RECOMMENDATIONS FOR 2000

STUDY OF DEVELOPMENT AND GROWTH IN COLORADO

Report to the
Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

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To Members of the Sixty-second General Assembly:

Submitted herewith is the final report of the Study of Development and Growth in Colorado. The interim committee was created pursuant to Senate Joint Resolution 99-046 to study, review, and evaluate the roles and relationships of state government, local governments, and the citizens of Colorado in planning for and accommodating urban development and growth in the state, as such development and growth impact the uses of land.

At its meeting on November 15, 1999, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2000 session was approved.

Respectfully submitted,

/s/ Senator Ray Powers
Chairman
Legislative Council

RP/GJ/pw

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STUDY OF DEVELOPMENT AND GROWTH IN COLORADO

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EXECUTIVE SUMMARY

Committee Charge

House Joint Resolution 99-046 created an eleven-member legislative study committee to study, review and evaluate planning for and accommodation of urban development and growth in Colorado.

Committee Activities

The legislative study committee met six times during the 1999 interim and heard testimony which included the following subject areas:

- Colorado population growth rates and economic trends;
- local government cooperation in planning for growth;
- local control of land use;
- local government comprehensive plans;
- local government competition for sales tax revenues and regional sales tax revenue sharing;
- "Smart Growth" planning and urban growth boundaries;
- state growth management legislation;
- loss of open space;
- environmental protection and loss of wildlife habitat;
- growth impacts on school district capital costs;
- protection of farm land and conservation easements; and
- the impact of federal estate taxes on agriculture.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends nine bills and one resolution for consideration at the 2000 legislative session.

Bill A — Rural Legacy Grants Program. Bill A proposes a referendum to the voters that would create the State Rural Legacy Trust Fund. The trust fund would be used to supplement existing state, county and local land conservation programs as a means of preserving Colorado's natural resources from the effects of growth and development.

Bill B — Land Use Factors for Government Bodies. Bill B expresses the will of the General Assembly that county and municipal governments coordinate their planning and zoning regulations. The bill encourages county and municipal regulation to provide consistent treatment of and timely reviews and decisions on land use requests. It encourages development within existing municipal boundaries, with special consideration given to projects that create low to moderate income housing.

Bill C — County and Municipal Development Rights. This bill authorizes counties and municipalities to acquire development rights to property within their boundaries in order to preserve open space or agricultural land for public use and enjoyment. Municipalities would be authorized to acquire development rights for land that is outside of their municipal boundaries if all counties in which the land is located agree to the acquisition.

Bill D — Tax Credit for Estate Tax on Agricultural Assets. Bill D would give an income tax credit for agricultural assets. The credit could be claimed by the resident estate or by a beneficiary. A beneficiary claim may not exceed a credit of 4.75 percent of the total taxable income passed through the estate to the beneficiary.

Bill E — Master Plan Criteria. Bill E updates the current statute regarding local governmental master plans. The bill establishes criteria that may be included in a master plan and requires local planning commissions to hold a public hearing prior to adopting a master plan.

Bill F — Local Government Master Plans. This bill requires the Division of Planning in the Department of Local Affairs to provide computer access to county, regional, and municipal master plans. The bill also requires county, regional and municipal planning commissions to use uniform terminology in their master plans and to make the master plans available to the Division of Planning.

Bill G — Resolving Local Land Use Disputes. Bill G requires the Division of Planning in the Department of Local Affairs to maintain a list of individuals and organizations that are available to assist in resolving land use disputes between local governments. The bill provides a method for mediation and arbitration of land use disputes. The Division is given the authority to notify state agencies that a local government has failed to enter into arbitration or mediation. This notification may result in the loss of services, funding or grants to a local government.

Bill H — Tax Incentives for Telecommuting. Bill H allows Colorado employers an income tax credit for allowing employees to telecommute. The amount of the credit is proportional to the miles of commuting avoided by telecommuting employees. The credits may be carried forward for up to three years, and apply to tax years beginning January 1, 2000.

Bill I — Income Tax Credit for Open Space. This bill creates an income tax credit for taxpayers who preserve their land as open space pursuant to an open space management plan. In order to claim the credit, a taxpayer must submit a certificate to the Colorado Cooperative Extension Service certifying compliance with an open space management plan.

Resolution A — Reduce Vacant Land Valuation for Assessment. Resolution A submits to Colorado voters a proposed constitutional amendment which would require vacant land to be assessed for property tax purposes at the same percentage of actual value as residential land. This requirement applies to property tax years beginning on January 1, 2001.

Statutory Authority and Responsibilities

House Joint Resolution 99-046 created an eleven-member legislative study committee to study, review and evaluate planning for and accommodation of urban development and growth in Colorado. The resolution stated that better coordination of development and growth throughout the state may enhance the health, welfare, safety, and quality of life of Colorado residents. The resolution further pointed out that such coordination will result in: more efficient use of taxpayer money for the construction and maintenance of utilities, schools, and public facilities, improved efficiencies in supplying public services, reduction in sprawl, preservation of agricultural lands in production, and environmental protection.

The legislative study committee was directed to examine the roles and relationships between state government, local governments and Colorado citizens in planning for development and growth in the state, and to develop recommendations for legislative changes necessary to improve state and local governments' ability to plan for growth.

COMMITTEE ACTIVITIES

The committee met six times during the 1999 interim and heard testimony from individuals representing a number of organizations including: the American Planning Association, the Colorado Association of Home Builders, the Colorado Association of Realtors, the Colorado Association of School Boards, the Land Use Coalition, Colorado Counties Incorporated, the Colorado Municipal League, the Denver Regional Council of Governments, the Demography Section of the Colorado Department of Local Affairs, the Chief Economist of the Colorado Legislative Council, Colorado Forum, the Colorado Public Interest Research Group, the Colorado Cattleman's Association, the Colorado Farm Bureau, Clean Water Action, and Colorado Trout Unlimited.

The committee invited commentary from these diverse stakeholders on two basic questions. The first question was whether they perceive problems related to population growth and development in Colorado. The second question was what remedies the organizations propose to address problems associated with growth in the state.

Testimony provided to the committee included the following subject areas:

- Colorado population growth rates and economic trends;
- local government cooperation in planning for growth;
- local control of land use;
- local government comprehensive plans;
- local government competition for sales tax revenues and regional sales tax revenue sharing;
- "Smart Growth" planning and urban growth boundaries;
- state growth management legislation;
- loss of open space;
- environmental protection and loss of wildlife habitat;
- growth impacts on school district capital costs;
- protection of farm land and conservation easements; and
- the impact of federal estate taxes on agriculture.

A number of the major topics addressed by the interim study committee are discussed on subsequent pages.

Colorado Population and Economic Projections

The committee received testimony regarding growth projections and trends in Colorado. Colorado's population is growing at approximately 2.2 percent a year, about twice the national average. It is estimated that in the year 2000 Colorado's population will reach 4.2 million. Much of Colorado's growth can be attributed to inmigration into the state, particularly due to the emergence of high-tech industries on the Front Range. With the competitive advantage that Colorado offers high-tech industries, growth in that sector is expected to continue to outpace the national average. Elsewhere in the state, construction of second homes is resulting in an increased demand for workers and consequently increased populations in and around Colorado's resort areas. In addition, Colorado is becoming a popular state for retirees. Large numbers of retirees from Texas and California are expected to relocate to Colorado. Colorado also has a larger percentage of baby boomers than do most states.

Colorado's typical economic cycle of boom and bust is changing. The concentration of high-tech industries in Colorado is transforming Colorado into more of an international economy and making it less susceptible to the boom and bust cycles that typically accompany economies dependent upon natural resources and agriculture.

Colorado's economy is expected to continue to grow, but at a slower rate than was experienced in the early and mid 1990s. In the early 1990s, it was relatively easy for companies to recruit workers in Colorado. The cost of living was low and the quality of living was high. In the late 1990s however, the increased cost of non-residential office space, non-residential construction, and residential housing has contributed to a slowing of growth. The high cost of leasing or building office space is discouraging or preventing some industries from re-locating to Colorado. Finally, the increased cost of living that has emerged in Colorado has made it more difficult for companies to recruit workers to move to Colorado.

State Government Approaches to Growth Management

The committee heard testimony regarding various programs in other states designed to address problems resulting from growth and development. Six states were highlighted as having model growth management and planning statutes. The six states are: Hawaii, Oregon, Washington, Florida, Maryland, and Tennessee. Although each state has used a slightly different approach with diverse elements to their plans, each state has experienced success. Oregon is considered by many to have the most advanced state-administered land-use planning system. Oregon's plan incorporates statewide planning goals, local comprehensive plans, rezoning for high-density residential land use, and urban growth boundaries. Comprehensive plans are reviewed by the Land Conservation and Development Commission which approves local government plans once it has been determined that the plan satisfies the state's requirements and goals. The Commission has the power to suspend local authority to issue building permits or approve land subdivisions.

Maryland's statewide land-use planning system utilizes local comprehensive plans which must contain certain prescribed elements. The plans must also incorporate a series of state "vision" statements. Maryland also incorporates "priority funding areas" into its planning as a means of directing new development into areas which meet certain state guidelines. State funding is precluded for growth-related projects that are not located in the priority funding areas.

Similar to Maryland, Washington requires the use of comprehensive plans in its statewide land-use plan. The comprehensive plans must include elements addressing land use, housing, capital facilities, transportation, and utilities. The plans must also designate urban growth areas. There is no state agency or board that approves the comprehensive plans, but county and municipal plans must be consistent with one another. There are three regional growth management hearing boards with the authority to hear petitions alleging non-compliance with the growth management laws. Tennessee, Hawaii, and Florida all have land-use plans that incorporate elements of the land-use mechanisms used by Oregon, Maryland and Washington.

Growth Problems and Proposed Remedies

The committee heard testimony from a total of 41 individuals representing home builders, realtors, local governments, K-12 schools, property rights advocates, agricultural interests, and environmentalists. These persons identified the following problems related to rapid growth and development in Colorado:

- unsightly urban sprawl;
- long and congested commutes;
- high costs of living;
- high housing costs;
- high costs of providing services to accommodate growth for local governments;
- reliance of municipalities on sales taxes and competition for sales tax revenues;
- unintended tax incentives to develop vacant land;
- high impact fees;
- insufficient and decaying infrastructure;
- high capital costs in the K-12 system to accommodate growth;
- wildlife habitat loss;
- degradation of air quality;
- loss of agricultural lands; and
- insufficient growth and economic decline in rural areas.

The committee heard numerous suggested remedies for these problems related to growth and development. The most comprehensive list of remedies was proposed by the group known as Colorado Forum. Colorado Forum is a state-wide organization of business leaders convened to seek sound public policy in Colorado. In 1999, Colorado Forum held a series of meetings with representatives of diverse Colorado organizations interested in growth management. This group included: home builders, municipalities, planners, COPIRG, DRCOG, the Denver Chamber of Commerce, and representatives of various foundations. The objective of the group was to work toward consensus on strategies to manage Colorado's growth and preserve the state's environment. The participants believe that coordinated growth management is urgent in the state, and essential to sustaining the Colorado economy and quality of life. The group's deliberations resulted in a set of positions addressing growth in seven subject areas. These positions are described below.

Colorado cities, towns and counties should be required to develop comprehensive plans. Colorado Forum participants believe that some Colorado communities will need financial support from the state to develop comprehensive plans. They suggested that 20-year plans be adopted through a public process. They also advocated mandatory compliance with comprehensive plans and that the plans be subject to revision annually. Common elements that should be included in comprehensive plans are: transportation, housing, open space, recreation, infrastructure, water, commerce and industry, and public facilities, including education. Plan elements should strive for a balance between new jobs and available housing. Colorado Forum participants believe that building moratoria are appropriate, however, existing property rights should not be harmed. Efficient land use reviews should be encouraged and a presumption of the right to build should exist where building proposals are consistent with comprehensive plans and within designated urban service areas.

Regional cooperation should be encouraged. Regional cooperation among local governments is considered critical to effective growth management by Colorado Forum participants.

Alternative dispute resolution should be established. An administrative appeals process should be created at the state or regional level. The purpose of the process would be to expedite appeals by landowners and citizens regarding local government decisions as well as appeals by local governments in response to comprehensive plans and decisions of neighboring local governments.

Urban service areas should be established. Urban service areas (i.e., designated areas in which municipal services may be provided) should be established by local governments based on their comprehensive plans, community objectives, projected growth, and the ability of the local government to pay for the required infrastructure. Urban service areas should have a minimum density and should be clearly defined. Policies to limit development outside of the urban service areas should be implemented.

Conservation measures should be taken. The transfer of development rights and the purchase of development rights are essential ingredients of effective growth management.

Uses and densities for ex-urban and rural areas. Densities and uses of areas outside of urban service area boundaries should be examined**.** Concern with development of 35-acre lots and consequent loss of open space and agricultural land was expressed.

Clustering requirements, transferable development rights, purchased development rights, limits on minimum lot sizes, and conservation acquisitions should be considered to discourage unwanted sprawl.

Authority to impose impact fees should be strengthened. Statutory authority for the imposition of impact fees by local governments should be strengthened.

In addition to Colorado Forum's recommendations, other testimony provided to the committee generated the following proposed remedies to mitigate growth and development problems:

- local control of development and growth should be maintained;
- redevelopment of urban areas, mixed-use developments, building around mass transit corridors, new development adjacent to existing urban areas, and compact development should be encouraged;
- light rail should be constructed;
- investments should be made in transportation infrastructure;
- the state should coordinate infrastructure development;
- planning laws and annexation laws should be revised and updated;
- moratoria should be placed on new home permits;
- the state should provide incentives to influence growth patterns;
- local government regional sales tax revenue sharing should be implemented;
- predictable, clear development processes should be established;
- a balance in the provision of jobs and housing in communities should be sought;
- open space acquisition should be encouraged;
- farmland protection programs should be established; and
- tax incentives for development in rural areas should be provided.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Bill A — Rural Legacy Grants Program

Bill A proposes a referendum to the voters that would create the State Rural Legacy Trust Fund. The trust fund would be used to supplement existing state, county and local land conservation programs as a means of preserving Colorado's natural resources from the effects of growth and development. The program would be administered through the Department of Local Affairs by a seven-member Rural Legacy Board. The board would consist of the executive directors of the Departments of Agriculture, Natural Resources and Local Affairs, along with four members appointed by the Governor. Board responsibilities include: recommending rules to administer the rural legacy grants program; designating rural legacy areas; adopting and publicizing criteria regarding the designation of rural legacy areas and grant awards; and receiving and expending gifts, grants and bequests upon the Governor's approval. The Trust would be funded from the state surplus in years in which a surplus exists. During such years, the lesser of the actual surplus or $17 million would be placed in the Rural Legacy Trust Fund.

Bill A is assessed as having a conditional fiscal impact. If the referred bill passes, the Department of Local Affairs would require a State Rural Legacy Trust Fund appropriation of 1.5 FTE and $17,000 for FY 2000-01.

Bill B — Land Use Factors for Government Bodies

Bill B expresses the will of the General Assembly that county and municipal governments coordinate their planning and zoning regulations in an effort to eliminate conflicts and to coordinate growth plans. The bill encourages county and municipal regulation to provide consistent treatment and timely reviews and decisions on land use requests. It encourages development within existing municipal boundaries, with special consideration given to projects that create low to moderate income housing. Bill B encourages local governments to seek a balance between jobs created and housing permits issued in their planning processes. Finally, the bill calls for county and local officials to conduct regular reviews of land use statutes in order to eliminate outdated and unnecessary provisions.

Bill B is assessed as having a conditional fiscal impact. The Department of Local Affairs has not estimated the amount of potential cost increases. Local governments which elect to coordinate planning regulations with adjacent communities may incur additional administrative costs.

Bill C — County and Municipal Development Rights

Pursuant to Bill C, counties and municipalities are authorized to acquire development rights to property within their boundaries in order to preserve open space or agricultural land for public use and enjoyment. Municipalities would be authorized to acquire development rights for land that is outside of their municipal boundaries if all counties in which the land is located agree to the acquisition. Development rights may only be acquired if the owner of the land voluntarily sells or transfers the land to the county or municipality. Development rights are perpetual unless the voters of the county or municipality approve the termination of the development rights.

Bill C is assessed as having a conditional local fiscal impact. The impact depends on the extent of local government expenditures to acquire development rights.

Bill D — Tax Credit for Estate Tax on Agricultural Assets

Bill D would give an income tax credit for the total amount of the state estate tax levied on the share of the gross estate that is attributable to agricultural assets. The credit would be available for income tax years commencing on or after January 1, 2002. The credit could be claimed by the resident estate or by a beneficiary. A beneficiary claim may not exceed a credit of 4.75 percent of the total taxable income passed through the estate to the beneficiary. If the amount of the credit exceeds the amount of income tax due, the amount of the credit not used can be carried forward as a tax credit against a subsequent year's income tax returns.

No new spending authority or appropriations would be required to implement Bill D in fiscal year 2000-01. The bill would result in a general fund revenue reduction in FY 2001-02 and later years.

Bill E — Master Plan Criteria

Bill E updates the current statute regarding local governmental master plans. The bill establishes criteria that may be included in a master plan and requires local planning commissions to hold a public hearing prior to adopting a master plan. Local master plans may include: the location of existing and proposed transportation systems; the location of public schools, parks, airports, trails, and other protected areas. Also included may be: the location and extent of public utilities; the location and extent of adequate water supplies; methods for assuring alternate energy sources such as solar or wind; the location and character of community centers, residential neighborhoods and sufficient land for future housing developments; the location of agricultural areas; and the location of steep slopes, geological hazards, endangered species, and wetlands.

Bill E is assessed as having a conditional fiscal impact.

Bill F — Local Government Master Plans

This bill requires the Division of Planning in the Department of Local Affairs to provide computer access to county, regional, and municipal master plans. The Director of the Division is authorized to charge fees to offset the cost of providing access. A fund is established into which the fees will be deposited. The bill also requires county, regional and municipal planning commissions to use uniform terminology in their master plans and to make the master plans available to the Division of Planning.

Bill F is assessed as having a state and local fiscal impact. The bill would require that the Department of Local Affairs receive cash fund spending authority of $10,000. These fees would offset the cost of providing electronic access.

Bill G — Resolving Local Land Use Disputes

Bill G requires the Division of Planning in the Department of Local Affairs to maintain a list of individuals and organizations that are available to assist in resolving land use disputes between local governments. The bill provides a method for mediation and arbitration of land use disputes, establishment of deadlines and procedures, and selection of mediators and arbitrators. If a local government refuses to engage in mediation or arbitration when requested to do so by another local government, the requesting local government may file a notice of such refusal with the Division. The Division is given the authority to notify state agencies that the local government has failed to enter into arbitration or mediation. This notification may result in the loss of services, funding or grants to the refusing local government.

Bill G would require a General Fund appropriation of $19,671 and 0.4 FTE for FY 2000-01.

Bill H — Tax Incentives for Telecommuting

Bill H allows Colorado employers an income tax credit for allowing employees to telecommute (using telecommunications equipment to perform their work at home) instead of traveling to work at the employer's office. The amount of the credit is proportional to the miles of commuting avoided by telecommuting employees. Employers who claim the credit must file a statement of the amount of the credit claimed, miles saved, and supporting documentation. The credit is in addition to any enterprise zone credits claimed by the employer. The credits may be carried forward for up to three years, and apply to tax years beginning January 1, 2000.

Bill H would require no new spending authority or appropriations for FY 2000-01. The Department of Revenue would be required to obtain additional information from certain taxpayers, however, since the number of returns claiming the credit is expected to be small, the costs will be absorbed within existing department resources.

Bill I — Income Tax Credit for Open Space

This bill creates an income tax credit for taxpayers who preserve their land as open space pursuant to an open space management plan. In order to claim the credit, a taxpayer must submit a certificate to the Colorado Cooperative Extension Service (CCES) that certifies compliance with an open space management plan. The Service is required to inspect the parcels of land every two years, and to certify that they are being preserved as open space. The Service is authorized to charge a fee to property owners to cover the costs of inspection. Bill I allows for a maximum aggregate credit that may be claimed by a taxpayer (amount not specified in the proposed bill.) Unused portions of a taxpayer's credit may be carried forward to subsequent tax years. The credit may not be claimed if a conservation easement credit has already been claimed for the same piece of property.

Bill I is assessed as having a fiscal impact. Costs to the Department of Revenue will be absorbed within existing resources. The CCES is authorized to charge fees to cover the costs of inspections. Since the number of parcels subject to inspection is unknown, and the time requirements for field visits has not been identified, the annual cost to CCES has not been estimated.

Resolution A — Reduce Vacant Land Valuation for Assessment

Resolution A submits to Colorado voters a proposed constitutional amendment which would require vacant land to be assessed for property tax purposes at the same percentage of actual value as residential land. This requirement applies to property tax years beginning on January 1, 2001. For the purpose of determining the biennial adjustment to the residential assessment rate, the bill requires the aggregate statewide valuation for assessment that is attributable to vacant land to be calculated using the current ratio of valuation for assessment for vacant land of 29 percent.

Resolution A, if approved by the voters, would reduce statewide property tax collections by $177 million beginning in FY 2001-02.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the study. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver. For a limited period of time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir /lcsstaff/1999/99interim.

Meeting Summaries	Topics Discussed
August 9, 1999	Comments on growth in Colorado; comments on national trends, problems, and solutions regarding state growth and development; planning legislation; comments on the Growth Management Alliance of Colorado.
August 30, 1999	Housing industry perspectives on growth in Colorado; K-12 schools and property rights advocates perspectives.
September 14, 1999	Local government perspectives on growth in Colorado.
October 4, 1999	Comments on state-wide and regional growth trends; economic trends and projections; comments on growth in Colorado.
October 12, 1999	Comments on growth and the "The Mineral Preservation Act"; perspectives on growth in Colorado from the agricultural and water communities.
October 28, 1999	Committee consideration of draft legislation.

Memoranda and Reports

Legislative Council Staff memoranda titles:

Colorado Development and Growth Bills: 1992-1999, Julie George, Research Assistant, July 28, 1999.

Reports provided to the committee:

National Association of Home Builders Statement of Policy on Smart Growth, NAHB Executive Committee, March 15, 1999.

Colorado Preliminary Population Projections, Demography Section, Colorado Division of Local Government, July, 1998.

Proposed Principles of a Colorado Growth Management Strategy: A Consensus Position, Colorado Forum, October, 1999.

The Geography of Colorado's Growth, Dr. Thomas A. Clark, Department of Planning and Design, College of Architecture and Planning, University of Colorado at Denver, August 9, 1999.

Growing Smart Legislative Guidebook, Model Statutes for Planning and the Management of Change, American Planning Association, September, 1998.