

Delta County, Colorado

Strategic Outline

(Proposed Land Use and Subdivision Strategy
to Implement the 2018 Comprehensive Plan,
Support Agricultural Operations, and Manage
Changes in Community Character)

Respectfully submitted
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Todd Messenger
Fairfield and Woods, P.C.
1801 California St., Ste. 2600
Denver, CO 80202
www.fwlaw.com

in consultation with

Gabe Preston
RPI Consulting, LLC
1911 East Main Ave., Ste. 224
Durango, CO 81301
www.rpiconsulting.com



View along 3700 Road in unincorporated Delta County.

Photo Credit: maps.google.com

Introduction

Colorado law has long required County Planning Commissions to develop a “master plan” for the physical development of their County’s unincorporated territory. The master plan is a document that provides policy direction, but in most cases it does not (and should not) set out specific regulations. Ideally, the County master plan should be coordinated with the master plans that are adopted by municipalities within the county.

In May 2018, Delta County adopted an updated Master Plan, replacing a 21-year old plan that had become largely obsolete. Like the plan that it replaced, the new plan is an advisory document. It does not directly regulate how property may be used or developed. It does not include enforceable regulations. Consequently, to implement the new Master Plan, the County will have to ensure that its rules and regulations about how property is used and developed will help to advance (or at least not frustrate) the plan’s goals.

That is why the Board of County Commissioners is taking the critical next step of evaluating and updating the County’s land use regulations. Ultimately, the regulations will be applied to the 42 percent of the County that is privately owned (the County does not have jurisdiction to regulate federal or state land) and not located within a municipality.

Guiding Principles

The County Commission is committed to updating the land development regulations in order to accomplish the following:

- Create consistency between the vision and goals in the Master Plan and the rules that are set out in the land use regulations.
- Ensure due process with a simple, clear, fair, streamlined, and predictable development review process and standards for property owners.
- Provide clarity and assurances for residents and property owners about how land around them could develop.
- Support decision making that better responds to unique infrastructure and needs around the County, rather than “one-size-fits-all.”
- Fosters more coordination between the County and municipalities with respect to accomplishing shared goals.

As to the first project goal, the vision of the Master Plan includes six over-arching objectives:

- Protect agricultural lands and operations, and support agricultural innovation.
- Work with agencies and stakeholders to protect the quality and quantity of water supply and the integrity of distribution systems to the extent allowed by law.
- Grow and diversify the economy of the County with appropriately sited business and industrial growth.
- Reform the land use regulations to ensure that they are fair, predictable, streamlined, defensible, and easily understood.
- Provide thoughtfully planned and coordinated infrastructure that meets the needs of the community.
- Develop the energy economy while protecting clear air, clean water, and community health and safety.

The five project goals and the six key goals that make up the County’s vision will operate together to frame the land development regulations project. Ultimately (with the exception of the provisions that are simply required by Colorado law), every requirement of the proposed new land development regulations will be drafted (or updated) with these goals in mind.

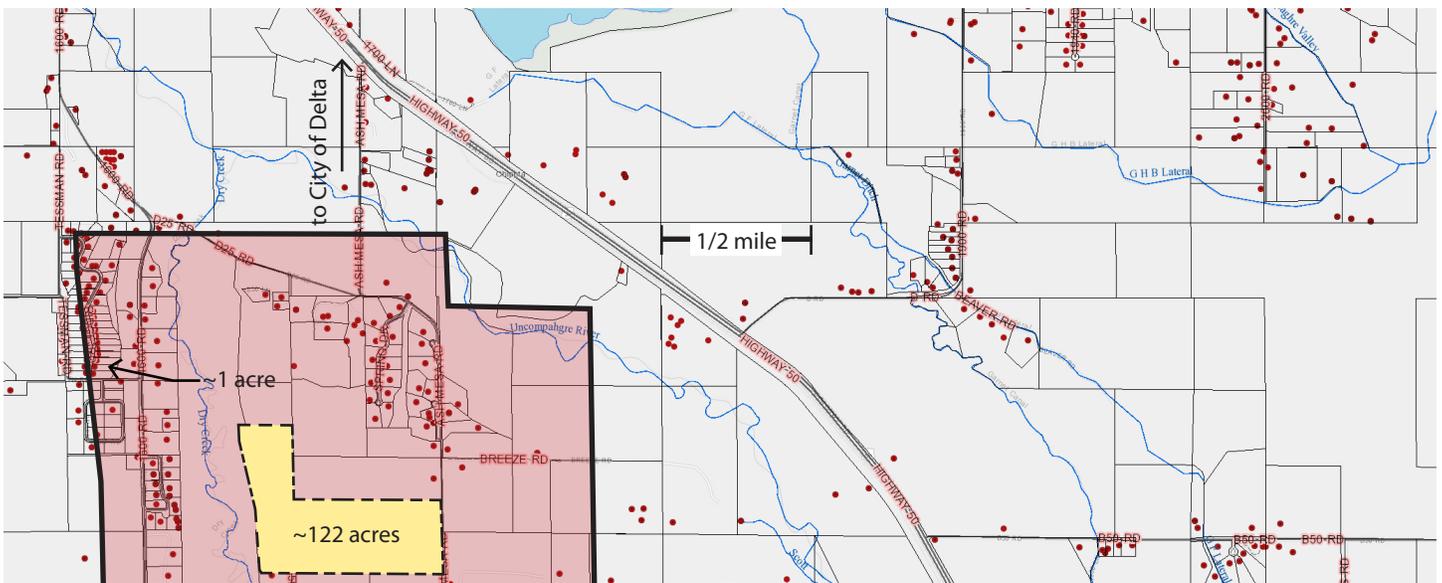
General Assessment

Delta County currently regulates land use and development using “subdivision regulations” and “specific development regulations” (Delta County Regulation for Specific Developments). Updates to both sets of regulations are recommended in order to implement the Master Plan (note that updates to the oil and gas sections of the specific development regulations are being considered in parallel to this land use regulations update process, so they are not addressed in this Strategic Outline). In their current form, both sets of regulations include provisions that may significantly frustrate the County’s goals.

The Existing Subdivision Regulations

The County’s subdivision regulations set out the requirements for dividing land into multiple lots for sale or development. Many aspects of the subdivision regulations are outside of the County’s control (they are established by state law), but critical elements with respect to Master Plan implementation are within the County’s control. Among other things, these critical elements include lot area (development density), lot width, and subdivision infrastructure standards.

Historically, the subdivision regulations that are currently in effect have offered some protection to the rural landscape. They did so by slowing the fragmentation of lots in the rural areas of the County in two ways. First, for land that is more than 1/2 mile from a municipal boundary, the density of new subdivisions is limited to 15 acres per lot or “the average density of all parcels within 1/2 mile of the borders of the parcel that is proposed to be subdivided,” with parcels that are larger than 35 acres counted as 35 acres. Second, once land was subdivided, it could not be immediately re-subdivided (which, to some degree, prevents over-use of the average density provision on a single property).



The map above illustrates how, over time, the current subdivision regulations will allow fragmentation of large agricultural parcels in the rural areas of the County to accelerate, as the average lot area in the unincorporated County decreases and clusters of small lots disproportionately influence the future density of large land areas around them.

Base Map: Delta County GIS

The key protections that were once offered by the current subdivision regulations are not sustainable due to the way they were set up. Specifically, the subdivision regulations do not effectively address the cumulative impacts of subdivision over the long term. Consequently, at present (and going forward), the number and pattern of small lots in relatively remote areas of the unincorporated County allows for an increasing pace of subdivision of large properties into relatively small-lot residential neighborhoods.

The County currently has standards that are designed to protect agricultural operations (*e.g.*, fencing requirements, domestic animal controls, weed control, irrigation ditch protection, clustering, and buffer zones) when new residential development occurs next door. However, replacing the County’s current approach to residential density with a more geographically-based approach would offer better protection for agricultural operations. The new approach would offer more predictability to both the landowner and the County (as it would not depend upon whether other subdivisions have already occurred within a given radius), and would protect landowners’ private property rights by ensuring that they could sell all or part of their land for residential development.

Subdivision Reform Concepts

Delta County currently regulates land use County-wide, but does not have a zoning code that divides the County up into multiple districts in which different use and development standards apply. The recommendations for subdivision reform presented in the prior section of this Strategic Outline are related to the recommendations for zoning reform that are presented on the following pages. This Strategic Outline recommends that development density and lot area standards be removed from the subdivision regulations and put into a new set of land use / zoning regulations, in which the allowable minimum lot areas and development densities for each area of the County would be established. This approach would provide desirable predictability, and directly address the individual contexts that exist in different areas of the unincorporated County.

Other aspects of the subdivision regulations (including the review procedure) should be updated to ensure that they conform to current statutory requirements and best practices. During this process, standards that could benefit from additional specificity will be clarified, and the regulations will be re-organized to make them easier to navigate, read, understand, and apply.

The Existing Specific Development Regulations

Delta County's current "specific development regulations" ("SDRs") allow the following land uses County-wide without a permit:

- Any land use that was existing at the time the regulations were adopted;
- Agriculture (except concentrated animal feeding operations);
- Residential (three units or fewer per building; however, subdivision regulations may still apply);
- Home occupations and cottage industries that meet certain requirements; and
- Oil and gas operations that do not require filing of an Application for Permit to Drill with the Colorado Oil and Gas Conservation Commission.

All other types of development (and expansions of such development) in the unincorporated County require review and approval by the Board of County Commissioners, after recommendation by the Planning Commission. Most new development also requires a development agreement in which conditions of approval (among other things) are memorialized. The Board and the Commission review the proposed development against a set of performance standards.

In general, the performance standards offer little in the way of specificity. The result is an often unpredictable development review process. Among the most problematic of the performance standards (from an administrative standpoint) is the one that requires compatibility with adjacent land uses. Compatibility is not well-defined in the regulations. Moreover, the regulations state that it may be evaluated "using comments from surrounding property owners." That means that a landowner's private property rights could be subjected to what is essentially a referendum instead of an evaluation against objective standards.

Among the other topics that are addressed during the performance standards review are a number of items that also provide fodder for disagreement, distrust, and litigation due to poor definition:

- Consistency with the Master Plan (which, as one court observed, is not really a standard due to sometimes conflicting policy objectives articulated in the Master Plan);
- Provision of on-site parking (there are no specific parking standards in the regulations);
- Protection of agricultural operations (the standard is that "development shall not interfere with the normal operation of existing agricultural operations . . ."); and
- Protection of scenic views of ridgelines (outside of the West Elk Scenic Byway Corridor Management Plan area, the standard is simply "development . . . on ridgelines with a direct effect on the skyline and / or blockage of view sheds from adjoining properties shall be mitigated").

The SDRs include appendices that provide additional standards for oil and gas operations, residential subdivision within certain overlay zones, and manufactured home parks. These standards are more specific than the ones that apply to other uses that are not exempt from the SDRs. Yet while the standards are more specific, they would still benefit from reform. The oil and gas standards are the subject of an ongoing review that is parallel to the land development code project. The manufactured home park regulations will be carefully reviewed during the land development code project, in order to deal with the delicate intersection they have with farmworker housing and recreational vehicle camps, and to ensure that reasonable opportunities for decent, affordable, and safe housing continue to exist in the unincorporated County.

Using Zoning to Address Land Use and Agricultural Land Fragmentation

The County's subdivision regulations and specific development regulations do not appear to be well suited to protect the agricultural economy of the County over the long-term. As the new Master Plan suggests, different areas of the County have different characteristics and functions. Zoning is a tool that allows the County to apply different land use and density standards in different places. Put simply, zoning will allow the County to better address new development in its context.

For example, zoning allows the County to, depending upon the location of property:

- Identify locations where certain often-controversial agricultural land uses (*e.g.*, feedlots, quarries, and manufactured home parks) will be allowed, allowable, or not allowed—reducing the need for potentially risky and uncertain development review procedures and lowering the potential for litigation;
- Prevent conflicting uses from interfering with productive agricultural fields, pastures, or orchards, using regulatory strategies that are appropriate to the context and not over-reaching;
- Encourage landowners to annex into the municipality if they propose “urban” level development or “urban” land uses.

As a starting point, this Strategic Outline suggests that five zoning districts would be useful to meet the land use challenges within the County. Within each zoning district would be a set of allowable land uses (which would be approved either “as-of-right”, in certain limited conditions, or after review by the Board of County Commissioners to ensure an appropriate fit to their context), and a set of standards for development density, minimum lot area, and options for clustering smaller lots as a way to protect agricultural or natural resource lands, or in certain cases, in anticipation of future annexation into a municipality.

Just over half of the proposed new zoning districts are focused on agriculture. It is anticipated that these zoning districts would cover most of the private land in the unincorporated County. The proposed agricultural zoning districts are:

- **A-35.** A-35 is a district that focuses on agricultural uses on larger parcels (generally, 35 acres or more). It allows for the broadest range of agricultural and supporting uses, with limited requirements for development review. While existing small lots could be considered “conforming” (a step up from “grandfathered” in terms of private property rights) to the new requirements by virtue of their existence prior to the adoption of the new regulations, the A-35 zoning district would have a minimum lot area of 35 acres (except where the clustered development provisions of the Colorado statutes allow for smaller lots), and therefore would not allow for much further fragmentation into small lots.
- **A-20.** A-20 is a district that also focuses on agricultural uses. It would be applied in areas where the existing uses are at a smaller scale than in the A-35 zoning district. With limited exceptions, new lots would have to be at least 20 acres in area. Like the A-35 zoning district, existing small lots would be considered “conforming” to the code's requirements by virtue of their existence prior to the adoption of the new regulations. Also like the A-35 zoning district, the A-20 zoning district would also not allow for much further fragmentation into small lots.
- **A-5.** A-5 is a district that focuses on small-scale agricultural and large-lot residential uses. It would be applied in areas where the existing uses are at a smaller scale than the A-20 zoning district, including where rural residential “hobby farms” are interspersed with small-scale commercial farms, orchards, vineyards, and the like. In the A-5 zoning district, with some exceptions, new lots would have to be at least five acres in area.

The other proposed new zoning districts are: rural industrial (**RI**), and urban growth area (**UGA**). The RI zoning district provides an area for rural industries that support farming and resource-based industries, or that otherwise benefit from locating outside of municipal boundaries (*e.g.*, minerals processing, tanneries, oil and gas services, etc.). The UGA zoning district provides a way for the County to work with its municipalities to achieve ordered growth. Within the UGA, incentives would be provided for property owners to annex into the affected municipality, or to execute and record annexation agreements if annexation is not legally possible at the time of development approval.



View along Hamilton Road in unincorporated Delta County.

Photo Credit: maps.google.com

Conceptual Land Use Tables

The conceptual land use table shows how land use in the proposed five zoning districts could be addressed by a new code. The table shows a proposed structure, but is by no means “final” in terms of its content. In the table, the letter “E” indicates that the use would be exempt from the application of zoning regulations (access permits, well permits, septic permits, and the like would still apply as they currently do); “P” indicates that the use would be allowed in the district “as-of-right”, but that a permit would be required; “L” indicates that the use would be allowed in the district subject to certain standards that are specific to the listed use in the identified district; and “C” indicates that the use would be allowed after “conditional use review”, which would include use-specific standards and more general “performance standards” to ensure that the use will appropriately fit into its proposed context. Uses marked “P” and “L” would be approved by County Staff if they comply with the land use regulations. Uses marked “C” would be approved by the Board of County Commissioners after a recommendation by the Planning Commission, not unlike the current SDR process.

The idea behind the conceptual land use tables presented below is to expand economic opportunity for County landowners and residents by maintaining most of the current exemptions from development review and by simplifying the approval process for the majority of land uses that are currently subject to the County’s Specific Development Regulations (“SDRs”). To that end, as to the land uses that are currently exempt from the SDRs, there are only a few proposed changes. See Table 1, below.

First, hemp cultivation is not currently addressed specifically in the County’s codes. It is called out in the proposed code due to State (and soon, Federal) licensing programs. The idea is to use the Land Use Code to identify the hemp operations and ensure that they are properly licensed. Since hemp and marijuana are visually indistinguishable, this minor limitation on the use would be potentially helpful for law enforcement.

Second, some limited review is proposed for adding homes to existing lots that are not being subdivided. These units may be accessory to the principal home, they may be additional homes (e.g., a family compound), or they may be farmworker housing. The idea is not to prohibit such development, but to ensure that it is not used as an end-run around the subdivision regulations, and to ensure that it does not interfere with adjoining farms, orchards, or ranches. Also, the current proposal is to not allow new single-family homes to be developed in those limited areas of the County that are zoned for industrial use.

Third, like the current SDRs, the proposed new land use code will respect existing operations and allow them to continue as “conforming” uses. Modest expansions of these uses will also be allowed (as they are now), but major expansions would be subject to whatever review procedures (if any) are applied to the existing use within the zoning district where the use is located.

TABLE 1: Conceptual Land Use Table (Land Uses that are Currently Exempt from Specific Development Regulations)					
Land Use	Zoning District				
	A-35	A-20	A-5	RI	UGA
Agricultural and Agribusiness Uses, Operations, and Activities					
Farm, Orchard, Ranch, or Beekeeping	E	E	E	E	E
Fish Hatchery (not “CAAP”)	E	E	E	E	E
Hemp Cultivation*	P	P	P	P	—
Rural Residential					
Single-Family Detached Residence	E	E	E	—	E
Additional Units on Lot with Existing Residence	P	P	P	P	P
Agricultural Workforce Housing	P	P	P	P	P

Home occupations, home businesses, and cottage industries would be exempt from zoning permits under the new Land Use Code. However, they will probably not be included in the land use tables. That is because home occupations, home businesses, and cottage industries are activities that occur within a residence, and the residence is the “principal use” of the land. As such, all residents of the unincorporated County would have the opportunity to operate a home occupation, home business, or cottage industry.

* currently subject to State licensing; Federal regulations expected soon

** currently called “Resource Preservation Subdivisions”



Certain areas of the County have good access to high-capacity roads and railroads, and are well-suited to industrial, manufacturing, and heavy retail (outdoor displays / sales of large products). View along US-50 in unincorporated Delta County.

Photo Credit: maps.google.com

As to the land uses that are currently subject to the SDRs, there are many proposed changes. All of them provide greater timeliness and certainty in the development approval process. That is not to say that all of the uses would be approved anywhere in the County (there are some zoning districts that do not allow for certain land uses). But it is to say that whether or not a particular use will be allowed, and under what conditions the use will be allowed, will be set out in Land Use Code, rather established by public hearings on each individual case. Existing land uses would be treated comparably to how they are treated now (they are allowed to continue and, to a limited extent, expand, without further review).

Table 2, below, illustrates the concept. For each “L” in the table (either currently, or as the table is further refined), the team will work to identify standards that, based on the County’s experience or based on the experience of similar places, will help to mitigate the impacts of the use. For each “C” in the table (also either currently or as the table is further refined), the team will work to identify comparable standards, but also a more general set of qualitative standards to be applied by appointed and elected officials after public hearings. In areas marked “—” (also either currently or as the table is further refined), the use would simply not be allowed.

TABLE 2: Conceptual Land Use Table (Land Uses that are Currently Subject to Specific Development Regulations)					
Land Use	Zoning District				
	A-35	A-20	A-5	RI	UGA
Intensive Agriculture (see companion document that provides definitions)					
Feedlot (not “CAFO” or “IAFO”)*	E	E	P	P	—
Intense Animal Feeding Operation (“IAFO”)	P	L	L	L	—
Concentrated Animal Feeding Operations (Large “CAFO”)	L	L	—	—	—
Concentrated Aquatic Animal Production (“CAAP”)	L	L	L	—	—
Agricultural Support and Rural Industries					
Farm Supply / Feed and Seed	L	L	L	E	E
Automobile Fueling or Service Station	—	—	—	E	E
Kennel	E	E	P	E	L
Rural Light Industry with Retail	P	P	P	P	P
Rural Light Industry without Retail	E	E	E	E	E
Rural Medium Industry (e.g., hemp processing, slaughterhouse, meat processing, sawmill)	L	L	L	L	L
Rural Heavy Industry (e.g., explosives, rock crushing, tannery)	L	L	C	—	—
Veterinary Hospital or Clinic	E	E	E	E	E
Oil and Gas Support Services	—	—	—	E	—
Rural Residential					
Manufactured Home Park	C	C	C	—	L
Multifamily (4+ dwelling units)	L	L	L	L	L

* currently called “confined animal operation”

Conceptual Land Use Table (cont.)

TABLE 2: Conceptual Land Use Table (Land Uses that are Currently Subject to Specific Development Regulations)					
Land Use	Zoning District				
	A-35	A-20	A-5	RI	UGA
Community					
Place of Assembly (e.g., churches, grange halls, etc.)	E	E	E	—	E
Schools and Child Care Centers	L	L	P	—	P
Cemetery	P	P	P	P	P
Commercial					
Retail Sales and Services (also includes banks, real estate, etc.)	L	L	L	P	P
Office	L	L	L	E	E
Restaurant	P	P	P	P	P
Sexually-Oriented Business	—	—	—	L	—
Rural Recreation and Hospitality					
Bed and Breakfast / Inn / Guest Ranch	E	E	E	—	E
Equestrian Facilities (training, arenas, horse boarding, etc.)	E	E	E	E	E
Shooting Range	C	C	C	C	—
Racetrack	C	C	C	P	—
Paintball Course	E	E	E	—	—
Hunting, Fishing, or Watersports Club	E	E	E	—	P
Campground (includes RV campgrounds)	P	P	L	—	L
Parks, Passive Recreation, Open Space, or Golf Course	E	E	E	E	E
Theater	—	P	P	—	E
Outdoor Theater	C	P	P	—	C
Resort or Conference Center Hotel	C	—	—	L	L
Utilities, Communications, Mining, Energy, Transportation, and Disposal					
Water or Wastewater Treatment Plant	P	P	P	P	P
Wireless Communications Facility	L	L	L	L	L
Renewable Energy Facility	L	L	L	L	L
Truck Stop / Truck Wash	—	—	—	P	P
Airport or Airstrip	L	—	—	L	—
Salvage Yard	C	C	C	C	C
Minerals Extraction / Quarry	C	C	C	C	C
Oil and Gas Extraction	TBD (process is under separate evaluation)				
Landfill*	C	—	—	—	—
Hazardous Waste Landfill*	C	—	—	—	—

* also requires certificate of designation under state law

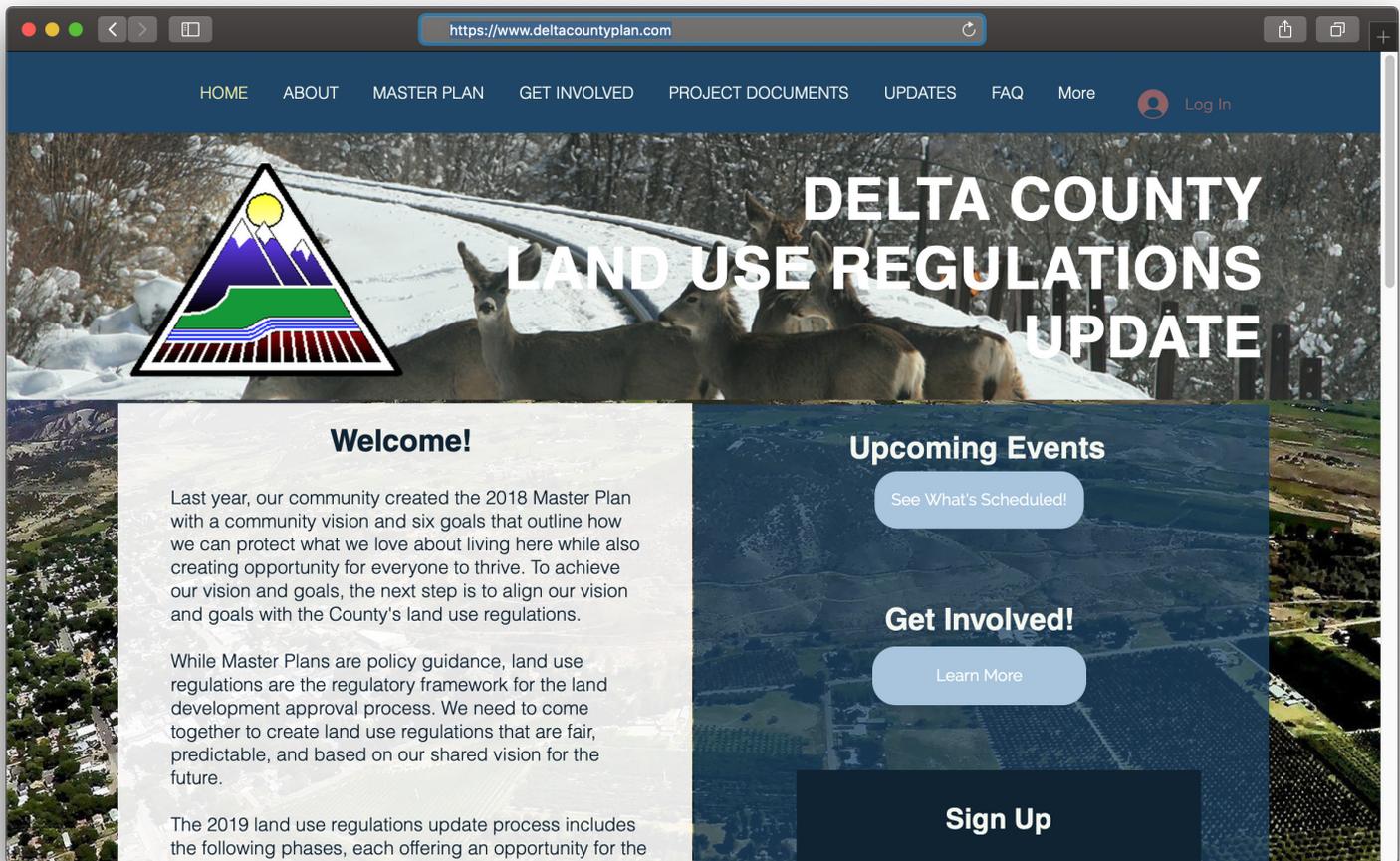


Produce stands (a retail use) support agricultural uses. View along CO-92 in unincorporated Delta County.

Photo Credit: maps.google.com

Additional Information and Resources:

For Additional Information, visit the project web site at <https://www.deltacountyplan.com>



You can also follow the project online on:

- YouTube (<https://www.youtube.com/channel/UCCLR-fL-A-FyiSCmWfG43Zw>)
- Facebook (<https://www.facebook.com/DeltaCountyCO/>)
- Twitter (<https://twitter.com/DeltaCountyCO>)

Or contact:

Elyse Ackerman-Casselberry
Community & Economic Development Director
Delta County
501 Palmer Street
Delta, CO
(970) 874-2105
ecasselberry@deltacounty.com