. *Right of way for ditches, flumes. All*
54 *persons and corporations shall have the right of way*
55 *across public, private and corporate lands for the*
56 *construction of ditches, canals and flumes for the*
57 *purpose of conveying water for domestic purposes,*
58 *for the irrigation of agricultural lands, and for*
59 *mining and manufacturing purposes, and for*
60 *drainage, upon payment of just compensation.*

61 From a land use planning, zoning, or regulatory perspective, La Plata County is
62 fragmented, with local land use regulations having very limited authority over
63 federal lands and no jurisdiction over Native American tribal lands, together which
64 comprise approximately 40% of land area throughout the county. The area
65 available for unrestricted land use regulation by the county is even further reduced
66 when the overlapping jurisdiction of the water conservancy and water irrigation
67 district control areas are considered.⁷ (Maps 1 and 2, Appendix A)

⁷ *The La Plata Water Conservancy District, the La Plata Archuleta Water District, the Florida Water Conservancy District, the Animas La Plata Water Conservancy District, and the Pine River Irrigation District.*

68 The interspersed nature of public lands, tribal nation holdings, split-estate minerals,
69 and competing jurisdictions raises fundamental questions about consistency,
70 uniformity, and ultimately the effectiveness of the county’s land use planning,
71 regulatory, and permitting programs. We investigate these in *Section 2, Situation*
72 *Appraisal*.

73 We were not able to discern the processes used by the county to identify or
74 consider potential jurisdictional conflicts with the operating plans of the water
75 conservancy and water irrigation districts during land use planning or regulatory
76 processes. Since the authority for the control areas of the water conservancy and
77 irrigation districts is delegated by district courts (conservancy districts) or the
78 BoCC (irrigation districts), these quasi-governmental entities have specific,
79 preeminent constitutional and statutory authority over infrastructure, lands,
80 watersheds, and waters within their control areas. Section 2.1.1 identifies specific
81 Title 37 authorities to which county land use policy is subordinate, and for which
82 land use plans and programs should be subjected to consistency review with water
83 conservancy and irrigation district plans and policies.

84 Approximately 280,700 acres of agricultural lands in La Plata County are subject
85 to possessory use taxation (Map 4, Appendix A). The nexus created through local
86 taxation provides a convenient mechanism to map and codify permanent Title 34
87 protections for agricultural lands in the county master plan, district land use plans,
88 and revisions to the county land use code.⁸ The statutory responsibilities of local
89 government are reviewed - in the context of constitutional access to water from
90 water conservancy and irrigation districts - in section 3.1.2, Agriculture.

91 Preparation of a Minerals Master Extraction Plan (MMP) is a core responsibility of
92 county planning commissions (PCs).⁹ The MMP identifies, maps, and examines
93 the economic feasibility of extracting commercial mineral deposits of significant
94 economic or strategic value to the area, state, or nation.¹⁰

95 The statutory language in CRS § 34-1-302(1) mandating preparation of a MMP
96 includes a general list of minerals which may constitute a commercial mineral
97 deposit. That list is preceded by specific statutory language expanding the scope
98 of commercial minerals to include the context in which those minerals may occur.
99 In La Plata County’s case, deposits of gold, silver, coal, quarry aggregate, and nine
100 (9) current federal strategic and critical minerals¹¹ are known to occur.

101 In May 2018, the Secretary of Interior, responding to a December 2017 executive
102 order, published a list of 35 critical minerals in the United States. Of the 35 federal
103 critical minerals, nine are known to occur at 57 locations throughout La Plata
104 County. The presence of these minerals is of such importance as to require creation

⁸ [CRS § 35-3.5-102\(2\)\(b\)](#).

⁹ [CRS § 30-28-106\(3\)\(c\) Adoption of Master Plan](#).

¹⁰ [CRS § 34-1-302\(1\)](#).

¹¹ [Federal Register Vol 83, No.97, Friday, May 18, 2018, pps. 23295. https://www.gpo.gov/fdsys/pkg/FR-2018-05-18/pdf/2018-10667.pdf](#)

105 of a map and investigation of protections under CRS Title 24. Map 5, Appendix A
106 depicts the mineral localities; Appendix B provides a list of mines containing
107 federal critical minerals, along with their locations and owners. Appendix C
108 includes a *Federal Register* notification list of federal critical minerals.

109 The strategic and economic importance of the coal, aggregate, and federal critical
110 minerals to the citizens of La Plata County, the state of Colorado, and the nation
111 outweigh a narrow application of the statute that could lead the county to further
112 delay development of its MMP. This is particularly true because La Plata County
113 projects it will meet the population threshold requirement for an MMP before or
114 during the year 2020. Section 3.1.3 explores the MMP requirement, the
115 significance of mineral resource areas,¹³ and other areas of state interest in the
116 county - in the context of access to water.^{14,15}

117 In June 1990, the La Plata Planning Commission and BoCC established and
118 mapped five (5) land use planning (development) districts (LUPDs) including
119 permanent boundaries.¹⁶ The LUPDs remain an integral part of the county's land
120 use planning system, its land use code and the organic La Plata County permit
121 system. Established in response to the unique history and physiographic
122 characteristics of La Plata County, it has been the intent of the BoCC for decades
123 that the LUPDs serve as an alternative to zoning in the unincorporated parts of the
124 county:

125 *“Unlike traditional zoning districts, these Districts*
126 *are designed to recognize the different needs of*
127 *geographic areas, not the similarities of groups of*
128 *uses. Consequently, development should be*
129 *proposed in accordance with the needs of the area,*
130 *and reclassification should be unnecessary.”¹⁷*

131 1.1.2 Overview and Mechanisms for Land-Use Planning

132 Planning commissions in Colorado have the duty to prepare a master
133 (comprehensive) plan (MP),²³ and under certain circumstances, a mandate to
134 prepare a Minerals Master Extraction Plan (MMP). For its part, the MP is a
135 factual, scientific document that serves as a positive guide for *future* development
136 of surface infrastructure. Typically an advisory²⁴ document, the MP is certified by
137 the planning commission.

¹³ [CRS § 24-65.1-202 \(1\)\(a\). Criteria for Administration of areas of state interest.](#)

¹⁴ [CRS § 24-65.1-201 \(1\). Areas of State Interest as Determined by Local Governments.](#)

¹⁵ [CRS § 24-65.1-104 \(1\). Definitions pertaining to other areas and activities of state interest. Airports.](#)

¹⁶ [Resolution 1990-39. A Resolution Concerned with Adoption of a Land Use Plan and Implementing Regulations for the Unincorporated Area of La Plata County, Colorado La Plata County. June 15, 1990.](#)

¹⁷ [La Plata County Permit System. June 11, 1990. Section 2.0.](#)

²³ [CRS § 30-28-106 Adoption of master plan – contents.](#)

²⁴ Note: Citizens should understand the conditions in CRS § 30-28-106(3)(a) under which a master plan may become regulatory.

138 A quality MP will balance constitutional priorities, protection for human systems,
139 identification of areas and activities of state interest,²⁵ and economic considerations
140 in context with environmental values, historic, cultural, and other information:

141 *“It is the duty of a county planning commission to*
142 *make and adopt a master plan for the physical*
143 *development of the unincorporated territory of the*
144 *county.”*

145 and,

146 *“Such regulations shall be designed and enacted for*
147 *the purpose of promoting the health, safety, morals,*
148 *convenience, order, prosperity, or welfare of the*
149 *present and future inhabitants of the state, including*
150 *lessening the congestion in the streets or roads...*
151 *protecting the tax base, securing economy in*
152 *governmental expenditures, fostering the state's*
153 *agricultural and other industries, and protecting*
154 *both urban and nonurban development.”*²⁶

155 Most states that have statutes enabling the preparation of MPs do not *require* local
156 governments to prepare such plans. This is because urban planning has not proven
157 capable of effectively solving problems in rural areas.²⁷ As a result, MPs prepared
158 for use in rural contexts, such as for the unincorporated areas of La Plata County,
159 should be prepared, reviewed and certified by the BoCC with great care and the
160 participation by the LUPDs and affected citizenry.

161 The overarching purpose of the MP is to inform the public and policymakers with
162 the objective of facilitating future infrastructure growth in a coordinated and
163 harmonious development of the county. The MP is a guidance document,
164 promoting the health, safety, and prosperity of county inhabitants, as well as
165 efficiency and economy in land use development, including recreational and
166 cultural opportunities.²⁹ As a result, the focal point and purpose of the MP is future
167 infrastructure growth.

168 The general assembly of Colorado has distinguished mandatory from discretionary
169 elements for inclusion in the MP process.³⁰ The necessity to incorporate optional
170 items in the MP, denoted by the words “*should*” or “*may*,” should be carefully
171 assessed and thoroughly justified by county governments. By contrast, the use of
172 the imperatives “*shall*” or “*must*” indicates those items which must be incorporated
173 in the MP.

²⁵ [CRS § 24-65.1-101](#); [CRS § 24-65.1-104](#).

²⁶ [CRS § 30-28-115 \(1\) Public Welfare to be Promoted – Legislative Declaration](#).

²⁷ [Julian Conrad Juergensmeyer & Thomas E. Roberts, Land Use Planning and Development Regulation Law, 3d \(Practitioner Treatise Series\), 2017 update, § 2:11](#).

²⁹ [CRS § 30-28-107](#).

³⁰ [CRS § 30-28-106\(1\)](#).

174 **Mandatory** MP elements include:

- 175 • *The county planning commission’s recommendations*
176 *for the development of the territory covered by the*
177 *plan.*³⁶
- 178 • *Coordination of any plan with a mass transportation*
179 *element with that of any adjacent county, region, or*
180 *other political subdivision.*³⁷
- 181 • *A master plan for the extraction of minerals pursuant to*
182 *CRS § 34-1-304.*³⁸ *No master plan shall conflict with a*
183 *master plan for the extraction of commercial mineral*
184 *deposits adopted by the county.*³⁹
- 185 • *The plan for the development of drainage basins when*
186 *county subdivision regulations require the payment of*
187 *drainage fees for any master plan that includes the*
188 *optional element for the development of drainage*
189 *basins.*⁴⁰
- 190 • *A recreation and tourism element if the county is*
191 *required to develop a master plan by the mandates of*
192 *CRS § 30-28-106 (4).*⁴¹

193 **Optional** MP elements are:

- 194 • *The general location, character, and extent of existing,*
195 *proposed, or projected streets or roads, rights-of-way,*
196 *viaducts, bridges, waterways, waterfronts, parkways,*
197 *highways, mass transit routes and corridors, and any*
198 *transportation plan.*⁴²
- 199 • *The general location of public places or facilities.*⁴³
- 200 • *The general location and extent of public utilities.*⁴⁴
- 201 • *The general location and extent of an adequate and*
202 *suitable supply of water.*⁴⁵
- 203 • *The acceptance, widening, removal, extension,*
204 *relocation, narrowing, vacation, abandonment,*
205 *modification, or change of use of any of the public ways*
206 *or rights-of-way.*⁴⁶
- 207 • *Methods for assuring access to appropriate conditions*
208 *for solar, wind, or other alternative energy sources.*⁴⁷

³⁶ [CRS § 30-28-106 \(3\)\(a\) Adoption of master plan – contents.](#)

³⁷ [CRS § 30-28-106 \(3\)\(b\) Adoption of master plan – contents.](#)

³⁸ [CRS § 30-28-106 \(3\)\(c\) Adoption of master plan – contents.](#)

³⁹ [CRS § 30-28-106 \(7\) Adoption of master plan – contents.](#)

⁴⁰ [CRS § 30-28-106 \(3\)\(d\) Adoption of master plan – contents.](#)

⁴¹ [CRS § 30-28-106 \(5\) Adoption of master plan – contents.](#)

⁴² [CRS § 30-28-106 \(3\)\(a\)\(I\) Adoption of master plan – contents.](#)

⁴³ [CRS § 30-28-106 \(3\)\(a\)\(II\) Adoption of master plan – contents.](#)

⁴⁴ [CRS § 30-28-106 \(3\)\(a\)\(III\) Adoption of master plan – contents.](#)

⁴⁵ [CRS § 30-28-106 \(3\)\(a\)\(IV\) Adoption of master plan – contents.](#)

⁴⁶ [CRS § 30-28-106 \(3\)\(a\)\(V\) Adoption of master plan – contents.](#)

⁴⁷ [CRS § 30-28-106 \(3\)\(a\)\(VI\) Adoption of master plan – contents.](#)

- 209 • *The general character, location, and extent of*
210 *community centers, housing developments, the existing,*
211 *proposed, or projected location of residential*
212 *neighborhoods and sufficient land for future housing*
213 *development.*⁴⁸
- 214 • *The general location and extent of forests, agricultural*
215 *areas, flood control area, and open development*
216 *areas.*⁴⁹
- 217 • *A land classification and utilization program.*⁵⁰
- 218 • *Projections of population growth and housing needs to*
219 *accommodate that growth.*⁵¹
- 220 • *The location of areas containing steep slopes,*
221 *geological hazards, endangered or threatened species,*
222 *wetlands, floodplains, floodways and flood risk zones,*
223 *highly erodible land or unstable soils, and wildfire*
224 *hazards.*⁵²
- 225 • *The availability of affordable housing within the*
226 *county.*⁵³
- 227 • *Location of designated of utility corridors.*⁵⁴

228 Many citizens, and even many county officials in Colorado, believe that a county’s
229 MP is an advisory document only. While this can be true, it is important to
230 understand that the MP becomes binding (regulatory) when it, or any portion of it,
231 is legislated into the county’s subdivision, zoning, platting, planned unit
232 development, or other similar land development regulation after satisfying notice,
233 due process, and hearing requirements for legislative or quasi-judicial processes, as
234 appropriate.⁵⁵

235 Because of the importance of water and the unique circumstances of La Plata
236 County, preparation and revision of MPs should incorporate the codified
237 boundaries of the water conservancy and water irrigation district control areas,
238 even though optional under CRS § 30-28-106(3)(a)(iv). MPs should also include
239 appropriate reference to water conservancy and water irrigation district plans,
240 policies,⁵⁶ rights of eminent domain,⁵⁷ responsibility over health and safety due to
241 flood control,⁵⁹ and other duties that may be germane to county land use planning
242 actions.

⁴⁸ [CRS § 30-28-106 \(3\)\(a\)\(VII\) Adoption of master plan – contents.](#)

⁴⁹ [CRS § 30-28-106 \(3\)\(a\)\(VIII\) Adoption of master plan – contents.](#)

⁵⁰ [CRS § 30-28-106 \(3\)\(a\)\(IX\) Adoption of master plan – contents.](#)

⁵¹ [CRS § 30-28-106 \(3\)\(a\)\(X\) Adoption of master plan – contents.](#)

⁵² [CRS § 30-28-106 \(3\)\(a\)\(XI\) Adoption of master plan – contents.](#)

⁵³ [CRS § 30-28-106 \(3\)\(e\) Adoption of master plan – contents.](#)

⁵⁴ [CRS § 30-28-106 \(3\)\(g\) Adoption of master plan – contents.](#)

⁵⁵ [CRS § 30-28-106 \(3\)\(a\) Adoption of master plan – contents.](#)

⁵⁶ [CRS §37-45-118 \(i\) General Powers.](#) [CRS §37-45-134\(1\)\(a\) Additional Powers.](#) [CRS §37-42-117 Directors to Adopt Plans.](#) [CRS §37-42-109 Directors to file map.](#)

⁵⁷ [CRS §37-45-118,](#) [CRS §37-45-119 Powers to acquire Rights-of-way,](#) [CRS §37-41-114.](#)

⁵⁹ [CRS §37-45-102 Legislative Declaration. Policy.](#)

243 **Land Use Plans** The most recent La Plata County MP, called a “comprehensive
244 plan” in the document itself, was certified by the PC and adopted by the BoCC in
245 May, 2017.⁶¹ For their part, the LUPDs are at various stages of updating their land
246 use district plans. This sequence is out of order, as the MP is to reflect the land use
247 plans prepared for the unincorporated areas of the county, not drive the process.

248 Provided the county planning department is cast in a solely advisory role, the
249 rational planning process,⁶² modified for the unique situation of each planning
250 district, is an appropriate tool for the district planning committees to use in
251 developing their individual district land use master plans.

252 La Plata County is one of a handful of counties in Colorado that has not
253 incorporated a top-down, central planning philosophy. Instead, the county
254 delegated specific zoning, planning, and permitting responsibilities for the
255 unincorporated areas to the LUPDs, including defined and mapped boundaries. At
256 the time of legislation by the BoCC, the intent was for a collaborative relationship -
257 and specific responsibilities - to be exercised between the PC and the LUPDs.

258 Unfortunately, the county did not capitalize sufficiently on this system to translate
259 the LUPD structure into the efficient and effective regulatory framework inherent
260 to its systematic elements. Instead, the county defaulted to a philosophically
261 dogmatic, central planning model characterized by permitting systems that have
262 become increasingly bureaucratic, expensive, and ineffective. Until recently public
263 interest and hands-on involvement with the land planning process has waned,
264 resulting in landowners and citizens alike becoming increasingly frustrated with
265 governmental processes.

266 Still, the integrity of the land use planning districts remains intact, and this system
267 should be administratively reorganized and reformed to function in its bottom up
268 capacity. It preserves a broad range of opportunity for innovation in grassroots land
269 use planning, providing a strong, statutorily authorized foundation for planning
270 that is responsive to the needs of the human and natural environments.

271 Land use plans do not mirror comprehensive plans. Instead, a MP incorporates the
272 district plans, and is more general in nature than the district plans. This relationship
273 helps make it easier for the MP to achieve consistency with the district plans,
274 which are also distinct from one another through accounting for the unique
275 physiographic conditions of each district. As a result, the correct order of
276 preparation is:

- 277 1) Preparation of a Minerals Master Extraction Plan;
- 278 2) Updating of LUPD plans;
- 279 3) Revision of the Master plan(s); then,
- 280 4) Potential updating the county land use code.

⁶¹ [Comprehensive Plan, La Plata County, Colorado, May, 2017.](#)

⁶² [Julian Conrad Juergensmeyer & Thomas E. Roberts, Land Use Planning and Development Regulation Law, 3d \(Practitioner Treatise Series\), 2017 update, § 2:10.](#)

281 1.2 *History of La Plata County* -

282 La Plata County was founded upon first order industries of minerals extraction,
283 agriculture, timber production, and similar multiple use productive activities.
284 Because these activities are central to the culture, customs, and economic base of
285 the county, their safeguarding and protection must be accommodated in
286 reasonable, long-term land use planning, zoning, and activity-based regulatory
287 decisions.

288 Early exploration, settlement, and industry in La Plata County, Colorado, grew out
289 of some of the first settlement occurring in the Western Territory, and was
290 spawned by courageous self-reliance, with no significant authority removing the
291 *thorns* or ensuring *tranquility*. The county derives its name, La Plata, from the
292 Spanish word for silver, which was first discovered in the region in the late 1700s.

293 Minerals extraction, water, agriculture, and timber harvesting all forged the
294 identity, customs, and cultures of La Plata County, and these industries can still be
295 very important to the economy in rural, unincorporated areas. Today’s descendants
296 of the rugged individualists who settled La Plata County understand the need for
297 coordination with government at every level, and this is reinforced by bottom-up
298 collective bargaining that should be integral to local, policy decision making.

299 The United States is experiencing increasing controversy featuring voices that
300 diminish and revise American history. The perception that yesterday’s nation-
301 forging activities and the industries that developed the American west need not be
302 included in history is prevalent in progressive planning philosophies and requires
303 balance.

304 The historic industries, such as minerals extraction, timber production, and
305 agrarian interests, remain integral part of the economy, culture, and customs of La
306 Plata County and must be considered alongside the tourism and hospitality
307 industries.

308 1.2.1 Physiographic Distinctions

309 A balanced analysis of geography, culture, and economics in the unincorporated
310 area is foundational to land use planning. It is a key topic that was not adequately
311 addressed in the May 2017 La Plata comprehensive [master] plan. Geography,
312 terrain, soils, access to water, and mineral availability determine the economic
313 viability of a region.

314 Geography is minimally addressed in the plan’s Policy 1.1.C2, which advises the
315 identification of “*geo-hazard areas, soil conditions, topography and the*
316 *availability of public facilities...*”, but is not identified as fundamental to the vast
317 agricultural, water, mining and timber economic opportunities that occur within
318 county’s the unincorporated territory.

319 1.2.2 Growth and Trends in Unincorporated Areas

320 Early exploration, settlement, and industrial development contributed to an
321 economy and culture that was based upon minerals extraction, agriculture, and
322 timber production. All are entirely dependent upon access to conveyed water.
323 Because of the abundance of resources, land use planning, development, and
324 regulatory activities must consider and provide for long term protection for these
325 productive activities and resources.

326 The La Plata County comprehensive [master] plan describes an average annual
327 2.5% population growth between 1970 through 2010, and identifies a projected
328 population growth of 91,422 by 2040, far exceeding the 2010 population of
329 53,446.

330 Rural La Plata County experienced modest population growth between 1970 to
331 about 2008, with much of that growth being traceable to the natural gas
332 exploration, development, and transmission industry. Beginning in the mid-1980s,
333 advances in coalbed methane technology contributed substantially to an increase in
334 natural gas production over conventional production methodologies.

335 A significant portion of coal gas production occurs on the Southern Ute reservation
336 lands within La Plata County's borders that are outside county land use planning
337 and regularity jurisdiction. Revenues from natural gas exploration, production, and
338 transmission contribute substantially to growth on tribal lands - and by extension -
339 the county's unincorporated areas. The fossil fuel industry has also contributed to
340 expansion of tribal gaming activities in Ignacio, resulting in job creation in the
341 county.

342 Given the maturity of the coal gas methane fields and increasing activist resistance
343 to exploration of fossil-fuels, it seems likely the future population growth in
344 unincorporated La Plata County will be similar to the period of 2010-2017 (about
345 1% per year).

346

Rural Population Growth -

Table 1 Population Growth Rates in Unincorporated La Plata County, Colorado⁸¹	
Period	Annual Population Growth
1950 - 1960	1.8%
1960 - 1970	2.1%
1970 - 1980	7.6%
1980 - 1990	2.5%
1990 - 2000	5.2%
2000 - 2010	1.3%
2010 - 2017	.99%

348 The reduction in annual population growth is corroborated by building permits
 349 issued by La Plata County. This includes single-family, multi-family, mobile
 350 home, and commercial building permits.

351 **Building Permits -**

Table 2 Building Permits, 1980 to 2014 La Plata County, Colorado⁸²	
Period	Annual Permits Issued
1980 - 1990	726
1990 - 2000	1334
2000 - 2010	1067
2010 - 2014	566

353 Long term growth trends in La Plata County can be traced to the first order
 354 industries of agriculture, minerals extraction, and contributions from federal
 355 agencies. Consequently, the master plan, minerals extraction master plan, land use
 356 planning, and district plans should all incorporate long term protections for these
 357 base industries.

⁸¹ US Census data between 1950-2017. Subtract the populations of the City of Durango and the Town of Bayfield.

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>
<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁸² La Plata County Building Department.

http://lpcds.org/UserFiles/Servers/Server_1323669/File/La%20Plata%20County's%20Community%20Development%20Services%20Department%20Migration/Building/Permits%20and%20Inspections/permit_.pdf
http://lpcds.org/UserFiles/Servers/Server_1323669/File/La%20Plata%20County's%20Community%20Development%20Services%20Department%20Migration/Building/Permits%20and%20Inspections/permit_.pdf

358 **2.0 SITUATION APPRAISAL**

359 **2.1 Jurisdictions and Governmental Hierarchy -**

360 **2.1.1 Water Conservancy and Irrigation Districts**

361 Water conservancy districts and water irrigation districts are quasi-governmental
362 entities formed under Title 37, the *Water and Irrigation, Conservancy Law of*
363 *Colorado - Flood Control Statutes*. Generally, Title 37 Articles 1 through 8 pertain
364 to establishment of conservancy districts; Articles 20 through 27 address drainage
365 districts; Articles 28 through 33 regulate voluntary districts, and contain
366 administrative statutes; and Articles 40 through 45 address water conservation,
367 conservancy, irrigation, and salinity control districts.

368 Water conservancy districts are created by district courts⁸³ in response to a bottom-
369 up petition process that originates with landholders.⁸⁴ Depending upon specific
370 articles of incorporation, these district boards can be responsible for:

- 371 • Promulgating regulations for their control areas;⁸⁵
- 372 • Constructing, managing and protecting⁸⁶ infrastructure to effect
373 protection of land, property or preserve fish populations;
- 374 • Facilitating protection of human systems and apportionment of water for
375 flood discharge and control;⁸⁷
- 376 • Protecting property, health, and safety;⁸⁸
- 377 • Monitoring external policies that could impact their control areas through
378 a reduction of property valuations and revenues to the State;⁹⁰
- 379 • Draining and restoring wetlands;⁹¹ and
- 380 • Encouraging land reclamation through construction of infrastructure
381 (works)⁹² that are “*essential to the public benefit.*”

⁸³ [CRS § 37-45-108; Jurisdiction of district courts.](#) [CRS§ 37-2-101 Jurisdiction of district courts - purposes of districts.](#)

⁸⁴ [CRS § 37-42-101 Petition for organization.](#) [CRS § 37-41-102 Petition.](#) [CRS § 37-41-101 Irrigation District - organization - purposes.](#)

⁸⁵ [CRS § 37-42-110 Directors to Organize - Powers.](#)

⁸⁶ [CRS § 37-3-103 General Powers.](#) [CRS § 37-47-107 \(j\) Powers of District.](#)

⁸⁷ [CRS § 37-45-102\(f\) Legislative Declaration.](#) [CRS § 37-3-103 General powers.](#)

⁸⁸ [CRS § 37-45-102\(g\);](#) [CRS § 37-3-103 General powers.](#)

⁹⁰ [CRS § 37-45-102 \(c\)](#)

⁹¹ [CRS § 37-42-136. Drainage of Lands - Surveys.](#)

⁹² [CRS § 37-45-103 \(10\) Definitions.](#)

382 District courts may delegate *dominant right of eminent domain* and powers over
 383 county access to water conservancy districts as quasi-governmental entities;⁹³
 384 authority to enact binding land and infrastructure plans;⁹⁴ discrete authority to tax;
 385 and regulatory power to enact rules for pollution control, water use, land use, or
 386 infrastructure within their control areas.⁹⁵ For their part, irrigation districts may
 387 also be granted many of the same prerogatives.

388 The *Animas-La Plata Water Conservancy District*, the *Florida Water Conservancy*
 389 *District*, the *Pine River Irrigation District*, and the *Southwestern Water*
 390 *Conservation District*⁹⁶ are all quasi-governmental districts established within La
 391 Plata County that have distinct control areas and delegated Title 37 powers. These
 392 five entities, occupying approximately 744,122 acres of La Plata County, were
 393 established through various provisions of the Water Law of 1905,⁹⁷ the Irrigation
 394 District Law of 1921,⁹⁸ or associated Title 37 water conservancy district statutes.⁹⁹

395

Table 3	
Water Conservancy and Irrigation Districts in La Plata County, Colorado	
<u>Water District</u>	Acres
La Plata Water Conservancy District	84,890
La Plata Archuleta Water District	273,082
Florida Water Conservancy District	52,250
Animas La Plata Water Conservancy District	216,900
Pine River Irrigation District	<u>117,000</u>
TOTAL	744,122

396 Over 40% (~438,000 acres) of La Plata County drains into water conservancy and
 397 water irrigation districts from lands managed by federal agencies, primarily the
 398 United States Forest Service (USFS), Bureau of Land Management (BLM), and
 399 Bureau of Reclamation (BOR). Water originating from the San Juan National
 400 Forest (SJNF) - unless appropriated otherwise - is, according to federal law,
 401 specifically called out for the three, Article XVI, Sections 6 and 7 constitutional
 402 priorities of “*domestic, mining, milling, or irrigation purposes*.”

⁹³ [CRS § 37-3-117 Dominate right of eminent domain](#), [CRS § 37-41-114; Meetings - duties - eminent domain](#),
[CRS § 37-44-108 Directors – powers and duties](#), [CRS § 37-45-118 \(II\)\(c\) General powers](#).

⁹⁴ [CRS § 37-3-106 Regulations to protect works](#), [CRS § 37-42-110 \(2\)\(a\) Directors to organize - powers](#),
[CRS § 37-45-118\(i\)](#).

⁹⁵ [CRS § 37-3-106](#); [CRS § 37-42-110 \(2\)\(a\)](#); [CRS § 37-44-108 \(3\)](#); [CRS § 37-45-118 \(1\)\(d\)\(IV\)](#);
[CRS § 37-45-134\(1\)\(a\)](#)

⁹⁶ The Southwestern Water Conservation District was created under CRS § 37-47-103 et. seq.

⁹⁷ [CRS § 37-41-101 et. seq.](#)

⁹⁸ [CRS § 37-42-101 et. seq.](#)

⁹⁹ [CRS § 37-45-102 et. seq.](#)

403 *“All waters within the boundaries of national forests*
404 *may be used for domestic, mining, milling, or*
405 *irrigation purposes, under the laws of the State*
406 *wherein such national forests are situated, or under*
407 *the laws of the United States and the rules and*
408 *regulations established thereunder.”*¹⁰⁵

409 By waiving its right to sovereign immunity under the McCarran Amendment,¹⁰⁶
410 through longstanding case law by the United States Supreme Court (SCOTUS),¹⁰⁷
411 and by execution of interstate compacts, federal claims to surface waters
412 transmitted from the San Juan National Forest (SJNF) are adjudicated in state
413 courts under state water laws, and are subject to the *Colorado Water Rights*
414 *Protection Act:*

415 *“The general assembly further recognizes that:*

416 (I) *The history between the federal government and the*
417 *states in the reclamation of the arid lands of the*
418 *western states is both long and involved. Throughout*
419 *that history, congress has maintained a purposeful*
420 *and continued deference to state water law.*

421 (II) *Pursuant to 43 U.S.C. sec. 666, commonly known as*
422 *the “McCarren Amendment,” Congress waived the*
423 *sovereign immunity of the United States for lawsuits*
424 *in state courts regarding the adjudication or*
425 *administration of water rights; and,*

426 (III) *In Colorado, water rights are established by making*
427 *an appropriation and are confirmed by state water*
428 *courts.*

429 (c): *Therefore, pursuant to federal and Colorado*
430 *law, the general assembly determines and declares*
431 *that:*

432 (I) *The United States forest service and the bureau of*
433 *land management are subject to the jurisdiction of*
434 *Colorado water courts for their water right claims*
435 *in Colorado; and,*

436 (II) *Nothing in this subsection (2) prevents the Federal*
437 *Government from:*

438 (A) *Participating in water court proceeding in*
439 *Colorado; or, seeking terms and conditions in water*
440 *court to protect its water rights.*^{111,112}

¹⁰⁵ [16 USC § 481 - Use of waters.](#)

¹⁰⁶ [43 USC Sec. 666](#)

¹⁰⁷ [United States v. New Mexico, 438 US 696 \(1978\).](#)

¹¹¹ [16 USC §475 June 4, 1897, ch. 2, § 1, 30 Stat. 36.](#)

¹¹² [CRS § 37-92-310 Colorado Water Rights Protection Act.](#)

441 With little exception, conveyance of appropriated state waters from federal lands
442 through the control areas of the water conservancy and water irrigation districts for
443 domestic, agrarian, and extractive minerals activities is a constitutional and
444 statutory prerogative that is preeminent for their lands, watersheds, and control
445 areas. As a consequence and general rule, the control areas within the water
446 conservancy and irrigation districts are preeminent to the more general and scope-
447 limited land use planning authorities delegated to local governments in CRS 29-20-
448 104:

449 *Except as expressly provided in section 29-20-104.5,*
450 *the power and authority granted by this section shall*
451 *not limit any power or authority presently exercised*
452 *or previously granted. Each local government*
453 *within its respective jurisdiction has the authority to*
454 *plan for and regulate the use of land by:*

455 (a) *Regulating development and activities in*
456 *hazardous areas;*

457 (b) *Protecting lands from activities which would*
458 *cause immediate or foreseeable material danger to*
459 *significant wildlife habitat and would endanger a*
460 *wildlife species;*

461 (c) *Preserving areas of historical and*
462 *archaeological importance;*

463 (d) *Regulating, with respect to the establishment of,*
464 *roads on public lands administered by the federal*
465 *government; this authority includes authority to*
466 *prohibit, set conditions for, or require a permit for*
467 *the establishment of any road authorized under the*
468 *general right-of-way granted to the public by 43*
469 *U.S.C. 932 (R.S. 2477) but does not include*
470 *authority to prohibit, set conditions for, or require a*
471 *permit for the establishment of any road authorized*
472 *for mining claim purposes by 30 U.S.C. 21 et seq.,*
473 *or under any specific permit or lease granted by the*
474 *federal government;*

475 (e) *Regulating the location of activities and*
476 *developments which may result in significant*
477 *changes in population density;*

478 (f) *Providing for phased development of services*
479 *and facilities;*

480 (g) *Regulating the use of land on the basis of the*
481 *impact thereof on the community or surrounding*
482 *areas; and,*

483 (h) *Otherwise planning for and regulating the use*
484 *of land so as to provide planned and orderly use of*
485 *land and protection of the environment in a manner*
486 *consistent with constitutional rights.*¹¹³

487 2.1.2 Land-Use Planning Districts

488 Between February of 1988¹¹⁹ and June of 1990, the La Plata County Planning
489 Commission (PC) and Board of County Commissioners (BoCC) established six (6)
490 land use planning [development] districts (LUPDs) called the *Corridor District*,
491 *East District*, *West District*, *Federal District*, the *Durango Service Area* and the
492 *Animas Valley Land Use Planning Area*. As part of this process, the BoCC enacted
493 the *La Plata County Permit System* and codified “permanent” “*Official*
494 *Development District Maps*,”¹²⁰ subdividing the unincorporated parts of the county
495 into districts.

496 In establishing the LUPDs, the BoCC specifically recognized that county-wide
497 zoning was too rigid for the vast physiographic differences, diverse agrarian
498 economy, and productive mineral extractive history characteristic of the
499 unincorporated parts of La Plata County. Creation of LUPDs by the BoCC was a
500 deliberate, legislative alternative that took the place of county-wide zoning:

501 *“Unlike traditional zoning districts, these Districts*
502 *are designed to recognize the different needs of*
503 *geographic areas, not the similarities of groups of*
504 *uses. Consequently, development should be*
505 *proposed in accordance with the needs of the area,*
506 *and reclassification should be unnecessary.”*¹²¹

507 The authority establishing the LUPDs is traced to a series of resolutions enacted by
508 the BoCC between 1990 and 1993. In Resolution 1990-39, taken nearly verbatim
509 from CRS § 30-28-113, the BoCC delegated discrete authority from CRS § 30-28-
510 111, CRS § 30-28-112, CRS § 30-28-113 and CRS § 30-28-115 to the LUPDs. The
511 intent was to establish a bottom-up system for land use planning, zoning, and
512 building permits to be administratively and collaboratively exercised along with
513 the PC:

514 *“WHEREAS, pursuant to Sections 30-28-11, 112,*
515 *113, and 115 C.R.S., as amended, the County Land*
516 *Use Plan and implementing Regulations may*
517 *provide, among other things, for regulating the*
518 *location, height, bulk, and size of buildings and*
519 *other structures, the percentage of lot that may be*

¹¹³ [CRS § 29-20-104. Powers of Local Governments.](#)

¹¹⁹ [Resolution 1988-4. A Resolution Authorizing the La Plata Planning Commission to Prepare and Certify a Land Use Plan and Regulations for the Unincorporated Area of La Plata County, Colorado. February 2, 1988.](#)

¹²⁰ [Resolution 1990-39. A Resolution Concerned with Adoption of a Land Use Plan and Implementing Regulations for the Unincorporated Area of La Plata County, Colorado La Plata County. June 15, 1990.](#)

¹²¹ [La Plata County Permit System. June 11, 1990. Section 2.0.](#)

520 *occupied, the size of yards, courts, and other open*
521 *spaces, the uses of buildings and structures for*
522 *trade, industry, residence, recreation, public*
523 *activities, or other purposes, access to sunlight for*
524 *solar energy devices, and*

525 *the uses of land for trade, industry, residence,*
526 *recreation, or other purposes and for flood control;*
527 *and in order to accomplish such regulation, the*
528 *board of county commissioners may divide the*
529 *territory of the county that lies outside of cities and*
530 *towns into districts or zones of such number, shape,*
531 *or area as it may determine, and within such*
532 *districts may regulate the uses of buildings,*
533 *structures, and the use of land, and may require and*
534 *provide for the issuance of building permits as a*
535 *condition precedent to the right to erect, construct,*
536 *reconstruct, or alter any building or structure within*
537 *which is subject to such land use plan and*
538 *regulations.*

539 Creation of the LUPDs and the La Plata County permit system accounted for land
540 use planning in the unincorporated area of the county, and permanently eliminated
541 the need for county-wide zoning. With the exception of discrete, performance-
542 based zoning enacted for Hermosa Creek, Bruce Lane, Hermosa/Animas, Hermosa
543 West and Central Animas Valley, the unincorporated territory of La Plata County
544 lacks a county-wide zoning system.

545 The fact that La Plata County does not have county wide zoning is easily
546 demonstrated, as the public record indicates that no zoning maps covering the
547 entire county have been certified by the Planning Commission or adopted by the
548 BoCC. Thus, the county remains unzoned.

549 The unzoned status of unincorporated areas of La Plata County has been affirmed
550 in recent discussions between the BoCC and the Director of the La Plata Planning
551 Department. Appendix E contains policy discussion questions¹²² and Appendix F
552 provides a formal Euclidian zoning memorandum to the BoCC by the La Plata
553 Planning Department.¹²³ These documents, and others, demonstrate that the
554 planning department itself does not believe county-wide zoning has been enacted
555 throughout La Plata County. We agree with this conclusion.

556 Authority for administration of local zoning activities, including regulatory
557 determinations, adjudication of standards, and conduct of public hearings was
558 delegated to the planning districts and their “*Commissions*” by the BoCC in
559 Resolutions 1993-44, 1993-53, and 1993-55 “*Administration of Neighborhood*

¹²² [Handout Questions: La Plata County Land Use Code Revision Policy Questions: Zoning. Jason Meininger July 25, 2018.](#)

¹²³ [Memorandum. DRAFT Policy Consideration for Zoning. Jason Meininger, Planning Director. June 1, 2018.](#)

560 *Overlay Districts.*” The language adopted by the BoCC delegates specific
561 administrative responsibilities and regulatory authority to the LUPDs and their
562 District Planning Commissioners to be exercised alongside of the PC:

563 "ADMINISTRATION OF NEIGHBORHOOD OVERLAY ZONING DISTRICTS”

- 564 A. *“Applications, adjacent property owner notices, staff*
565 *reports and notices of public hearings before the*
566 *District Planning Commissions shall be given in the*
567 *same time, place and manner as provided for the*
568 *County Planning Commission.*
- 569 B. *District Planning Commissions shall meet to review*
570 *projects, or portions of projects, located within their*
571 *Districts, for compliance with Neighborhood Zoning*
572 *District Regulations and Standards.*
- 573 C. *District and County Planning Commissions shall*
574 *hold simultaneous public hearings on projects*
575 *located within District boundaries, in whole or in*
576 *part. At such joint public hearings, the County*
577 *Planning Commission Chairperson and the District*
578 *Planning Commission Chairperson shall open the*
579 *respective public hearings at the same time.*
580 *Thereupon, the County Planning Commission*
581 *Chairperson shall then chair the joint meeting*
582 *through the duration of the public hearing. Joint*
583 *public hearings shall be conducted in accordance*
584 *with the County Planning Commission public*
585 *hearing procedures. All procedural matters shall be*
586 *determined by the County Planning Commission.*
587 *Following the close of the public hearing, the chairs*
588 *shall revert to the respective Commissions for their*
589 *deliberations. The District Planning Commission*
590 *shall first find whether the project complies with*
591 *District standards and regulations. Following the*
592 *finding of the District Planning Commission, the*
593 *County Planning Commission shall proceed in the*
594 *usual manner. In the event that a quorum of District*
595 *Planning Commissioners is not present, the County*
596 *Planning Commission shall make the finding on*
597 *behalf of the District. The minutes and finding of the*
598 *District Planning Commission and the minutes and*
599 *recommendation of the County Planning*
600 *Commission shall be forwarded to the Board of*
601 *County Commissioners and made part of the record*
602 *for the project.*

- 603 D. *All County regulations, not in conflict with*
604 *neighborhood zoning district standards and*
605 *regulations, shall apply within said districts, it being*
606 *the intent hereof that the most restrictive standards*
607 *and regulations shall apply.*
- 608 E. *The standards and regulations of the neighborhood*
609 *zoning districts shall be required standards for*
610 *development within such respective district.*
- 611 F. *District Planning Commissions shall be composed*
612 *of three (3) members and (1) alternate, each of*
613 *whom shall be a resident and property owner within*
614 *such district. Members shall be appointed by the*
615 *Board of County Commissioners and serve for*
616 *staggered terms of three (3) years, or until their*
617 *successors are appointed by the Board of County*
618 *Commissioners.*¹²⁴

619 It is no mistake that the La Plata County BoCC distinguished neighborhood zoning
620 districts using CRS § 30-28-119 authority from the statutory authority delegated to
621 the LUPDs in Resolution 1990-39. In fact, Resolution 1990-39 does not even
622 mention CRS § 30-28-119 authority whatsoever, pointing to express BoCC intent
623 for the LUPDs to have land use planning, zoning, and building permit prerogatives.

624 Organizationally, the bottom-up BoCC mandate places the LUPDs as
625 administrators over the neighborhood districts to act collaboratively with the PC.
626 This structure also delegated to the LUPDs the authority to develop regulations
627 that reflected the varying physiographic, cultural, and economic distinctiveness
628 from district to district:

629 “Any resolution adopted by the board of county
630 commissioners may cover and include the
631 unincorporated territory covered and included in
632 any such single plan or in any of such separate and
633 successive plans. No resolution covering more or
634 less than the territory covered by any such certified
635 plan shall be adopted or put into effect until and
636 unless it is first submitted to the county planning
637 commission which certified the plan to the board of
638 county commissioners and is approved by said
639 commission or, if disapproved, receives the
640 favorable vote of not less than a majority of the
641 entire membership of such board. All such
642 regulations shall be uniform for each class or kind
643 of building or structure throughout any district, but
644 the regulations in any one district may differ from
645 those in other districts.”¹²⁵

¹²⁴ See BoCC Resolutions [1993-53](#); [1993-44](#); [1993-55](#).

¹²⁵ [CRS § 30-28-113\(2\). Regulation of size and use of districts.](#)

646 Recognition of regulatory nature of a BoCC-certified land use plan - and by
647 extension, the authority of West Durango Land Use Planning District to prepare it -
648 was realized in October, 1999 in a case decided by the Colorado Court of
649 Appeals.¹²⁶

650 At issue and upon appeal, it was Mr. Condiotti's contention that the land use plan
651 by the West Durango District constituted unconstitutional zoning, was legislative
652 in nature, and that he had standing to contest the facial validity of the land use
653 permit system under C.R.C.P.57.¹²⁸ In its remand instructions to the district court,
654 the Colorado Appellate Court concluded that adoption of the district plans into the
655 land use permit system was legislative in nature, indirectly affirming the authority
656 of the LUPDs to perform land use planning, zoning, and review building
657 permits.¹²⁹

658 Recognition of the planning district committees has continued and remains in place
659 today. As example, in 2007, the La Plata County BoCC adopted the Fort Lewis
660 Mesa District land use plan containing specific and detailed language defining the
661 planning district committee structure, criteria of property ownership, residence
662 requirements, and other detailed requirements:

663 *"The Committee shall be nominated by the*
664 *citizens in the Fort Lewis Mesa Planning*
665 *District. Citizens of the District shall present a*
666 *slate of nominees to be appointed together by*
667 *the Board of County Commissioners. Each*
668 *member shall serve 3-year staggered terms.*
669 *Beginning with two with 1-year terms, two with*
670 *2-year terms, and three with 3-year terms.*
671 *Diversity in membership is encouraged, as we*
672 *value critical thought from all sectors of our*
673 *community. Inclusion of the following*
674 *stakeholders is encouraged:*

- 675 *1. Ranchers and Farmers*
676 *2. Land owners with large parcels of land*
677 *3. Irrigators*
678 *4. Land owners with smaller parcels of land*
679 *5. Business owners*
680 *6. Individuals who work in the District*

¹²⁶ [Condiotti V. Board of County Commissioners of the County of La Plata and the La Plata County Planning Commission. No.98CA0740; 97CV239 & 98CV7.](#)

¹²⁸ Colorado Rules of Civil Procedure.

¹²⁹ Colorado Court of Appeals Division V. Judgement reversed and cause remanded with directions. Honorable Judge Rothenberg Tauban, et al. Case 98CA0740. June 24, 1999.

681 *The Committee shall make recommendations to*
682 *the Board of County Commissioners and the La*
683 *Plata County Planning Commission regarding*
684 *development and planning within the Fort*
685 *Lewis Mesa Planning District.”*

686 Were the district plans only advisory in nature, there would be no need for
687 “appointments” to be made by the BoCC.¹³⁰

688 The La Plata County land use system, including processes used to prepare land use
689 plans undertaken by the LUPDs, was legislatively confirmed by the BoCC. With
690 the Condiotti ruling, rather than educate the LUPDs and encourage their quasi-
691 governmental role and authority for land use planning and zoning, the BoCC, PC,
692 and planning staff elected to subordinate the role of the planning districts and
693 disaggregate their planning authority by calling their plans and processes
694 “advisory.”

695 The authority delegated to the LUPDs for administration of zoning districts in
696 Resolutions 1993-44, 1993-53, and 1993-55 was also regulatory in nature and it is
697 difficult to understand how land use plans generated by the LUPDs may be
698 designated advisory-only, particularly in light of the Condiotti ruling. In
699 Resolution 2014-38, the BoCC, citing lack of commissioning (disuse) of the
700 zoning commissions, rescinded the administrative language that gave the LUPDs
701 authority over zoning to the neighborhood zoning commissions. However, the
702 underlying authority for land use planning, zoning, and permits legislated in 1990-
703 39 remains. It is essential to understand that the authority enjoyed by the LUPDs
704 may not be legitimately withdrawn until county wide zoning maps have been
705 certified by the PC and adopted by the BoCC, after due process.¹³¹

706 Following Condiotti, land-use planning activities and decision-making have
707 become increasingly top-down, driven by planning staff and the PC. This transition
708 has not resulted in effective, rational land use planning or reasonable regulatory
709 activities, but instead has become an increasingly bureaucratic, dysfunctional
710 command and control system that appears to frustrate the BoCC, PC, and the
711 community at large.

¹³⁰ [Fort Lewis Mesa District Land Use Plan, 2007.](#)

¹³¹ [CRS § 30-28-116. Regulations may be amended. CRS § 30-28-119\(6\). CRS § 30-28-119\(b\).](#)

712 2.1.3 Native American Lands

713 Approximately 208,131 acres of the 1,129,945 acres of La Plata County (~19%)
 714 falls under the jurisdiction of two Native American tribal governments (Map 1,
 715 Appendix 4). Situated in the south and eastern part of the county and
 716 headquartered at Ignacio, the Southern Ute Indian nation measures approximately
 717 15 miles wide and 72 miles in length. Within the reservation boundaries,
 718 approximately 301,867 acres are reported as tribal-owned lands, 4,966 acres are
 719 fee-for-title grazing allotments, and the remaining 511,000 acres are federally
 720 managed or private (fee) lands.¹³⁵

Table 4		
Tribal Land Inholdings		
By Planning District		
<u>Planning District</u>	<u>Tribe</u>	<u>Tribal Inholdings (acres)</u>
Bayfield	Southern Ute	4,035
Florida Mesa	Southern Ute	36,460
Southeast La Plata	Southern Ute	69,663
Fort Lewis Mesa	SUTE/UMU	71,517/26,566;
Total		208,131

721 Lands within the Southern Ute reservation are host to significant deposits of coal-
 722 bed methane, natural gas, and oil from the Ignacio Blanco field of the northern San
 723 Juan Basin. Proceeds from mineral extractive activities are a major source of
 724 revenue for the Southern Ute tribal government, and the tribe reportedly
 725 contributes heavily to the local and regional economy.

726 Located in the western unincorporated territory of La Plata County, the Ute
 727 Mountain Ute Tribe has jurisdiction over approximately 26,566 acres of land, and
 728 reports an enrolled tribal membership of 1,850. For its part, the economy of the Ute
 729 Mountain Ute tribe is based primarily upon agriculture and related activities, with
 730 cattle production and ranching being an integral and historical part of the tribal
 731 culture.

732 Jurisdiction within the Native American reservation boundaries can be complex
 733 and is of considerable importance. Classification of lands include tribal trust lands,
 734 allotted lands, tribally-owned fee lands, and privately-owned fee lands. From the
 735 tribe’s perspective, all land within the reservation is considered “indian county”
 736 and tribal governments may exercise government powers irrespective of the
 737 classification of individual lands.

¹³⁵ https://www1.eere.energy.gov/tribalenergy/guide/pdfs/southern_ute.pdf

738 Occurring as inholdings within the Southern Ute and the Ute Mountain Ute
739 reservation boundaries are significant areas of privately owned, non-tribal fee
740 lands. Fee lands within Native American reservation boundaries occur as
741 interspersed, non-contiguous patchworks, often sharing boundaries or even being
742 landlocked by parcels of Native American ownership.

743 From a land use and regulatory perspective, fee (taxable) lands and subsurface
744 mineral-extraction activities within Native American reservation boundaries face
745 unique jurisdictional and regulatory challenges - and risks. Because fee lands
746 within reservation boundaries occur in a patchwork and disaggregated fashion, the
747 application of county, state, and local land use plans, regulations or permit
748 requirements is also disaggregated, fragmented, and transient. In situations where
749 fee lands occur adjacent to tribally-owned lands, it is foreseeable that imposed
750 county standards, environmental regulations, land use codes, or denial-of-access
751 decisions may result in inequities and impacts, particularly because consistent
752 standards may not be recognized or enforced by tribal governments on adjacent
753 lands. A less obvious but significant impact to remaining landholders occurs as
754 private fee lands are transferred to tribal ownership. This condition further
755 fragments county [state] jurisdiction, possibly rendering land use regulations
756 increasingly arbitrary over time.

757 Lands within Southern Ute Indian reservation also occur as “split estate,” a
758 condition where the surface land falls under different ownership than the
759 subsurface mineral estate beneath the same land. It is conceivable that access to
760 separately owned subsurface minerals under fee lands within reservation
761 boundaries could be inhibited by local regulatory activities or even blocked
762 entirely by surface land encumbrances such as conservation easements.

763 Although the La Plata County BoCC acknowledged that no state statutes require
764 notification to Indian tribes, on October 3, 1994 the BoCC passed Resolution
765 1994-59 providing notice to tribal governments for development projects within
766 two hundred feet of tribal property. This political courtesy encourages mutually
767 productive communication among the local governing entities.

768 Impacts to the complex and interspersed checkerboard nature of fee lands within
769 reservations can be reduced by encouraging, provisioning, and using the bottom-up
770 LUPD system. Because residents within the individual LUPDs are proximally and
771 even relationally closer to their Native American neighbors, encouraging,
772 supporting, and funding the existing LUPD structure brings better information,
773 greater certainty, and more effective land use policy than top-down, command-
774 and-control systems administered at the county level.

775 Non-tribal landowners of fee (taxable) parcels within a reservation boundary need
776 access to county services as much as other residents. Should these landowners not
777 be served by their county and LUPDs, they could become subject to tribal
778 governments that have no obligation to them and where non-enrolled persons have
779 no voice or vote. It is generally understood that while tribal governments do claim
780 an entire reservation area to be “Indian Country,” the vast, non-contiguous

781 holdings in fee-taxable lands within Indian reservations may be considered an
782 exception to “Indian Country” status. Fee parcels owned by non-Indians are under
783 county jurisdiction. Were it not so, these county citizens would have no
784 constitutional protections, could be compelled to answer in a tribal court for any
785 arising issues with no due process or other Bill of Rights guarantees, or other
786 protections of the U.S. Constitution.

787 2.1.4 Federally Managed Lands

788 Approximately 437,521 acres (39%) of northern La Plata County are federally-
789 managed public lands reserved as the San Juan National Forest (SJNF). The SJNF
790 lands fall under the jurisdiction the United States Department of Agriculture’s
791 Forest Service, (USFS) and the Department of Interior’s Bureau of Land
792 Management (BLM) and Bureau of Reclamation (BOR).

793 Administration, permitting, and land use planning responsibilities for federal lands
794 in the SJNF are shared between the USFS and BLM, with surface estate lands
795 under the management of USFS and the subsurface mineral estate being the
796 responsibility of BLM. For its part, BOR maintains responsibility for permitting
797 and management of dams, one of which is located on Vallecito reservoir, north of
798 Bayfield (Map 1).

799 The scope of USFS authority in SJNF is constrained to management of surface
800 lands, including grazing allotments, ensuring a consistent supply of merchantable
801 timber for the United States, and managing water flow within the forests (quantity)
802 to maintain the same.¹³⁸ For its part, BLM maintains responsibility and decision-
803 making preeminence over the subsurface mineral estate in the SJNF, which
804 includes mineral exploration, prospecting, mining, and protection of critical
805 minerals. BLM also participates in management of tribal minerals, and can be
806 responsible for permits, right-of-way, and other land and mineral related functions.

807 The congressional acts that govern SJNF land use policy are the *Federal Land*
808 *Management and Policy Act of 1976* (FLPMA),¹⁴⁰ the *Multiple Use and Sustained*
809 *Yield Act of 1960* (MUSYA),¹⁴² and the organic act establishing the national forest
810 system of the United States (Appendix G).¹⁴³

811 MUSYA requires USFS to manage the SJNF for access, productivity, and yield:
812 “...shall be administered for outdoor recreation, range, timber, watershed, and
813 wildlife and fish purposes,” and when administering MUSYA values, the Secretary
814 of Agriculture is required by statute to: “...cooperate with interested State and
815 local governmental agencies... in the development and management of national
816 forests.” This includes water conservancy and water irrigation districts.

¹³⁸ [16 USC § 475](#)

¹⁴⁰ [43 USC §§ 1701-1781](#)

¹⁴² [16 USC §§ 528-531](#)

¹⁴³ [16 USC § 475](#)

817 In FLPMA, Congress expanded the MUSYA doctrine of multiple use and
818 sustained yield, applying it to a limited, hierarchical list of principal uses: "...
819 *domestic livestock grazing, fish and wildlife development and utilization, mineral*
820 *exploration and production, rights-of-way, outdoor recreation, and timber*
821 *production.*" These primary use values govern, inform and predominate minerals,
822 land management, and land use decisions by the Secretary of Interior, placing long
823 term productivity and mixed-use utilization as first-among-equals over
824 sequestration of public resources, lands, or minerals from public access.

825 The Secretary of Interior has decision-making responsibility over the subsurface
826 mineral estate of the SJNF, including mineral inventories, prospecting, minerals
827 extraction, and other activities that fall under the BLM's purview. A confluence of
828 decision-making responsibility between USFS and BLM occurs when subsurface
829 exploration or extraction activities are proposed that could affect the surface estate,
830 or where the Secretary of Agriculture proposes access or other surface
831 encumbrances.

832 La Plata County land use plans and the county regulatory code have limited
833 jurisdiction over federal lands and agencies; however, the county does have some
834 authority to regulate access roads, with the exception of roads set aside for access
835 to mining claims and critical minerals described in section 3.1.3:

836 *"Each local government within its respective*
837 *jurisdiction has the authority to plan for and*
838 *regulate the use of land by:*

839 *(d) Regulating, with respect to the establishment of,*
840 *roads on public lands administered by the federal*
841 *government; this authority includes authority to*
842 *prohibit, set conditions for, or require a permit for*
843 *the establishment of any road authorized under the*
844 *general right-of-way granted to the public by 43*
845 *U.S.C. 932 (R.S. 2477) but does not include*
846 *authority to prohibit, set conditions for, or require a*
847 *permit for the establishment of any road authorized*
848 *for mining claim purposes by 30 U.S.C. 21 et seq.,*
849 *or under any specific permit or lease granted by the*
850 *federal government."¹⁴⁴*

¹⁴⁴ [CRS § 29-20-104 Powers of Local Governments.](#)

851 **3.0 DISCUSSION; CONCLUSIONS**

852 *3.1 Constitutional Priorities -*

853 *3.1.1 Water*

854 Access for conveyance of state-appropriated waters through the control area of the
855 water conservancy and water irrigation districts for “domestic, irrigation of
856 agricultural lands, and for mining”¹⁴⁵ is a constitutionally and statutorily protected
857 priority that has discrete preeminence over county land use planning and regulatory
858 activities.

859 Establishment of the water conservancy and water irrigation districts by district
860 courts and adoption of maps by the BoCC creates control area boundaries and
861 delegates specific Title 37 powers to the water conservancy and irrigation districts.
862 These powers and others include dominant eminent domain, full authority to
863 promulgate rules and regulations, condemnation, responsibility for health and
864 safety through flood control, authority to adopt and revise land use plans, and even
865 authority over wetlands:

866 *“The board of directors of any irrigation district*
867 *may cause surveys, maps, estimates of cost, and a*
868 *report of feasibility to be made looking to the*
869 *drainage of the whole or any part of an irrigation*
870 *district which may have become, or threatens to*
871 *become, seeped or too wet or which requires*
872 *drainage for profitable cultivation. Such surveys,*
873 *maps, estimates, and report shall be filed in the*
874 *office of the district, and such matters shall be*
875 *submitted to the landowners at a general or special*
876 *election held not less than sixty days from the date*
877 *of the filing of such documents. If the landowners*
878 *express their approval of such drainage undertaking*
879 *by affirmative vote of a majority of the votes cast at*
880 *such election, the district may proceed to do such*
881 *drainage work and shall have like powers with*
882 *reference thereto, including the levying of an*
883 *assessment or the issuing of bonds, to defray the*
884 *expense thereof.*¹⁴⁶

885 Water conservancy and water irrigation districts have authority to adopt rules,
886 regulations and protection policies for the entire area within their control
887 boundaries. These authorities should be incorporated into district water
888 management and system operating plans and periodically revised for completeness
889 and consistency with higher government statutory law.

¹⁴⁵ [Colorado Constitution. Article XVI Section 7. Right of Way for Ditches, Flumes.](#)

¹⁴⁶ [CRS § 37-42-136 Drainage of lands - surveys.](#)

890 Review and revision of district plans should include documentation of watershed
891 policies, clear presentation of legitimate prerogatives over channels and drainage
892 management, and identification of preeminent prerogatives over county land use
893 planning or regulatory programs. Because water conservancy and irrigation
894 districts have a responsibility to ensure permanent water access for domestic,
895 agricultural, and minerals extraction uses, all policies should consider reflecting
896 the Article XVI constitutional imperative.

897 Once water conservancy and water irrigation district regulations have gone out for
898 public notice and have been appropriately adopted through official board action,
899 they may be transmitted to local governments for consistency review to be
900 undertaken along side of local plans and policies. Because the county cannot
901 legitimately superimpose land use policies or regulatory code that may be stricter
902 than those established for the control areas of the water conservancy and water
903 irrigation districts, the differences would then be reconciled through invocation of
904 an intergovernmental consistency review process. If agreement is not able to be
905 achieved, the water conservancy and irrigation district's policies take preeminence
906 for their control areas.

907 3.1.2 Agriculture

908 La Plata County recognizes approximately 280,700 acres of agrarian-use lands in
909 unincorporated parts of the county through possessory use taxation. (Map 4,
910 Appendix A). Ranching, farming, dairy, forestry, and many other productive
911 operations fall within the broad definition of "agriculture" in CRS Title 35:

912 *"Agriculture" means the science and art of*
913 *production of plants and animals useful to man,*
914 *including, to a variable extent, the preparation of*
915 *these products for man's use and their disposal by*
916 *marketing or otherwise, and includes horticulture,*
917 *floriculture, viticulture, forestry, dairy, livestock,*
918 *poultry, bee, and any and all forms of farm products*
919 *and farm production.*¹⁴⁷

920 It is the policy of the State of Colorado to ensure conservation, protection,
921 development, and improvement of agricultural products.¹⁴⁸ The statutory construct
922 of the agrarian nuisance (right-to-farm) statutes renders that agrarian pursuits of all
923 types are a state priority having minimum protection that must be observed by all
924 political subdivisions:

¹⁴⁷ [CRS § 35-1-102 \(1\) Definitions.](#)

¹⁴⁸ [CRS § 35-3.5-101 Legislative declaration. Policy.](#)

925 *“It is further recognized that units of local*
926 *government may adopt ordinances or pass*
927 *resolutions that provide additional protection for*
928 *agricultural operations consistent with the interests*
929 *of the affected agricultural community, without*
930 *diminishing the rights of any real property*
931 *interests.”*

932 The nuisance protection statutes are intended to recognize the history, culture, and
933 importance of agriculture to the county, the State of Colorado and the United
934 States. Agricultural operations and lands that employ reasonable and historical
935 agrarian practices have a high level of protection, called “*rebuttable presumption*,”
936 from nuisance lawsuits associated with suburban expansion, land development, or
937 in-migration of urban residents:

938 1)(a) *”Except as provided in this section, an*
939 *agricultural operation shall not be found to be a*
940 *public or private nuisance if the agricultural*
941 *operation alleged to be a nuisance employs methods*
942 *or practices that are commonly or reasonably*
943 *associated with agricultural production.*

944 (b) *An agricultural operation that employs methods*
945 *or practices that are commonly or reasonably*
946 *associated with agricultural production shall not be*
947 *found to be a public or private nuisance as a result*
948 *of any of the following activities or conditions:*

- 949 (I) *Change in ownership;*
950 (II) *Nonpermanent cessation or interruption of*
951 *farming;*
952 (III) *Participation in any government sponsored*
953 *agricultural program;*
954 (IV) *Employment of new technology; or*
955 (V) *Change in the type of agricultural product*
956 *produced.*

957 (2)(a) *Notwithstanding any other provision of this*
958 *section to the contrary, an agricultural operation*
959 *shall not be found to be a public or private nuisance*
960 *if such agricultural operation:*

- 961 (I) *Was established prior to the commencement of*
962 *the use of the area surrounding such agricultural*
963 *operation for nonagricultural activities;*
964 (II) *Employs methods or practices that are*
965 *commonly or reasonably associated with*
966 *agricultural production; and*
967 (III) *Is not operating negligently.*

968 (b) *Employment of methods or practices that are*
969 *commonly or reasonably associated with*
970 *agricultural production shall create a rebuttable*
971 *presumption that an agricultural operation is not*
972 *operating negligently.*¹⁴⁹

973 Beyond mandating that local government maintain minimum protection for
974 agriculture, the nuisance statutes contain compensatory language that give courts
975 punitive tools to use against aggressive litigation from environmental
976 organizations, unscrupulous developers, or other groups or individuals hostile to
977 agriculture.¹⁵⁰

978 The nexus created through local taxation provides one convenient mechanism to
979 map and codify Title 34 protections for agricultural lands across the county. Other
980 lands that have an agricultural designation should be identified and incorporated
981 into protection programs. These protections and maps should be included in the
982 county master plan, district land use plans, and revisions in the county land use
983 code.¹⁵¹

984 3.1.3 Minerals Master Extraction Plan

985 Preparation of a minerals master extraction plan¹⁵² (MMP) is a significant
986 responsibility of planning commissions in the populous counties of Colorado. The
987 MMP is a locally prepared, rationally based¹⁵³ document that draws heavily on
988 technical information from the Colorado Geological Survey,¹⁵⁴ data from Colorado
989 state agencies,¹⁵⁵ academia, or even federal scientific sources.

990 The scope of the MMP can include identification, documentation, and mapping of
991 commercial-grade mineral deposits, mineral resource areas, and areas of state
992 interest. The MMP is a science-based document that has a cost-of-extraction
993 feasibility focus; it is prepared using economic data, risk/reward information, and
994 cost/benefit criteria.¹⁵⁶ The MMP does not necessarily *encourage* minerals
995 extraction, it only identifies their presence, economic viability, and the feasibility
996 of doing so.

997 As a planning document prepared by county government, the MMP contains a
998 balanced, neutral, and technically sound review of potential commercial mineral
999 deposits, mineral resource areas, and areas of state interest for regulatory
1000 protection.¹⁵⁷

¹⁴⁹ [CRS § 35-3.5-102 Agricultural operations deemed not a nuisance.](#)

¹⁵⁰ [CRS § 35-3.5-102\(3\)](#)

¹⁵¹ [CRS § 35-3.5-102 \(2\)\(b\).](#)

¹⁵² [CRS § 30-28-106\(3c\).](#)

¹⁵³ [CRS § 34-1-301 \(1\)\(c\) Legislative Declaration. Policy.](#)

¹⁵⁴ [CRS § 34-1-303 Geological survey.](#)

¹⁵⁵ [CRS § 24-65.1-101 \(1\) Legislative Declaration. Policy.](#)

¹⁵⁶ [CRS § 24-65.1-202 \(1\) \(a\) Criteria for administration of areas of state interest.](#)

¹⁵⁷ [CRS § 24-65.1-201 Areas of state interest as determined by local governments.](#)

1001 “be protected and administered in such a manner as
1002 to permit extraction and exploration of mineral
1003 therefrom, unless extraction and exploration would
1004 cause significant danger to public health and safety.
1005 If the local government having jurisdiction, after
1006 weighing sufficient technical or other evidence, finds
1007 that the economic value of the minerals present
1008 therein is less than the value of another existing or
1009 requested use, such other use should be given
1010 preference; however, other uses which would not
1011 interfere with the extraction and exploration of
1012 minerals may be permitted in such areas of state
1013 interest.”¹⁵⁸

1014 In defining what constitutes “commercial mineral deposit,”¹⁵⁹ the general
1015 assembly mandates that context be considered as to what minerals, areas, or
1016 protective measures may be incorporated in the MMP: “... *unless the context*
1017 *otherwise requires.*”¹⁶⁰ The statutory and *in pari materia* situational context of
1018 CRS Titles 24, 30, 34 means that all construction related, critical, strategic, and
1019 economically-recoverable mineral deposits that are essential to the state’s
1020 economy,¹⁶¹ areas containing minerals of state or national interest, or areas defined
1021 as having key facilities¹⁶² must be incorporated into the MMP unless there is
1022 compelling public interest for omission.

1023 In Colorado, a MMP is required for each populous county of the state¹⁶³ meeting
1024 the minimum threshold population is 65,000 residents.^{164,165} For La Plata County,
1025 the 2010 U.S. Census based its population estimate on an average annual
1026 population increase of 8.3% through the 2020 census, and using these estimates,
1027 the officially estimated population at the end of 2017 was 55,589.¹⁶⁶ By its own
1028 comprehensive plan estimates, La Plata county projects a population of 65,000
1029 residents by the end of 2019 or early 2020.

1030 On December 20, 2017 the President of the United States (POTUS) signed
1031 Executive Order 13817, *A Federal Strategy to Ensure Secure and Reliable*
1032 *Supplies of Critical Minerals.*^{167,168} EO 13817 requires the secretaries of Interior
1033 and Defense to maintain an inventory of federal critical minerals that are essential
1034 to economic stability, national security, and the prosperity of the United States.

¹⁵⁸ [CRS § 24-65.1-202\(1\)\(a\)](#)

¹⁵⁹ [CRS § 34-1-302 “Unless context otherwise requires:”](#)

¹⁶⁰ [CRS § 34-1-302 Definitions.](#)

¹⁶¹ [CRS § 34-1-301\(1\)\(a\).](#)

¹⁶² [CRS § 24-65.1-104\(7\).](#)

¹⁶³ [CRS § 34-1-304\(1\).](#)

¹⁶⁴ As determined by latest, decennial federal census.

¹⁶⁵ [CRS § 34-1-302\(3\).](#)

¹⁶⁶ <https://www.census.gov/quickfacts/fact/table/laplatacountycolorado/PST045217>

¹⁶⁷ [Federal Vol. 82, No. 246. Tuesday, December Register 26, 2017.](#)

¹⁶⁸ <https://www.gpo.gov/fdsys/pkg/FR-2017-12-26/pdf/2017-27899.pdf>

1035 On May 18, 2018, the Secretary of Interior published a *Final List of Critical*
1036 *Minerals*,¹⁶⁹ along with supporting information by the United States Geological
1037 Survey (USGS).¹⁷⁰ The final critical minerals list contains thirty-five (35) minerals
1038 of strategic importance to the United States. In La Plata County, a minimum of
1039 nine (9) critical minerals have been documented to occur at no less than fifty-seven
1040 (57) localities. The localities containing federal critical minerals, and commercially
1041 feasible deposits of coal, sand, and gravel in La Plata County are presented on Map
1042 5, Appendix A. A list of mines with federal critical minerals, their locations, and
1043 owners is included as Appendix B. The May 18, 2018 *Federal Register*
1044 notification is included in Appendix C.

1045 As part of resource management planning, it is the policy of the State of Colorado
1046 to encourage local governments to identify areas of state interest that may contain
1047 commercial minerals of significant value:

1048 *(b) “shall be encouraged to designate areas and*
1049 *activities of state interest, and after such*
1050 *designation, shall administer such areas and*
1051 *activities of state interest and promulgate guidelines*
1052 *for the administration thereof;”*

1053 So that Colorado may fulfill its obligation to:

1054 *“...describe areas which may be of state interest*
1055 *and activities which may be of state interest and*
1056 *establish criteria for the administration of such*
1057 *areas and activities;”*

1058 because,

1059 *“Adequate information on land use and systematic*
1060 *methods of definition, classification, and utilization*
1061 *thereof are either lacking or not readily available to*
1062 *land use decision makers;*

1063 in order that,

1064 *The protection of the utility, value and future of all*
1065 *lands within the state, including the public domain*
1066 *as well as privately owned land,”*

1067 may be achieved.¹⁷²

¹⁶⁹ [Federal Register Vol 83, No.97. Friday, May 18, 2018. pps 23295. https://www.gpo.gov/fdsys/pkg/FR-2018-05-18/pdf/2018-10667.pdf](https://www.gpo.gov/fdsys/pkg/FR-2018-05-18/pdf/2018-10667.pdf)

¹⁷⁰ [Critical Mineral Resources of the United States -Economic and Environmental Geology and Prospects for Future Supply. United States Geological Survey Professional Paper 1802. https://pubs.usgs.gov/pp/1802/pp1802_entirebook.pdf](https://pubs.usgs.gov/pp/1802/pp1802_entirebook.pdf)

¹⁷² [CRS § 24-65.1-101. Legislative Declaration. Policy.](#)

1068 The identification, mapping, and extractive feasibility of federal critical minerals,
1069 coal, quarry aggregate, and other commercial minerals is a fundamental
1070 responsibility of the La Plata planning commission, and particularly now that
1071 presence of federal critical minerals and the MMP requirements have been publicly
1072 documented.¹⁸⁴

1073 Colorado statutes contain specific provisions for designation of “*mineral resource*
1074 *areas*”¹⁸⁵ in areas of state interest that may be designated during preparation of the
1075 MMP. Careful consideration should be given to identification and protection of
1076 some or all the 57 federal critical mineral localities and their access routes through:

- 1077 1. Designation of Mining Protection Areas (MPA) for preservation
1078 under CRS § 34-1-305 and Section 701 of 43 USC § 1701(a);
- 1079 2. Coordination with the Secretary of Interior to perform an
1080 inventory of all federal critical mineral locations on public
1081 lands,¹⁸⁶ in accordance the FLPMA 42 USC § 1711(a);
- 1082 3. Coordination with the Secretaries of Interior and Agriculture to
1083 establish or supplement inventories of all Federal 932 (RS 2477)
1084 roads on public lands so as to ensure future access to mining
1085 claims and federal critical minerals;¹⁸⁷
- 1086 4. Establishment and professional land survey of buffer zones, in
1087 perpetuity access corridors, and access roads to be recorded
1088 with the La Plata County Clerk and Recorders office;
- 1089 5. Incorporation of buffer zones, commercial minerals and mineral
1090 resource protection maps in the MMP, a revised county master
1091 plan, land use district plans, and the county land use code;
- 1092 6. Inclusion of federal critical minerals, coal, and any known
1093 quarry aggregate locations in land use district plans and the
1094 county master plans;
- 1095 7. In accordance with Colorado statutes, the MMP and land use
1096 district plans should all contain language preserving commercial
1097 mineral locations during future zoning action:

1098 *“After July 1, 1973, no board of county*
1099 *commissioners, governing body of any city and*
1100 *county, city, or town, or other governmental*
1101 *authority which has control over zoning shall, by*
1102 *zoning, rezoning, granting a variance, or other*
1103 *official action or inaction, permit the use of any*
1104 *area known to contain a commercial mineral deposit*

¹⁸⁴ [CRS § 30-28-106\(3\)\(c\); CRS § 34-1-304.](#)

¹⁸⁵ [CRS § 24-65.1-104 Definitions pertaining to other areas and activities of state interest.](#)

¹⁸⁶ Inventory should include monitoring of BLM mine closure projects on Alpine Loop to ensure documentation of critical minerals prior to closure: See <https://durangoherald.com/galleries/890-closing-abandoned-mines>

¹⁸⁷ [CRS § 29-20-104\(d\).](#)

1105 *in a manner which would interfere with the present*
1106 *or future extraction of such deposit by an extractor.*
1107 *(2) After adoption of a master plan for extraction for*
1108 *an area under its jurisdiction, no board of county*
1109 *commissioners, governing body of any city and*
1110 *county, city, or town, or other governmental*
1111 *authority which has control over zoning shall, by*
1112 *zoning, rezoning, granting a variance, or other*
1113 *official action or inaction, permit the use of any*
1114 *area containing a commercial mineral deposit in a*
1115 *manner which would interfere with the present or*
1116 *future extraction of such deposit by an extractor.”¹⁸⁸*

1117 3.1.4 Regulatory Fragmentation

1118 Legislative and regulatory decisions by the La Plata County government must
1119 contain a reasonable, rational, and demonstrable connection between the limited
1120 police powers delegated to the county and the burdens imposed upon the
1121 community.

1122 From a jurisdictional perspective, a large portion (40%) of the land area in La Plata
1123 County is federally managed or Native-American owned, and these areas are
1124 generally unavailable for blanket application of county land use planning and
1125 regulatory programs. Similarly, the private fee land inholdings within the Southern
1126 Ute Indian nation are jurisdictionally “checkerboarded,” and some are completely
1127 landlocked by adjacent, tribal-owned lands. A significant portion of these lands
1128 also occur in split-estate, a situation which limits opportunities for blanket
1129 application of land use or regulatory standards due to inequities and unintended
1130 consequences.

1131 The control areas of the five water conservancy and water irrigation districts within
1132 La Plata County collectively occupy approximately 744,122 acres. The public
1133 record is silent as to how county legislative and land use regulatory activities have
1134 proactively identified, incorporated, and maintained sensitivity for the preeminent
1135 land use and regulatory responsibilities delegated to the water conservancy and
1136 irrigation districts by district courts and the county BoCC.

1137 When the areas under federal, tribal and water conservancy and water irrigation
1138 district jurisdictions are collectively considered, the unincorporated land area in La
1139 Plata County available for blanket application of land use legislative and regulatory
1140 activities is approximately 69,000 acres - or about 6%.

1141 Establishment of the bottom-up structure of the land use planning districts for the
1142 unincorporated parts of La Plata County accounts for the physiographic differences
1143 across the county, negating the need for zoning. From a hierarchical perspective,
1144 creation of the land use planning districts is consistent with the statutory, bottom

¹⁸⁸ [CRS § 34-1-305 Preservation of commercial mineral deposits for extraction.](#)

1145 up process used to establish the water conservancy and irrigation districts - a
1146 process that begins with a petition from landholders.

1147 To be considered reasonable, government land use planning, regulatory burdens,
1148 and decisions must be consistent, generally apply county wide, and be easily
1149 understandable by those who delegate authority to the government in the first place
1150 - the regulated community. For this inquiry, we find the jurisdictional
1151 fragmentation across La Plata county to be of such significance that it renders the
1152 current land use planning and regulatory code systems unreasonable and
1153 unworkable for the long term. Using that vantage point, we speculate that the day-
1154 to-day regulatory actions and permitting decisions by La Plata County to be top-
1155 down in nature, susceptible to philosophical influences, and have a foreseeable
1156 long-term potential for arbitrariness, particularly in context of staff turnover and
1157 attrition.

1158 As a result, we conclude the current La Plata county land use planning and land
1159 use code system is an unreasonable use of local police power, requiring
1160 deconstruction and reform. We propose reforms to be initiated by a collaboration
1161 of the regulated public, land use planning district committees, and a coalition of
1162 water conservancy and irrigation districts.

1163 **4.0 RECOMMENDATIONS**

1164 The jurisdictional fragmentation, likelihood of encroachment upon prerogatives of
1165 quasi, federal and other governments, and demonstrated unreasonableness of the
1166 La Plata County land use planning and regulatory system make reforms necessary.
1167 This should be undertaken with appropriate deference and respect for local
1168 governmental functions and elected officials, and must be balanced with the
1169 understanding that governments - especially when driven from top-down - can be
1170 resistant to change and reorganization by citizenry.

1171 The Bill of Rights of the Colorado Constitution provides citizens with the
1172 constitutional basis to amend government as may be needed:

1173 **Section 1 - Vestment of Political Power**

1174 *All political power is vested in and derived from the*
1175 *people; all government, of right, originates from the*
1176 *people, is founded upon their will only, and is*
1177 *instituted solely for the good of the whole.*

1178 and,

1179 **Section 2 - People may alter or abolish form of**
1180 **government**

1181 *The people of this state have the sole and exclusive*
1182 *right of governing themselves, as a free, sovereign*
1183 *and independent state; and to alter and abolish their*
1184 *constitution and form of government whenever they*
1185 *may deem it necessary to their safety and happiness,*
1186 *provided, such change be not repugnant to the*
1187 *constitution of the United States.*

1188 We recommend that the Landowners of La Plata, the LUPDs and concerned water
1189 conservancy and water irrigation districts work collaboratively to audit and effect
1190 balanced reforms to the La Plata County land use planning and regulatory system.

1191 The reform process should focus on defining the scope, purpose, and core
1192 requirements that constitute *required* county land use planning and regulatory
1193 activities, appropriately allocating secondary values, such as environmental
1194 concerns, to higher governments.¹⁹³

1195 The scope of land use planning and regulatory reform should be revised and
1196 narrowed to future physical *infrastructure* needs (e.g. water, sewer, road access
1197 and electrical, etc.) since those physical items constitute the core responsibility of
1198 the planning commission and the planning department. Similarly, the functions of
1199 future land use planning should be purposefully segregated from building codes,
1200 for which off-the-shelf programs are available.

¹⁹³ [CRS §29-20-104\(b\)](#).

1201 The reformed land use planning and regulatory system should utilize the existing
1202 LUPD framework, since these districts have delegated BoCC authority, and
1203 because they are philosophically consistent with the water conservancy and
1204 irrigation districts in their bottom-up establishment. (Section 2.1.2).

1205 The LUPDs and water conservancy and water irrigation districts should consider
1206 forming a coalition of quasi-governmental entities for collective bargaining with
1207 the county and other governmental entities. The scope of that coalition would be to
1208 fully document the legitimate and statutory prerogatives of the water conservancy
1209 and irrigation districts alongside of the La Plata county land use planning and
1210 regulatory system. Any overlaps, discrepancies, or encroachments could be the
1211 subject of intergovernmental consistency review processes to effect positive and
1212 necessary changes in administrative government.

1213 We recommend that individual water conservancy and water irrigation districts
1214 perform independent internal audits of their articles of incorporation, operating and
1215 water management plans, and mapped control areas. The objective would be
1216 incorporation of, as may be necessary and/or appropriate, CRS Title 37 powers that
1217 are consistent with environmental considerations, state and federal law, and present
1218 circumstances. Through this process, clear and bright line policies could be
1219 established for the control areas, drainage lands, stream channel and watersheds.

1220 Other Recommendations include:

1221 **Land Use Planning Districts**

1222 *Organizational Recommendations -*

- 1223 1. As discussed in Section 2.1.2, the LUPDs in La Plata County
1224 have been delegated authority by the BoCC under CRS § 30-28-
1225 111, CRS § 30-28-112, CRS § 30-28-113, and CRS § 30-28-
1226 115, to be exercised collaboratively with the planning
1227 commission.
- 1228 2. Using previous BoCC actions as precedent and a model, each
1229 LUPD should consider formalizing its organization through
1230 preparation of by-laws, implementation of an organizational
1231 structure, and development of basic modes of performing quasi-
1232 governmental business such as a budget, communications
1233 policy, and a mailing address.

- 1234 3. Even though the LUPDs have been designated, mapped, and
1235 have authority to preform land use planning, zoning, and to
1236 issue building permits, appointment of the individual committee
1237 *members* by the BoCC may still be required to affirm a fully-
1238 functioning, land use planning commission. Once organizational
1239 structure is in place, we recommend each LUPD elect three
1240 officers¹⁹⁴ and forward that recommendation to the BoCC for
1241 action on the county consent agenda.
- 1242 4. Each LUPD should prepare a 2020 budget for submittal to the
1243 BoCC. This should include funding to complete its land use
1244 plan and include minimum line items for business related
1245 activities, external services, and review and preparation of
1246 maps.
- 1247 5. LUPDs should petition the BoCC for reinstatement of the
1248 administrative authority rescinded by Resolution 2014-38. This
1249 action should accompany a request for recognition of the
1250 LUPDs as commissions.
- 1251 6. LUPD interim committees should prepare a Staff Utilization
1252 Plan (SUP) that forecasts access to county planning and legal
1253 staff, designates reporting relationships, and describes how each
1254 LUPD intends to utilize and allocate county resources to
1255 achieve LUPD land use planning objectives. The SUP would be
1256 a collaborative effort undertaken in collaboration with the
1257 County Administrator and the BoCC.

1258 *Technical Recommendations, Maps & Data -*

- 1259 1. Maps used for land use plan regulatory purposes contain
1260 boundaries, setbacks, sewer lines, rights-of-way, easements,
1261 roadway access dimensions, and other information. We
1262 recommend that each LUPD obtain copies of all BoCC adopted
1263 maps for their district from the county planning and road and
1264 bridge departments. Because of the regulatory significance, and
1265 until adequate maps have been received by the LUPDs, we
1266 propose that a moratorium be negotiated delaying the schedule
1267 for revision of LUPD land use plans.

¹⁹⁴ [See BoCC Resolution 1993-20 for precedent.](#)

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2. LUPDs should request a copy of the PC Certified, BoCC adopted, county-wide zoning map. This map will be required to understand and confirm zoning protections for commercial minerals, coal, and federal critical minerals. In the event a county wide zoning map has not been adopted by the BoCC, the county remains unzoned; if a county-wide zoning map has been legislatively adopted by the BoCC, it would need revision to incorporate protected areas for commercial mineral area identified during preparation of the MMP or any zoning activities.
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3. In addition to documenting reasonable protections for agriculture, the location of commercial minerals, mineral resource areas²³⁰ and areas of state interest, the land use plans prepared by LUPDs should address future, physical infrastructure planning and needs. In order to prepare certifiable and adoptable land use plans, each LUPD will need specific and current road data. We recommend that each LUPD obtain from the county planning department data for all roadways within their district, including road type, width, ownership, easement and utility information.

²³⁰ [CRS § 24-65.1-104. Definitions pertaining to other areas and activities of state interest.](#)

APPENDIX A

MAPS

Map 1: Base Map

Map 2: Water Conservancy Districts

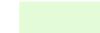
Map 3: Land Use Planning Districts

Map 4: Agricultural Lands

Map 5: Federal Critical Minerals; Areas of State interest

MAP 1 BASE MAP La Plata County Colorado

Legend

-  Major Roads
-  Lakes & Streams
-  Townships
-  La Plata County
-  Sitla Lands
-  Municipality
-  Private / Unicorp. Lands
-  Federal Lands
-  Ute Mountain Ute Lands
-  SUIT Tribal Lands
-  County Boundaries

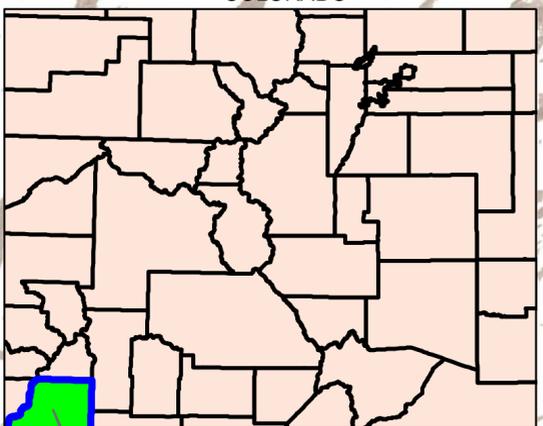
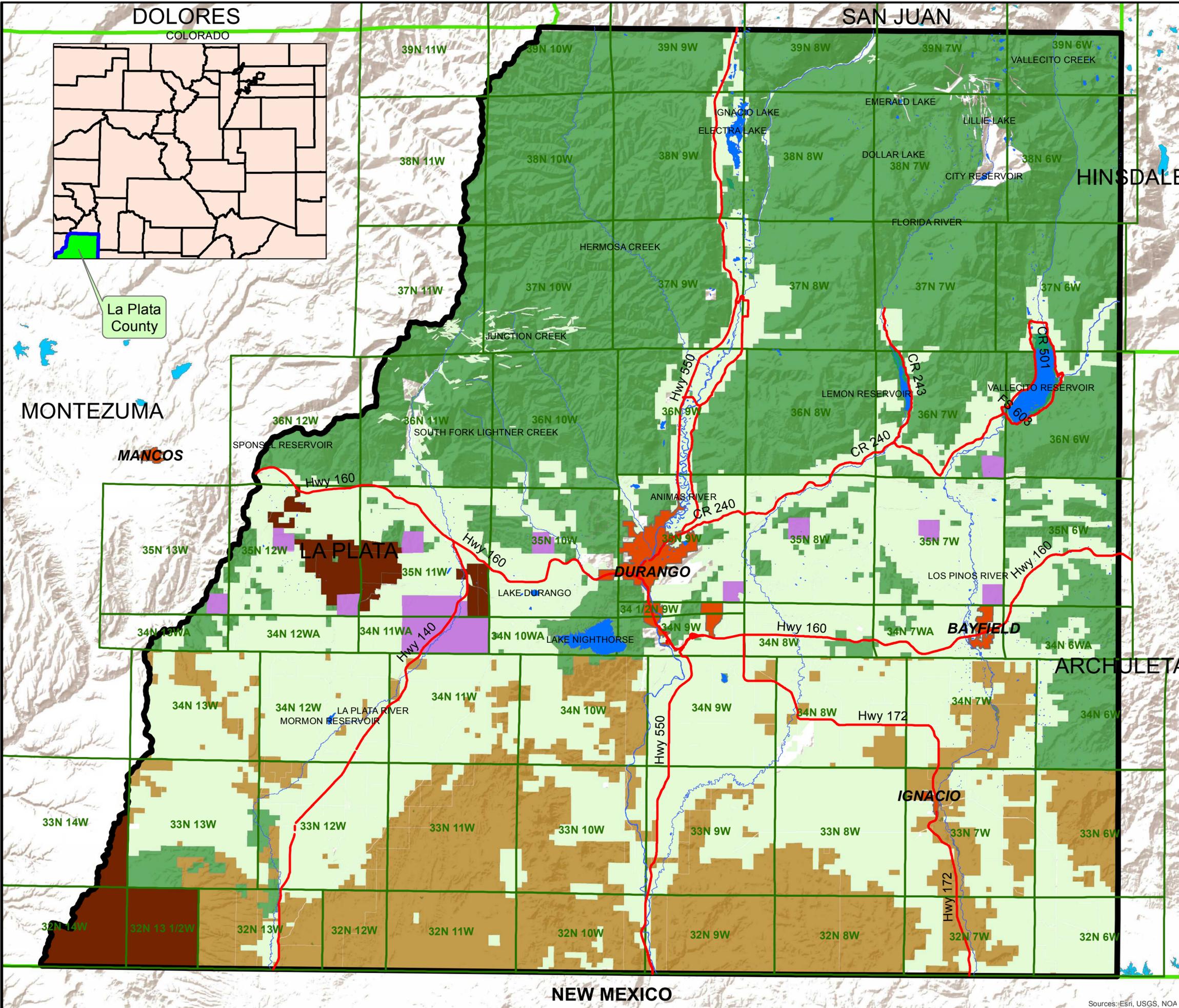
La Plata County: 1,129,945 Acres
 Federal Lands: 437,521 Acres
 SITLA Lands: 12,445 Acres
 Tribal Lands: 208,131 Acres
 Southern Ute Indian Tribe: 181,565 Acres
 Ute Mountain Ute Tribe: 26,566 Acres
 County Unincorporated: 479,439 Acres



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"Complex Problems Solved Well"



La Plata County



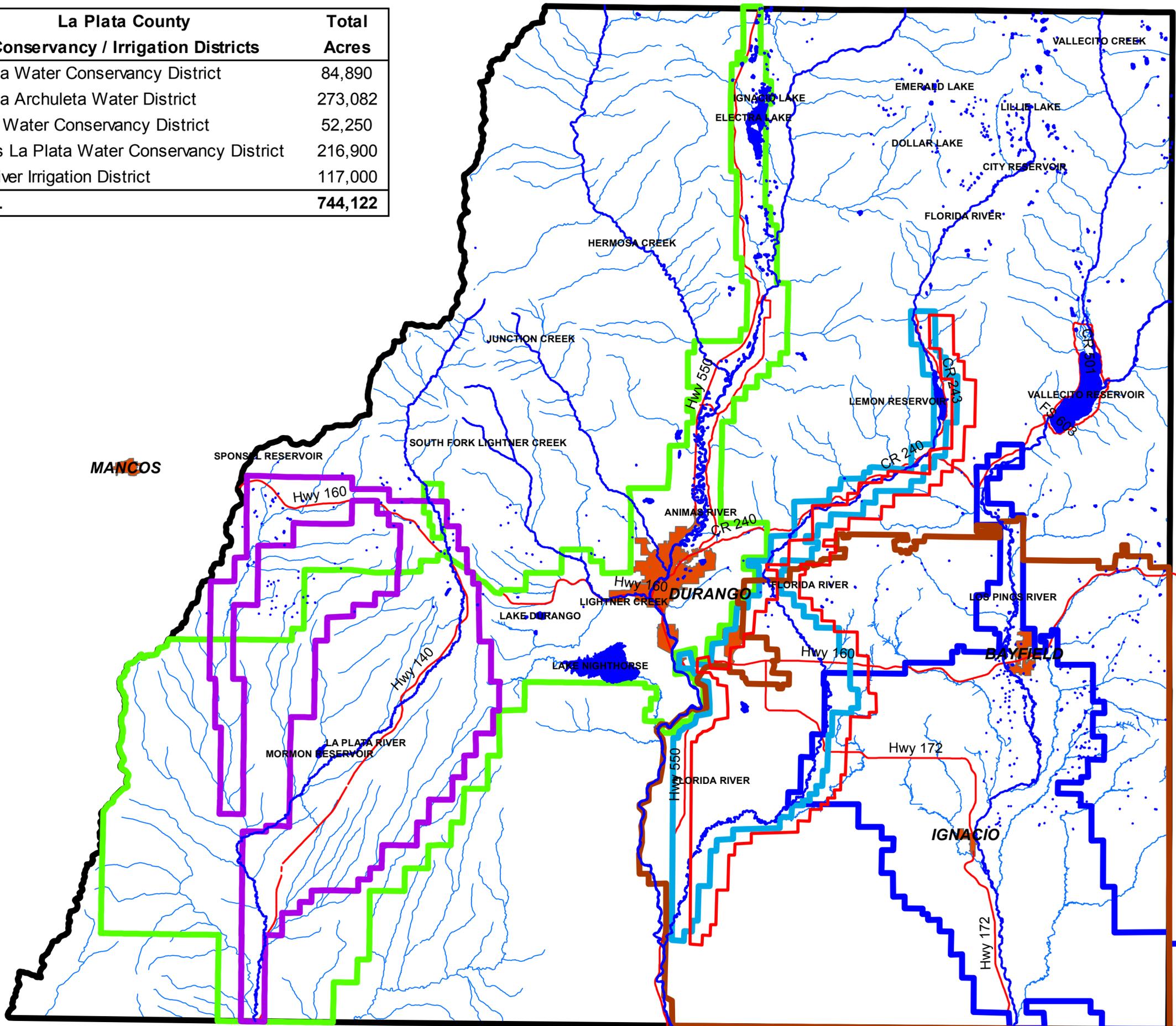
Sources: Esri, USGS, NOAA

MAP 2 Water Conservancy And Irrigation Districts La Plata County Colorado

La Plata County Conservancy / Irrigation Districts	Total Acres
La Plata Water Conservancy District	84,890
La Plata Archuleta Water District	273,082
Florida Water Conservancy District	52,250
Animas La Plata Water Conservancy District	216,900
Pine River Irrigation District	117,000
TOTAL	744,122

Legend Water Districts

-  Lakes & Streams
-  La Plata Water Conservancy
-  La Plata Archuleta Water
-  Florida Water Conservancy
-  Animas La Plata Water
-  Pine River Irr. District



References:

CRS Title 37 §§
Articles 1 - 8; 41 - 45

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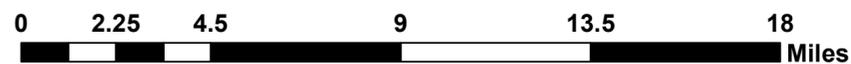


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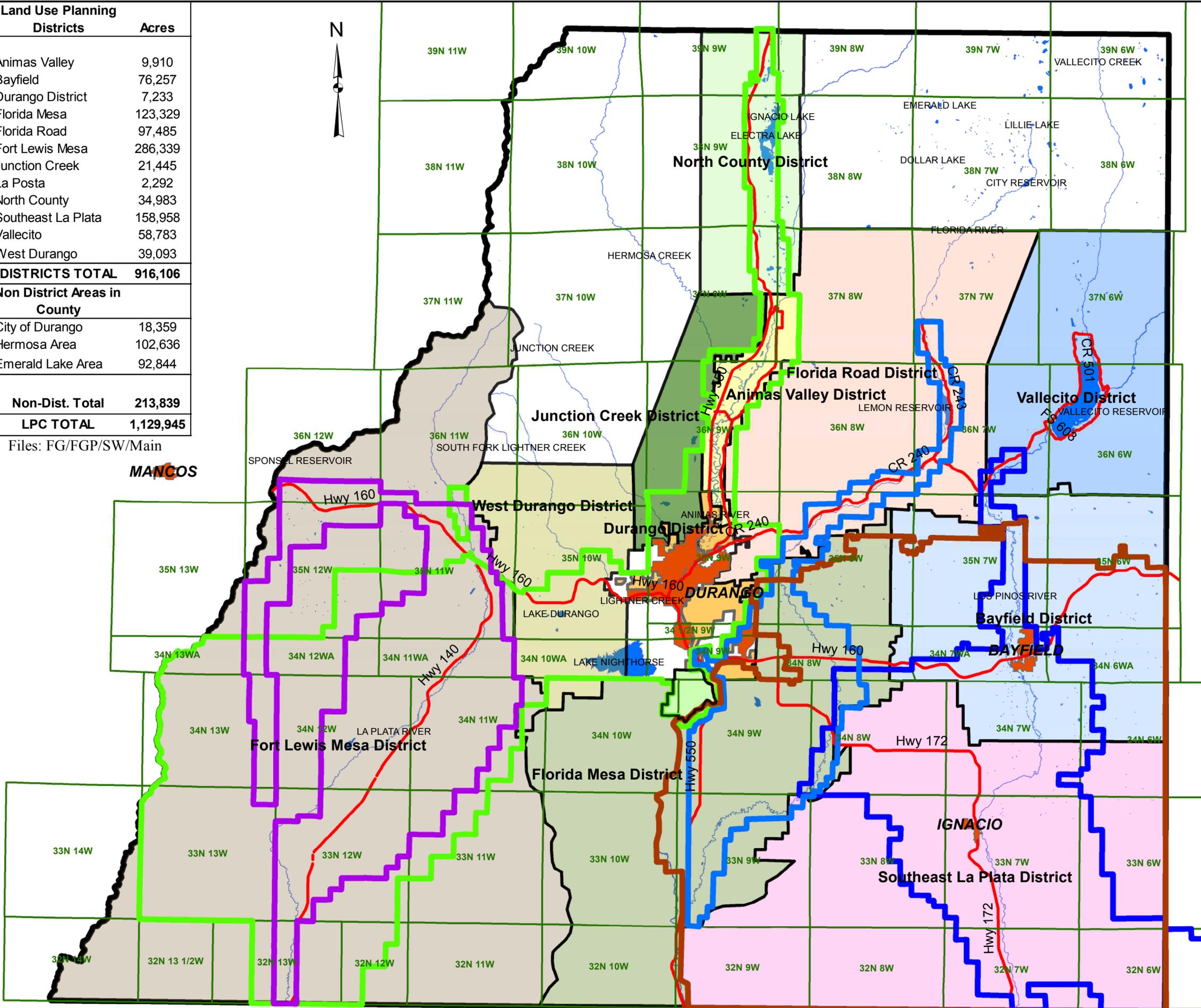
NEW MEXICO



Land Use Planning Districts	Acres
Animas Valley	9,910
Bayfield	76,257
Durango District	7,233
Florida Mesa	123,329
Florida Road	97,485
Fort Lewis Mesa	286,339
Junction Creek	21,445
La Posta	2,292
North County	34,983
Southeast La Plata	158,958
Vallecito	58,783
West Durango	39,093
DISTRICTS TOTAL	916,106
Non District Areas in County	
City of Durango	18,359
Hermosa Area	102,636
Emerald Lake Area	92,844
Non-Dist. Total	213,839
LPC TOTAL	1,129,945

Files: FG/FGP/SW/Main

MANCOS



MAP 3

Land Use Planning and Water Conservancy Districts

La Plata County Colorado

Legend

Land Use Planning Districts

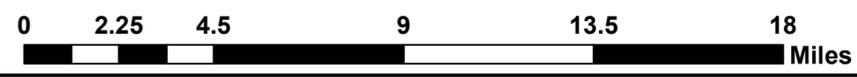
- Animas Valley
- Bayfield
- Durango District
- Florida Mesa
- Florida Road
- Fort Lewis Mesa
- Junction Creek
- La Posta
- North County
- Southeast La Plata
- Vallecito
- West Durango

Water Districts

- La_Posta
- La Plata Water Conservancy
- La Plata Archuleta Water
- Florida Water Conservancy
- Animas La Plata Water
- Pine River Irrigation District



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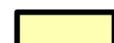
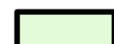
NEW MEXICO

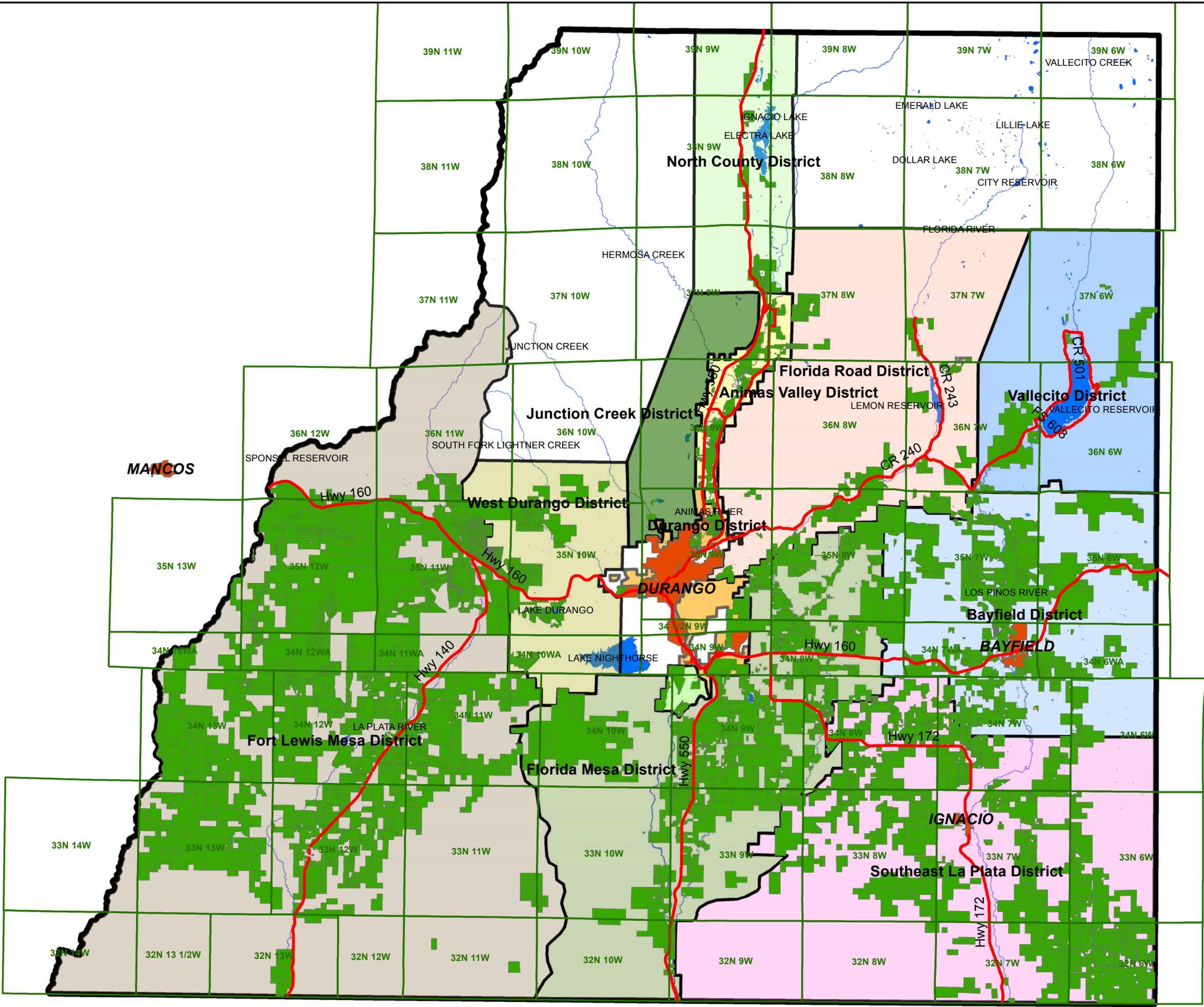
MAP 4 Agricultural Lands La Plata County Colorado

Legend

 Agricultural Lands
280,000 Acres

Land Use Planning Districts

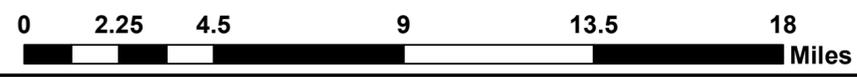
-  Animas Valley
-  Bayfield
-  Durango District
-  Florida Mesa
-  Florida Road
-  Fort Lewis Mesa
-  Junction Creek
-  La Posta
-  North County
-  Southeast La Plata
-  Vallecito
-  West Durango



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"Complex Problems Solved Well"



NEW MEXICO

MAP 5 Strategic Minerals & Mines La Plata County Colorado

Legend

- Strategic Minerals Mines
- Quarries
- Mining Districts
11,700 Acres
- Fruitland Coal Fm. Outcrop
- King Coal Active Coal Mine
2,750 Acres
- Mine Lands
6,600 Acres

Planning Districts with Strategic Minerals Mines

- Durango District
- Fort Lewis Mesa
- Junction Creek
- Hermosa Creek Area
- Emerald Lake Area

Notes:

CRS § 34 - 1 304
 CRS § 34 - 1 305
 CRS § 24 - 65.1 - 101
 CRS § 24 - 65.1 - 104

References:

Executive Order 13817
 F.R. 23295 May 18, 2018

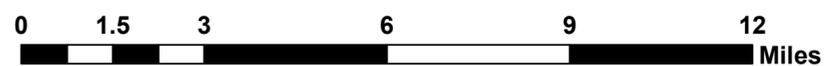
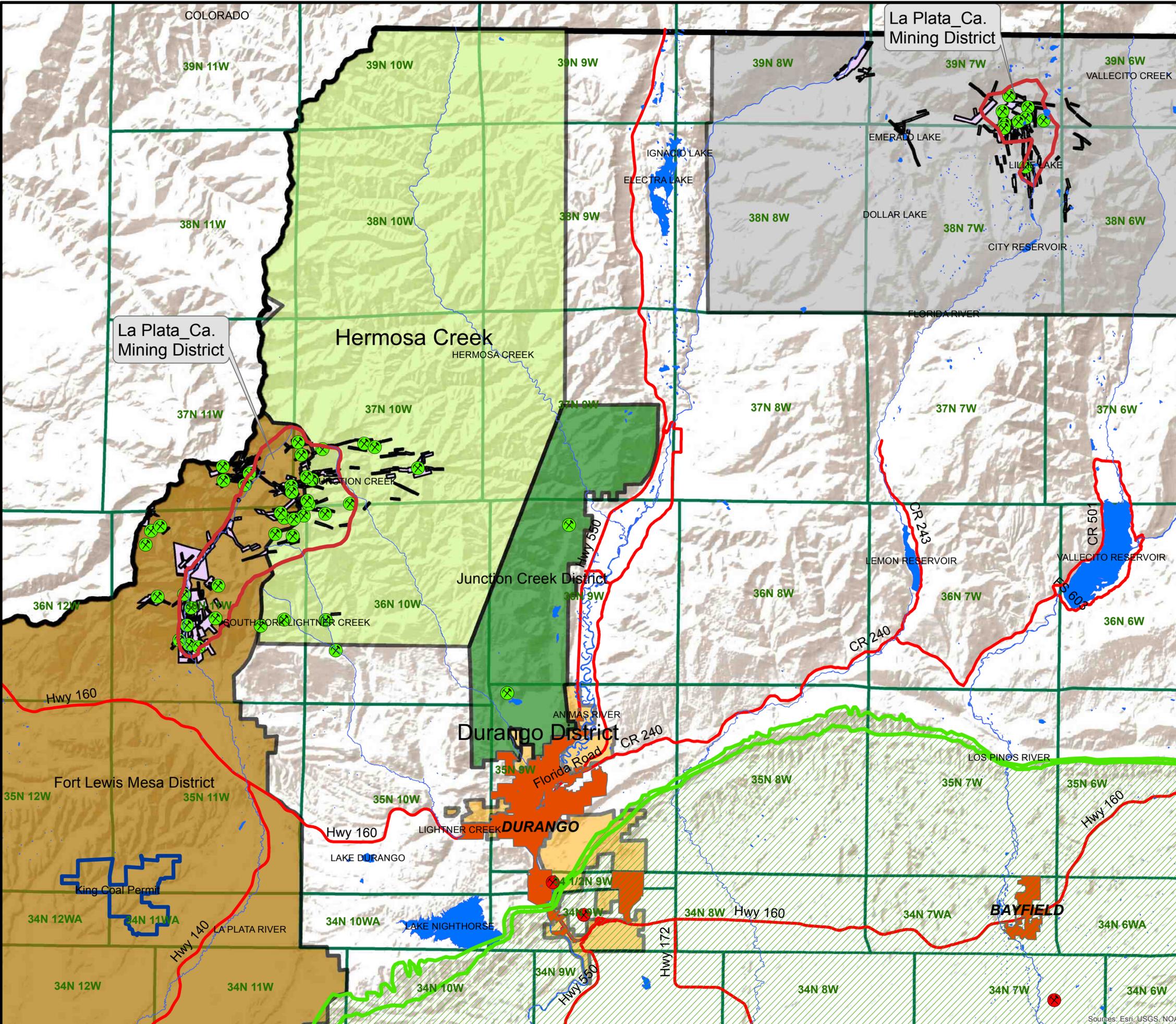
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 Rev. No. 5.4



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Sources: Esri, USGS, NOAA

APPENDIX B

Table of Federal Critical Minerals and Mines in La Plata County

**Federal Strategic Minerals¹
and Locations
La Plata County, Colorado**

Page 1/4

<u>Operation and Mine</u>	<u>Mineral</u>	<u>Location (STR)</u>	<u>La Plata Planning District</u>	<u>Owner</u>	<u>Domain</u>
Aetna Mine	Bismuth Manganese	Sec. 2-38N-7W	Emerald Lake	USA	Public
Ashland - Ten Broeck Mines	Tellurium	Sec. 31-37N-10W	Hermosa Creek	C. Barker, J. Bender	Private
Aurora Mine	Tellurium	Sec. 31-37N-10W	Hermosa Creek	SJNF	Public
Aztec Mine	Manganese Molybdenum	Sec. 35-39N-7W		USA	Public
Bessie G. Mine	Antimony Tellurium	Sec. 31-37N-10W	Hermosa Creek	SJNF	Public
Black Diamond Mine	Tellurium	Sec. 27-37N-11W	Fort Lewis Mesa	SJNF	Public
Black Giant	Manganese	Sec. 35-39N-7W	Emerald Lake	USA	Public
California District	Tellurium Vanadium	Part of La Plata District ~11,420 ac.		Various	P&P
Cason Manganese	Manganese	Sec. 36-39N-7W	Emerald Lake	USA	Public
Chicago Basin	Manganese Molybdenum	Sec. 35-39N-7W	Emerald Lake	USA	Public
Columbus Mine	Tellurium	Sec. 36-39N-7W		A Cruce Salas LLC	Private
Comstock Mine	Antimony Bismuth Tellurium	Sec. 16-36N-11W	Fort Lewis Mesa	USA	
Daisy-Hibernia Mine	Antimony	Sec. 1-36N-11W	Fort Lewis Mesa	SJNF	Public
Durango Girl Mine	Antimony Tellurium Vanadium	Sec. 6-36N-10W	Fort Lewis Mesa	SJNF	Public

¹ Executive Order 13817. 82 FR 60835, December 26, 2017; 83 FR 23295, May 18, 2018.

**Federal Strategic Minerals
and Locations
La Plata County, Colorado**

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<u>Operation and Mine</u>	<u>Mineral</u>	<u>Location (STR)</u>	<u>La Plata Planning District</u>	<u>Owner</u>	<u>Domain</u>
Durango Mill	Uranium Vanadium	Sec. 29-35N-9W	City	USPS	Public
Eagle Pass Mine	Tellurium	Sec. 1-36N-11W	Fort Lewis Mesa	SJNF	Public
Eureka Mine	Manganese	Sec. 35-39N-7W	Emerald Lake	USA	Public
Eureka-Bulldozer Mine	Tellurium	Sec. 1-36N-11W	Fort Lewis Mesa	D.E. Briggs	Private
Flicker Group	Vanadium	Sec. 19-36N-10W	Hermosa Creek	SJNF	Public
Gold King Mine	Antimony Tellurium	Sec. 36-37N-11W	Hermosa Creek	SJNF	Public
Good Hope	Vanadium	Sec. 32-37N-10W	Hermosa Creek	SJNF	Public
Good Hope - Nevada	Uranium Vanadium	Sec. 30-36N-10W	Hermosa Creek	SJNF	Public
Hazel Mine	Tellurium	Sec. 29-35N-9W	City	USPS	Public
Idaho Mine	Antimony Tellurium	Sec. 28-36N-11W	Fort Lewis Mesa	Wildcat Mining Corp.	Private
Incas Mine	Tellurium	Sec. 22-36N-11W	Fort Lewis Mesa	Incas Mining Inc.	Private
Jennie Lind	Tellurium Vanadium	Sec. 1-36N-11W	Hermosa Creek	SJNF	Public
John Graves	Manganese	Sec. 23-36N-11W	Hermosa District	SJNF	Public
Lady Eleanora Mine	Antimony	Sec. 21-36N-11W	Fort Lewis Mesa	USA	Public
Lightner Creek Group	Uranium Vanadium	Sec. 19-36N-10W	Hermosa Creek	SJNF	Public

**Federal Strategic Minerals
and Locations
La Plata County, Colorado**

Page 3/4

<u>Operation and Mine</u>	<u>Mineral</u>	<u>Location (STR)</u>	<u>La Plata Planning District</u>	<u>Owner</u>	<u>Domain</u>
Little Jim Mine	Manganese	Sec. 35-39N-7W	Emerald Lake	USA	Public
Little Nona Mine	Manganese	Sec. 28-36N-11W	Fort Lewis Mesa	USA	Public
Lucky Discovery Mine	Antimony Manganese	Sec. 17-36N-11W	Fort Lewis Mesa	Marie Bedford Trust	Private
May Day Mine	Antimony Tellurium	Sec. 28-36N-11W	Fort Lewis Mesa	La Plata County Land LLC.	Private
May Rose Mine	Tellurium	Sec. 15-36N-11W	Fort Lewis Mesa	SJNF	Public
Mineral Wonder	Antimony	Sec. 28-37N-10W	Hermosa Creek	SJNF	Public
Mountain Lily	Tellurium	Sec. 35-37N-11W	Fort Lewis Mesa	SJNF	Public
Muldoon Mine	Antimony Arsenic	Sec. 30-37N-10W	Hermosa Creek	Herman Dalla	Private
Needle Mountain District	Antimony Bismuth Manganese Molybdenum Tellurium Uranium	Sec. 35-39N-7W ~2640 ac.	Emerald Lake	USA	Public
Neglected	Tellurium	Sec. 27-37N-10W	Hermosa Creek	H. Luzar Jr.	Private
Neglected Mine	Antimony Tellurium	Sec. 27 37N-10W	Hermosa Creek	H. Luzar Jr.	Private
Nevada & Good Hope	Uranium Vanadium	Sec. 19-36N-10W	Hermosa Creek	SJNF	Public
Oregon Claim	Molybdenum	Sec. 11-38N-7W	Emerald Lake	USA	Public

**Federal Strategic Minerals
and Locations
La Plata County, Colorado**

Page 4/4

<u>Operation and Mine</u>	<u>Mineral</u>	<u>Location (STR)</u>	<u>La Plata Planning District</u>	<u>Owner</u>	<u>Domain</u>
Puzzle Mine	Antimony Tellurium	Sec. 1-36N-11W	Fort Lewis Mesa	SJNF	Public
Ruby King	Antimony Arsenic Tellurium	Sec. 28-37N-10W	Hermosa Creek	SJNF	Public
Sadie Mine	Antimony Tellurium	Sec. 1-36N-11W	Fort Lewis Mesa	C. Barker, J. Bender	Private
Schaefer Ranch Deposit	Titanium	Sec. 6-35N-9W	Emerald Lake	R.W. Sauer	Private
Shorty Pinky Claims	Uranium	Sec. 8-36N-11W	Fort Lewis Mesa	SJNF	Public
Shorty Lode	Uranium Vanadium	Sec. 5-36N-11W	Fort Lewis Mesa	SJNF	Public
Small Hope Mine	Tellurium	Sec. 26-37N-11W	Fort Lewis Mesa	Copper Age Uranium Co.	Private
Snowstrom Mine	Antimony Arsenic	Sec. 30-37N-10W	Hermosa Creek	Iron Ore Corp.	Private
Southern Boy Mine	Tellurium	Sec. 16-36N-11W	Fort Lewis Mesa	David Harley Park	Private
Texarado Oil Uranium	Uranium	Sec. 5-36N-11W	Fort Lewis Mesa	SJNF	Public
Texas Chief Mine	Antimony	Sec. 24-36N-11W	Hermosa Creek	SJNF	Public
Tippecanoe Mine	Antimony	Sec. 30-37N-10W	Fort Lewis Mesa	SJNF	Public
Tomahawk Mine	Antimony Manganese Tellurium Uranium	Sec. 34-37N-11W	Fort Lewis Mesa	SJNF	Public
Tripp Gulch Mine	Uranium Vanadium	Sec. 4-36N-9W	Junction Creek	High Meadows Property	Private
Western Belle Mine	Tellurium	Sec. 31-37N-10W	Hermosa Creek	C. Barker, J. Bender	Private

APPENDIX C

May 18, 2018 Federal Register
List of Federal Critical Minerals

Availability of Documents

The **Federal Register** documents publishing the receipt of applications for these permits may be viewed here: <https://www.fws.gov/policy/frsystem/default.cfm>. Documents and other information submitted with these applications are available for review subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a written request for a copy of such documents. For detailed information regarding a particular permit, please contact the Region that issued the permit.

Authority

We provide this notice under the authority of section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2018.

Lisa Ellis,

Chief, Branch of Recovery, Conservation Planning, and Communication.

[FR Doc. 2018-10670 Filed 5-17-18; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[178D0102DM, DS6CS00000, DLSN00000.000000, DX.6CS25]

Final List of Critical Minerals 2018

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The United States is heavily reliant on imports of certain mineral commodities that are vital to the Nation's security and economic prosperity. This dependency of the United States on foreign sources creates a strategic vulnerability for both its economy and military to adverse foreign government action, natural disaster, and other events that can disrupt supply of these key minerals. Pursuant to Executive Order 13817 of December 20, 2017, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals," the Secretary of the Interior on February 16, 2018, presented a draft list of 35 mineral commodities deemed critical under the definition provided in the Executive Order. After considering the 453 public comments received, the Department of the Interior believes that the methodology used to draft the list remains valid and hereby finalizes the draft list of 35 critical minerals. The final list includes: Aluminum (bauxite), antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt,

fluorspar, gallium, germanium, graphite (natural), hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium. This list of critical minerals, while "final," is not a permanent list, but will be dynamic and updated periodically to reflect current data on supply, demand, and concentration of production, as well as current policy priorities. This final list will serve as the Department of Commerce's initial focus as it develops its report to comply with Section 4 of Executive Order 13817.

ADDRESSES: Public comments received on the draft list are available at www.regulations.gov under docket number DOI-2018-0001.

FOR FURTHER INFORMATION CONTACT: Ryan Nichols, (202) 208-7250, ryan_nichols@ios.doi.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Mr. Nichols during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with this individual. You will receive a reply during normal business hours. Normal business hours are 9:00 a.m. to 5:30 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: Executive Order 13817, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals" (82 FR 60835, December 26, 2017), addressed the United States' dependency on vulnerable limited and foreign supply chains of mineral commodities that are vital to the Nation's security and economic prosperity. The Executive Order directed the Secretary of the Interior, in coordination with the Department of Defense and in consultation with other executive branch agencies, to produce a list of critical minerals. The Secretary of the Interior in turn directed the U.S. Geological Survey (USGS), in coordination with the Bureau of Land Management (BLM), to provide technical input to a draft critical minerals list, and to incorporate Federal interagency input through the White House Office of Science and Technology Policy's National Science and Technology Council (NSTC) Subcommittee on Critical and Strategic Mineral Supply Chains. The NSTC Subcommittee has representation from a wide range of Federal Departments

including, but not limited to, Defense, Interior, Energy, State, Commerce, and Homeland Security.

The USGS used as a starting point for developing the draft critical mineral list the NSTC Mineral Criticality Screening Tool, which was first published by the Executive Office of the President in 2016 and updated in 2017. The tool is a quantitative methodology for identifying and ranking mineral commodities based on widely accepted criteria published in the mineral commodity literature. Using that methodology, and several other sources of data, the USGS applied two principal criteria to evaluate minerals for inclusion on the draft list of critical minerals: The Hirfındal-Hirschmann index, which measures country concentration of production, and the USGS net import reliance metric based on USGS's annual Mineral Commodities Summaries. The methodology used by the USGS to develop the draft list is described in USGS Open-File Report 2018-1021 (<https://pubs.usgs.gov/of/2018/1021/ofr20181021.pdf>).

Federal interagency feedback to Interior on the initial draft list highlighted one mineral, uranium, with both fuel and non-fuel uses, and for which Energy Information Administration data indicated high production concentration and significant import reliance. Based on those data, the USGS agreed that it would be consistent with the methodology to include uranium on the draft list for public comment.

Pursuant to Executive Order 13817, on February 16, 2018, the Secretary of the Interior published the draft list of critical minerals in the **Federal Register** (83 FR 7065). The draft list consisted of 35 minerals or mineral material groups deemed critical under the definition provided in the Executive Order: Aluminum (bauxite), antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite (natural), hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium.

The **Federal Register** notice included a 30-day public comment period, which closed on March 19, 2018. The comments are available for public viewing at www.regulations.gov under docket DOI-2018-0001. DOI received 453 comments, including 118 comments made anonymously, 273 from individuals, and 62 submitted on behalf of organizations (20 from industry

organizations, 18 from mining companies, ten from consultants and other businesses, six from non-governmental environmental organizations, five from government agencies, and three from elected officials). The comments included 147 requests to add a total of 13 minerals to the list, with seven minerals (copper, silver, nickel, gold, zinc, molybdenum and lead) each receiving over 10 requests for addition to the list. There were 183 requests to delete one mineral (uranium) from the list.

After considering all comments received, the Department of the Interior believes that the methodology described in USGS Open-File Report 2018–1021 remains valid. Therefore, the Department of the Interior is hereby finalizing the draft list of 35 critical minerals as the final list. This list of critical minerals, while “final,” is not a permanent list, but will be dynamic and updated periodically to reflect current data on supply, demand, and concentration of production, as well as current policy priorities. This final list will serve as the initial focus for the Department of Commerce report, currently in development pursuant to Executive Order 13817.

This final list is based on the definition of a “critical mineral” provided in Executive Order 13817. The U.S. Government and other organizations may also use other definitions and rely on other criteria to identify a material or mineral as “critical” or otherwise important. This final list is not intended to replace those related terms and definitions for minerals or materials that are deemed strategic, critical or otherwise important (e.g., National Defense Stockpile). The Department of the Interior recognizes the economic significance and indispensable nature of other minerals that are produced domestically in large quantities such as copper, zinc, molybdenum, gold, silver, and industrial minerals such as phosphate, sand, gravel, and aggregate. Given current levels of domestic production, the U.S. is not highly reliant on imports for these minerals and typically has a combination of domestic reserves and reliable foreign sources adequate to meet foreseeable domestic consumption requirements. While these minerals do not currently meet the definition of critical, they are similar to critical minerals in that they are indispensable to a modern society for the purposes of national security, technology, infrastructure, and energy production (both fossil fuels and renewables). It should be noted that some potential supply chain vulnerabilities relating to

critical minerals, such as high import reliance and limited domestic capability for production of refined metals and processed alloys, extend beyond what is described here and will be addressed within the Department of Commerce report to be submitted to the President as required by Executive Order 13817. The Department of the Interior also recognizes that many public comments addressed issues not directly associated with the development of the critical minerals list. Instead, they addressed regulatory and policy issues more appropriately considered as part of the Department of Commerce report.

Those comments will be available to help inform the development of the Commerce report.

Finally, the Department of the Interior recognizes that a significant number of comments requested the removal of uranium from the list. As noted above and in USGS Open-File Report 2018–1021, input from other agencies represented on the NSTC Subcommittee on Critical and Strategic Mineral Supply Chains emphasized that uranium, while primarily known as a fuel mineral, also has important non-fuel uses, and otherwise meets the criteria for inclusion.

The NSTC Mineral Criticality Screening Tool was designed as an early warning screening tool that identifies potentially critical minerals using regularly-reported and publicly-available data. The screening tool was designed so that potential mineral criticality could be evaluated in a repeatable and transparent manner, on an ongoing basis. This tool is updated annually by the USGS on behalf of the NSTC Subcommittee when USGS releases a new year of mineral production and price data. This systematic, annual collection, analysis, and publication of mineral information is the foundation for the analysis of present-day security of supply for minerals and mineral materials and of changes in the security of supply over time. With this basis, the finalized list of critical minerals provides a starting point for developing a new Federal strategy and a continuing process to strengthen supply chains. The finalized list does not foreclose later addition of minerals that become critical in the future due to advances in technology, natural disasters, world events, and other factors influencing the security of supply and demand.

As part of developing the new Federal strategy, Executive Order 13817 and Secretary’s Order 3359, “Critical Mineral Independence and Security” (December 21, 2017), direct further efforts to assess potential domestic

critical mineral resources above ground and below ground, and to examine Federal leasing and permitting processes to expedite access to these potential resources. Because the critical minerals on the final list are administered under existing mineral disposal laws and regulations, any recommendations to improve permitting processes for those critical minerals will improve permitting processes for all minerals administered under the same laws and regulations by the Bureau of Land Management and other Federal land management agencies.

The Department of the Interior recognizes that many commodities are not mined directly, but are instead recovered during the processing, smelting, or refining of a host material and are, therefore, deemed “byproducts.” Of the 35 minerals deemed critical, 12 are byproducts. Therefore, strategies to increase the domestic supply of these commodities must necessarily consider the mining and processing of the host materials because enhanced recovery of byproducts alone may be insufficient to meet U.S. consumption.

Authority: E.O. 13817, 82 FR 60835 (December 26, 2017).

Timothy R. Petty,

Assistant Secretary for Water and Science.

[FR Doc. 2018–10667 Filed 5–17–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[18XD0120AF/DT11100000/
DST000000.54AB00; OMB Control Number
1035—New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Trust Evaluation System

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Special Trustee for American Indians (OST, we), are proposing a new information collection. **DATES:** Interested persons are invited to submit comments on or before June 18, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget’s Desk Officer for the Department of the Interior by email at

APPENDIX D

Distribution of Land Ownership

**Distribution of Land Ownership¹ -
Federal, Native American and Land Use Planning Districts
La Plata County, Colorado (acres)**

Land Use Planning District	Acres	Tribal	Fed	Private	Residential	City	County	Ag	Irrig.	Mines	SITLA
Animas Valley	9,910	0	260	9,650	4,820			3,564	2,985		
Bayfield	76,257	4,035	19,360	52,862	16,889		40	32,764	8,602		1,240
Durango District	7,233	0	310	6,440	3,440	740	483	1,894	835		
Florida Mesa	123,329	36,460	3,599	83,270	22,104		1,171	45,607	19,070		1,206
Florida Road	97,485	0	66,594	30,891	16,547		16	8,191	705		
Fort Lewis Mesa	286,339	98,083	54,211	134,045	16,511	41	24	117,179	10,970	3,445	8,759
Junction Creek	21,445	0	18,705	2,740	1,548		129	84	266		
La Posta	2,292		156	2,136	418			894	56		
North County	34,983	0	17,550	17,433	6,972			1,859	190		
Southeast La Plata	158,958	69,553	5,657	83,748	19,286		18	54,408	30,780		
Vallecito	58,783	0	45,017	13,766	2,241			5,642	716		640
West Durango	39,093		16,082	23,011	9,187			8,120	227		600
DISTRICTS TOTAL	916,106	208,131	247,501	459,992	119,963	781	1,881	280,206	75,402	3,445	12,445
Non-District Areas in County											
City of Durango	18,359	0	352	13,636	10,767	6,146		454			
Hermosa Area	102,636		101,854	782	170					1,566	
Emerald Lake Area	92,844		87,815	5,029						1,620	
Non-Dist. Total	213,839										
LPC TOTAL	1,129,945	208,131	437,521	479,439	130,900	6,927	1,881	280,660	75,402	6,631	12,445

¹Land area estimates presented in this report were determined through 3-D calculations using publicly-available data. Estimates may vary slightly from county or state reported data sources.

APPENDIX E

Zoning Policy Discussion Questions
Jason Meininger

La Plata County Land Use Code Revision
Policy Questions: Zoning
July 25, 2018

Overview

For more than a century, zoning has been an effective tool throughout the United States for planning growth and infrastructure improvements/investments while also mitigating disparate land use intensities. Zoning provides predetermined criteria and locations for development by analyzing infrastructure and cost of services. In turn, zoning is a tool that offers predictability as to what types of development can occur on specific property.

Through professional experience, public input, and Board direction, it is apparent more certainty is sought relative to land use development. Although there may be other mechanisms to manage growth and land development patterns, there are two primary approaches which could work best for La Plata County: Euclidean Zoning is the most widely used and traditional approach which provides the highest level of certainty in the context of identifying appropriate use types and locations; Performance Zoning is an alternative approach that provides more flexibility and less certainty by utilizing a points system to determine potential compatibility of uses.

Staff is seeking direction from the Board of County Commissioners with regard to establishing the desired type of use system as it relates to land development and growth management. The policy questions below aim to draw guidance for how to approach the conversation regarding zoning in La Plata County so that the Board can provide direction as to whether and how the revised Land Use incorporates zoning principles.

1) What process does the BOCC want to use to provide direction on how/whether to incorporate zoning in the revised code?

Staff recommends three work sessions structured to examine:

- Existing conditions & zoning options
 - Euclidean
 - Performance-based
- Legal Framework & Comparative Counties
 - 2) Legal framework
 - 3) Performance-based & Euclidean discussion
- Public input
 - Memos
 - Survey/public comment

2) What materials does the BOCC need in order to provide direction on whether and how to incorporate zoning in the revised land use code?

Staff recommends the following materials to guide the conversation:

- Existing condition
- Zoning overview
- Legal memos
- Comparative table between Euclidean/Performance-based zoning
- Comparable counties chart

APPENDIX F

June 1, 2018 Zoning Memorandum
Jason Meininger



MEMORANDUM

DATE: June 1, 2018
TO: Board of County Commissioners
FROM: Jason Meininger, Planning Director
Re: DRAFT Policy Consideration for Zoning

I. Introduction

From 1970 to 2010, La Plata County's (county) population grew by 178%¹, a majority of which (61%) has been absorbed by the unincorporated territory of La Plata County. The county's current land use regulations largely lack adequate structure to plan for and guide growth in a way that's predictable for property owners, the county, or other governmental entities (e.g., city, towns, state, and tribal). This memorandum evaluates the current regulatory structure in the context of exploring Euclidian zoning as a potential solution for promoting economic diversity and job growth, controlling costs of services, and identifying appropriate locations for future growth.

II. OVERVIEW

Since the mid-1990s, the Planning Department (Department) has been utilizing district plans (in furtherance of the goals the Comprehensive Plan), to understand unique geographical areas of the county. From the mid-1990s thru 2007, the residents of those individual districts participated in creating and updating plans setting forth their associated goals, policies, and objectives. The 2016 update of the Comprehensive Plan relied on the district plans to inform the geographically specific considerations of this advisory plans well as identify broader countywide policies.

The need for orderly growth has been felt throughout most of Colorado and in 2002 the State Legislature empowered counties to prepare and adopt master plans (also known as a comprehensive plan) for the physical development of their counties.² A comprehensive plan, and La Plata County's associated district plans, are statements of policy adopted by the Planning Commission in the form of text, maps and graphics, used to guide public and private actions that affect the future growth.³ Comprehensive and district plans provide decision makers with necessary context to make informed decisions affecting the long-range social, economic, and physical growth of a community.⁴

¹ Colorado Department of Local Affairs, *County Census Data*.

² C.R.S. §30-28-106

³ Wiley, *Planning and Urban Design Standards*, American Planning Association at 3.

⁴ *Id.*

In Colorado, comprehensive plans are adopted by planning commissions and certified to the Board of County Commissioners⁵. The Board of County Commissioners is legally precluded from adopting comprehensive plan and district plans and therefore the plans are advisory to the Board. Conceptually, these plans provide a guide to development rather than an instrument to control land.⁶ However, the Board may adopt zoning maps which function as the detailed means for giving legal effect to portions of the Comprehensive Plan's policies and principles.

As further discussed below, implementation of zoning can help develop the La Plata County's economy while balancing economic development against the interests of existing residential and agricultural land uses. Promoting businesses and land development in areas that are primed and evaluated for growth will help preserve the historic character of La Plata County in a fiscally responsible manner.

III. Application of Zoning Principles

Zoning within the United States has been an effective tool for planning growth and mitigating disparate land use intensities for more than a century. The constitutional authority to zone properties based on use was affirmed by the seminal Supreme Court decision, *Village of Euclid, Ohio v. Amber Realty Co.*, which has since translated into the present day traditional "Euclidean zoning." Within Colorado, 58 of 64 counties utilize zoning, and all but six counties⁷: (Baca, Delta⁸, Dolores, Kit Carson, Gunnison, and La Plata⁹) have adopted zoning for land use regulation. Within La Plata County all three of the municipalities (Bayfield, Durango and Ignacio) utilize traditional zoning to plan for growth. Through the implementation of zoning, it is evident that focused growth and certainty for property owners and the community can be achieved in a way that retains or enhances property values.

Through zoning, counties regulate the use of land, buildings and structures. Compatible land uses are grouped together and permitted within certain "zone districts." It is important to distinguish "zone districts" from the "planning districts" considered in district plans. The planning districts are geographical sectors located within the county. In contrast, zone districts broadly describe types of land uses that may occur over the entirety of the county.

The most common types of zone districts are residential, agricultural and commercial/industrial. Within each zone district, more specific uses are then described. For example, there are "uses by right" that generally require little to no regulatory review. As to property zoned agricultural, examples of "uses by right" include the storage of farm and ranching equipment¹⁰ or animal stables, training and boarding facilities. If a proposed use within the agriculture zone is not "by right," it may still be allowed but with some degree of regulatory review by the Planning Department. Building on the prior example, the storage of farm and ranching equipment would

⁵ C.R.S. §30-28-106

⁶ *Theobald v. Bd. Of County Comm'rs*, 644 P.2d (Colo. 1982)

⁷ Colorado Department of Local Affairs' Community Development Office, *Land Use Survey* (2015).

⁸ Delta County has initiated implantation of a zoning plan (2017).

⁹ La Plata County administers zoning only in the defined area of the Animas Valley, LPLUC Chapter 106.

¹⁰ It is important to note that such uses may still require a building permit but the land use itself may be "by right".

be a “use by right,” but if the property owner also sought to commercially sell that equipment, such activity would not be a “use by right” but could be considered an accessory use to the agricultural use and therefore require some form of regulatory review and a land use permit.

If a property owner wishes to use property for a purpose or in a manner not permitted by the applicable zone district, there are three possible solutions: 1) a rezoning of the property to a zone district in which the use is permitted; 2) a variance from the zoning regulations; or 3) an amendment to the general zoning ordinance to permit the desired use in the existing zone district.¹¹

A. Zoning Map Analysis

With the proposed establishment of zoning within the county, questions may arise such as: “What is an appropriate use for a particular location?” or “What can be done with a specific property?” Answering these and similar questions requires analyzing current and projected data to help inform policy direction.

Availability of infrastructure and compatibility of neighboring uses typically are the two most important considerations when a new development is proposed. If infrastructure is lacking (i.e. inadequate water supply or sewage disposal, roads over capacity, etc.) in an area proposed for development, the area may not currently be suitable. Typically, appropriately applied land use principles encourage commercial, industrial, mixed use, and higher density residential developments in areas where adequate infrastructure exists. Conversely, such more intense uses are not allowed in areas lacking adequate infrastructure.

To identify locations appropriate for certain uses, and areas that may not be suitable for certain uses, models can be generated based on weighted factors. These factors can include the quality or capacity of road, and proximity to existing central water or sewer lines, which inform the determination of what zoning classification is most appropriate for particular properties. Utilizing this type of data for decision making and determining zoning appropriateness ensures that decisions are made in a fair and equitable manner with all properties being evaluated according to the same or substantially similar criteria. However, if zoning districts are applied without the appropriate analysis, sporadic and illogical development occurs, it ultimately leaves the taxpayers to absorb the financial consequences associated with degraded roads, inadequate or overburdened infrastructure or deteriorated public safety services.

The necessary analysis can be done in a number of ways, most notably through geographical information systems (GIS) modeling. The county has the in-house capacity and expertise to produce the necessary models to determine the ability of certain areas to support new development and growth without creating a nuisance or negatively impacting the county and taxpayer. Specifically, staff recommends utilizing the “McHargian Model” to conduct the detailed modeling and analysis, as described in *Exhibit A*.

¹¹ Colo. Methods of Practice, §54:22

B. Zoning Districts

In addition to the analysis, described above, of the availability of adequate roads and infrastructure, the establishment of zoning districts also requires review of the types of uses anticipated in the community, and those uses' consistency with community vision, and policies that promote economic development and compatible uses. First, the County must determine the appropriate number and type of zoning districts (e.g., agricultural, residential, and commercial/light industrial), and then identify those uses which, depending on the factors discussed above, should be allowed by right in each district, allowed pursuant to a specified permitting process, or not allowed.

Looking outside La Plata County, jurisdictions around the state that have implemented zoning have a broad range of established zoning districts. For example, Chaffee County has established a very basic system containing six zoning districts¹². Weld County, (which has a much larger population than La Plata County), has adopted 16 zoning districts¹³. These examples demonstrate that there is not a "one-size fits all" model for the appropriate number of zoning districts, but rather an opportunity to balance the interests of current county residents with an eye toward future growth and economic vitality.

As described above, the county in general has three broad use types which, at minimum, should become established zoning districts: agricultural, residential, and commercial/light industrial. Proposed uses of these types comprise the majority of development applications seen in the Department. Mechanisms for more discrete zoning districts can be considered based upon factors such as property sizes and types, and the location and intensity of proposed uses.

A common model for more discrete residential zoning districts is classification based on parcel size, e.g. "residential 3," or "residential 10." The former could apply to properties three-acres or greater, typically used for single family residences. The latter could apply to residential properties 10 acres or greater and may include some use of the land for other purposes beyond strictly residential. Either district could have built-in use-by-right provisions for smaller home businesses and other limited impact uses.

In addition to residential zoning districts, commercial/mixed-use/light industrial districts are needed within the county to strengthen and diversify the local economy. The current land use system lacks predictability regarding where these types of uses may locate or expand. With limited infrastructure beyond the areas proximate to the county's three municipalities, businesses are limited in available properties with adequate infrastructure. As a result, development proposals commonly submit proposals with inadequate infrastructure, leading to potential community opposition and uncertain outcomes.

Establishing zoning districts has been effective nationwide for more than a century to provide certainty to property owners and developers by identifying appropriate locations for various uses. Establishing suitable zoning districts will result in faster approvals for proposed projects, as the

¹² *Article 2: Zone Districts*, Chaffee County, Colorado (2018).

¹³ *Chapter 23, Art. III. Zone Districts*, Weld County, Colorado (2018).

analysis of infrastructure and compatibility will have occurred upon the establishment of the zoning district, and need not be conducted in the course of evaluating individual land use applications.

Following is a comparative table of the sample counties regarding their utilization of zoning. The existing La Plata County Land Use Code identifies 14 zoning districts in the Animas Valley, and the average number of zoning districts in the sample counties is 15.5.¹⁴ If the Board of County Commissioners provides direction to develop zoning districts for La Plata County, the total number of recommended districts would likely be around that average.

The total number of zoning districts normally correlates to the need to recognize unique and specific characteristics of uses, intensities, and property sizes. Typically, a greater number of districts within a zoning table correlates to a more precise description of allowed uses, intensities, and lot sizes. Conversely, fewer zoning districts typically result in less as to allowed uses, intensities and requires additional public process to ensure compatible intensities.

¹⁴ For comparative purposes Gunnison County was excluded

County	Euclidean Zoning	Performance Based Zoning	Total Number of Zoning Classifications
Chaffee	Yes	No	Six (6)
Elbert	Yes	No	Fifteen (15)
Gunnison	No	No	N/A
La Plata	No ¹	No	N/A
Larimer	Yes	No	Twenty Three (23)
Mesa	Yes	No	Twenty Three (23)
Montrose	Yes	No	Ten (10)
Weld	Yes	No	Sixteen (16)

¹ Zoning only applies within defined area of the Animas Valley.

C. Overlays

Overlay can be utilized in conjunction with zoning designations to apply different standards on portions of one or more underlying use-based zoning districts.¹⁵ Often, overlays are applied to address an area’s special purpose or unique characteristic, such as floodplains, airports, historic preservation, or a wildlife corridor. For example, GIS can be used to analyze and map a flight path to depict air traffic arriving and departing from an airport. The n, following identification of

¹⁵ Selmi, Kushner, Ziegler. *Land Use Regulation: Cases and Materials*, at 95 (4th Ed. 2012).

the area subject to a special purpose or unique characteristic, the overlay can be used to implement specific standards as necessary to promote or protect those purposes or characteristics.

Within overlays, increased or decreased standards can be applied consistently throughout the various types of zone districts. For example, in San Miguel County,¹⁶ overlays are utilized to define areas that are in proximity to wildland-urban interfaces¹⁷. A concept like this could be applied to locations within the county when a proposed development may be in proximity to dense vegetation or areas that are geographically challenging for emergency responders to access. Further, within these areas, development standards could be applied that protect the general health and safety of citizens by requiring mitigation - such as removal of dead/downed debris within a defined overlay.

Given the community's stated desire that more flexible tools be built in to the land use system, overlays could be appropriate in some instances. Similar to zoning districts, overlays can be analyzed via GIS with weighted modeling systems (see *Exhibit A*) to identify characteristics which could be addressed by an overlay's establishment.

III. Rezoning

Similar to the comprehensive plan and land use regulations, zoning should be reviewed and revisited when there are changes and growth within a community. As such, the land use code should provide clear criteria for when and how a particular property's zoning district may change. The analysis for a rezoning request is similar to that employed during the initial decision to zone the property (i.e. available infrastructure, fiscal impacts for the delivery of government services) and clearly articulated criteria that ensures the rezoned designation is in furtherance of the goals, visions and policies set forth in the comprehensive plan.

Under the current land use code, zoning amendments only take place within the defined area of the Animas Valley, and are subject to review by the Planning Commission and approval by the Board of County Commissioners. In the remaining planning districts, amendments to the advisory district plan maps are approved only by the Planning Commission and such amendments are not binding on the Board of County Commissioners. Therefore, there is limited predictability in this process. In contrast, rezones or amendments to a zoning map are approved by and binding upon both the Planning Commission and the Board of County Commissioners.

The current approach of reviewing applications for map amendments is problematic as it lacks specific review criteria and certainty for a developer, neighboring property owners, or the county to anticipate how properties may change over time.

¹⁶ *San Miguel County, Colorado: Community Wildfire Protection Plan* (2009).

¹⁷ "Any area where man-made improvements are built close to, or within, natural terrain and flammable vegetation, and where high potential for wildland fire exists." Colorado State Forest Service, *Colorado's Wildland- Urban Interface* (2018).

V. Planning for Growth

As mentioned above, in 2016 the county adopted its foundational planning policy document, the Comprehensive Plan, which sets forth policies for long-range growth management. The plan establishes goals, objectives and policies to guide future growth. The Comprehensive Plan encourages the county to “develop and maintain a land use planning system which encourages a high quality of living environment with a mix of compatible land uses; and coordinates managed growth with other Plan Elements, promoting public health, safety and welfare.¹⁸” By focusing higher intensity of uses to areas that are established development locations and have adequate infrastructure, dispersed growth and its associated impacts can be reduced.

Roads, which have become increasingly burdened in more rural areas of the county, are a good example of how unplanned growth can have a negative impact on the welfare of our community. Historically, the agricultural areas of the county were accessed by farm-to-market road systems. As a result of dispersed growth, those roads are now facing increased pressures from higher density rural subdivisions or commercial and industrial developments that generate daily car trips more typical of suburban/urban locations. Because the county lacks more traditional regulatory tools, development proposals are reviewed through the lens of policy documents (i.e. district plans) and sometimes ill-defined regulations that require a developer to create a proposal that is “compatible” with surrounding land uses and the needs of the community, while not addressing infrastructure adequacy. If a proposal is not sufficiently “compatible”, to receive approval by the Planning Commission or Board, the developer must undertake additional measures to mitigate the incompatible aspects of the project. This sometimes haphazard approach to growth has led to neighborhood conflicts, while also negatively impacting infrastructure and the county’s ability to deliver other services (i.e. law enforcement patrols) in a fiscally responsible manner.

A. Financial Considerations of Growth

To remain fiscally responsible, the County has worked to understand the impacts and costs incurred as a result of different types of development in the unincorporated areas of La Plata County. It is well known that the current land use system allows dispersed development and fails to account for financial impacts to the county and its taxpayers. A 2017 report by, Tischler/Bise¹⁹ concludes:

“[The] current county land use policy allows virtually the same densities 20 miles away from the City of Durango as it does one mile away. The pockets of population in the rural areas of the county have significantly higher negative fiscal impact on the county.”

Highlighting this report finding, the cost of dispersed development can be calculated to confirm that expenses incurred due to a lack of appropriate regulatory tools will continue to burden the county’s financial resources. For the complete Tischler/Bise report see *Exhibit B* to this memo.

¹⁸ *La Plata County Comprehensive Plan: Land Use*, at 1.10 (2016).

¹⁹ Tischler/Bise, *Cost of Land Use Fiscal Impact Analysis La Plata County, Colorado* (2017).

The county maintains approximately 643 miles of roads, 221.9 miles of which are paved. Recognizing that roadways are a significant asset and maintenance is a major service of the county, La Plata County contracted with Infrastructure Management Services (IMS) to conduct a Pavement Condition Index Study; *Exhibit C*. The study was developed to analyze existing pavement conditions, determine system deficiencies, and recommend annual budget levels to maintain existing quality. La Plata County scored an average of 66 out of 100, which “is slightly (1%) above average of other agencies recently surveyed²⁰.”

The portion of the currently adopted budget for paved road maintenance is approximately \$1 million. The projected minimum budget necessary to maintain existing conditions is \$3.8 million annually; the recommended budget is \$4.6 million annually. With the fourth-lowest mill levy rate in the state combined with continued decline in property tax revenue and growing demand for services, it is becoming increasingly difficult for La Plata County to remain fiscally sustainable.

VI. Recommendation

Based on review of sample counties, and more than a century of nationally utilized best practices, staff believes it is in the best interest of the general health, safety, and welfare of county to pursue zoning more broadly in La Plata County. Staff offers the following policy considerations:

Policy consideration 1 – Should the county develop Euclidian zoning districts specific to La Plata County’s needs?

Staff recommends the county develop zoning districts that reflect the unique and diverse characteristics of our community. The districts should be developed to reasonably stimulate economic diversity, maintain existing neighborhoods and compatible uses, and promote our agricultural history.

Policy consideration 2 – Should the county develop a zoning map based on infrastructure and supporting existing compatible uses?

Staff recommends the county utilize GIS tools, data, and information to begin developing maps designating zoning districts based on opportunities and constraints. The factors used for mapping should include, but not be limited to: existing infrastructure capacity (e.g., roads, water availability, electricity and other utilities, sewer), existing land uses and intensities, and physical attributes of properties.

Policy consideration 3 – Should the county consider cost of service delivery to the county (i.e., taxpayer) when developing a zoning map?

Staff recommends the county consider long-term fiscal sustainability when determining appropriate locations for certain types of uses. Staff believes that it would be in the best

²⁰ La Plata County, CO: Pavement Management Analysis Report, at 21 (2018).

interest of county residents to ensure that new development doesn't create an unmitigated financial burden on county services or its citizens.

Policy consideration 4 – Should the county expand Euclidian zoning to areas of the county where it currently does not exist?

If fiscal sustainability and economic predictability for where and how future growth occurs are priorities, staff recommends the BOCC expand Euclidian zoning to areas where it currently does not exist. Euclidian zoning will create greater certainty for property owners of the types and intensity of uses which may be allowed within a specific zoning district. Additionally, it will ensure that the minimum necessary infrastructure is available to support the intensity of development where it's proposed.

Policy consideration 5 – Should the County expand Euclidian zoning to the entire county?

Staff recommends the BOCC direct staff to develop (and map) proposed zoning districts for La Plata County before making this decision. Without knowing the details of the uses within each of zoning districts, it would be premature to potentially deprive specific areas of opportunities that may be afforded with Euclidean zoning districts. Zoning districts developed specifically for La Plata County will likely provide property owners with expanded uses and intensities beyond those that currently exist.

Policy Consideration 6 – If the county pursues zoning beyond the current area (Animas Valley), should the existing zoning districts be adjusted to align with the new districts?

Staff recommends the zoning districts be aligned to the greatest extent possible. Staff has observed conflicting points of view on this issue from property owners in the Animas Valley (Valley) and therefore believes that a public process should be used with residents of the Valley to align newly created districts with the established districts. If alignment cannot reasonably be reached, then it is staff's recommendation that the existing zoning districts remain unchanged and be incorporated as a subdistrict.

Policy consideration 7 – Should the county revise the existing criteria for rezoning to increase clarity and predictability?

Staff recommends the county develop a set of clear criteria to be used when considering rezoning based on review of the sample counties.

Exhibits:

Exhibit A – Zoning Map Creation: McHargian Model for analyzing opportunities and constraints impacting development suitability (2018)

Exhibit B - Cost of Land Use Fiscal Impact Analysis La Plata County, Colorado (2017)

Exhibit C – La Plata County, CO Pavement Management Analysis Report (2018)

APPENDIX G

Exerpts from the Federal Land Policy Management Act

TITLE II

LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

Sec. 201. [43 U.S.C. 1711] (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

LAND USE PLANNING

Sec. 202. [43 U.S.C. 1712] (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest

System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approval tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the

lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l-4 et seq. note], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or

more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be

TITLE VII

EFFECT ON EXISTING RIGHTS; REPEAL OF EXISTING LAWS; SEVERABILITY

EFFECT ON EXISTING RIGHTS

Sec. 701. [43 U.S.C. 1701 note] (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact; or

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the