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MEMORANDUM

April 4, 2012

TO: Maria Berry and Bruce Etkin

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #87, concerning county control of local development

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To add a legislative declaration declaring that, to effectuate local control of local development, counties should be allowed to impose local subdivision regulations on land divided into parcels of less than 160 acres.
2. To specify that the definition of "subdivision" and "subdivided land" does not apply to any division of land that creates parcels of land comprising 160 acres or more and that is not intended for use by multiple owners.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The proposed initiative should amend section 30-28-101 rather than section 30-29-101.
2. Make sure the section numbers of the initiative are in order. The proposed initiative is missing section 2.
3. It is standard drafting practice to insert a left tab at the beginning of the first line of each new section, subsection, paragraph, or subparagraph, including amending clauses and section headings. It is also standard practice to bold the section number.
4. It is standard drafting practice for the first subsection to immediately follow the headnote on the same line instead of the first subsection appearing on a separate line from the headnote.
5. It is standard drafting practice to include any existing introductory portion that is relevant to the statute being amended. Please include the following language after the amending clause in section 30-28-101:

30-28-101. Definitions. As used in this part 1, unless the context otherwise requires:

6. Include "(10)" before paragraph (b) in section 30-28-101 as follows:

(10) (b) The terms "subdivision" and "subdivided land", as defined in paragraph (a) . . .

Similarly, include "(4)" before paragraph (e) in section 30-28-110.

7. It is standard drafting practice to use SMALL CAPITAL LETTERS rather than ALL CAPS to show the language being added to the Colorado Revised Statutes.
8. Prior to the 2012 legislative session, the Office of Legislative Legal Services adopted new guidelines for drafting amending clauses. To conform to these new drafting practices, please consider the following changes:
 - a. If your intention is to add a new section to article 28 of title 30 of the Colorado Revised Statutes, include an amending clause that reads as follows: "In Colorado Revised Statutes, **add** 30-28-100.5 as follows:"
 - b. To amend section 30-28-101, the amending clause should read: "In Colorado Revised Statutes, 30-28-101, **amend** (10) (b), (10) (c) (I), and (10) (c) (VIII) as follows:"

- c. To amend section 30-28-110, the amending clause should read: "In Colorado Revised Statutes, 30-28-110, **amend** (4) (e) as follows:"
9. In section 30-28-101 (10) (c) (I) of the proposed initiative, the phrase "or more" is missing after "thirty-five". Please either include the phrase after the new language "one hundred sixty" or show it in strike type if you wish to delete it.
10. The legislative declaration of the proposed initiative refers to "current law", a term that will become obsolete upon approval and codification of the proposed measure. Please consider the substitution of this phrase with the phrase "law in effect as of the effective date of this section" or words of similar effect.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Section 1 (5.5) of article V of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The effective date of the proposed initiative is November 7, 2012. However, pursuant to section 1 (4) of article V of the Colorado constitution, an initiated measure shall take effect "from and after the date of the official declaration of the vote thereon by the governor . . ." Would you consider selecting a new effective date for the proposed measure that would follow the governor's proclamation?
3. As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?
4. With respect to the legislative declaration contained in section 1 of the proposed initiative:
 - a. What do you mean by the word "growth" for purposes of the proposed initiative? Does the word refer to population growth, economic growth, or is some other meaning intended? Would you clarify the use of this word?
 - b. Please explain how the definition of "subdivision" and "subdivided land" in existing law "often denies counties the ability to effectively manage growth within their borders".
 - c. Please explain how authorizing counties to impose subdivision regulations on land divided into larger parcels will effectuate county control of local development.
 - d. The legislative declaration references "local officials' determination of the uses of parcels of less than one hundred sixty acres". However, subdivision regulation generally does not address the *uses* of parcels. Is the proposed initiative intended to modify zoning rules, regulations, or practices at the local level?

5. What is your intent in changing current law to specify that the terms "subdivision" and "subdivided land" shall not apply to any division of land that creates parcels of land each of which comprises 160 or more acres of land and none of which is intended for use by multiple owners?
6. Is it correct to state that, if the proposed initiative were to become law, land divided into parcels of 160 or more acres would be exempt from subdivision regulations, as contrasted with the 35-acre requirement under existing law? Please explain how increasing the size of a parcel subject to subdivision regulations from 35 acres to 160 acres will effectuate county control of local development?
7. What do you anticipate will be the effect of this statutory change on county land use policies, including the process generally for obtaining land use approvals, and on local development throughout the state?
8. Is there a significance to the number 160 as the dividing line separating those parcels subject to, and not subject to, subdivision regulations?
9. What effect do you believe the proposed initiative will have on the preservation of agricultural land and open space throughout the state?
10. Do you foresee any practical difficulties in connection with the application of the new "one hundred sixty or more acres" requirement? If so, what difficulties do you anticipate?
11. The provisions of part 4 of article 28 of title 30, C.R.S., address cluster development and appear to have been drafted to work in tandem with the existing 35 or more acre requirement for subdivision regulations. See, e.g., sections 30-28-401 (1) (b) and (1) (c), 30-28-402 (1), 30-28-403 (1), and 30-28-404 (2), C.R.S. The text of the proposed initiative does not contain any proposed changes to this part 4. Have you considered whether conforming amendments to the cluster development statute would be necessary if the proposed initiative were to become law?
12. Have you considered whether and to what extent a conforming amendment would need to be made to the definition of "irregular, divided area" found in section 30-28-302 (1), C.R.S., if the proposed initiative were to become law?
13. Do the proponents have any idea how many remaining parcels in the state would be subject to the modified exemption of 160 acres? Depending upon the number, is there any continuing purpose in maintaining an acreage requirement at any level?
14. The current 35-acre requirement presumably accounts for rights-of-way, survey errors, and other discrepancies that may reduce the actual survey size of an otherwise standard 40-acre quarter-quarter section. Would it be appropriate to add a similar margin of error to the minimum requirement specified in the proposed initiative?
15. Given the presumed intent of the proposed initiative to allow more land to become subject

to subdivision regulations, should county planning offices anticipate the need for additional staff if the proposed initiative were to become law?

16. Given the rural nature of all or most subdivisions containing larger parcels, i.e., parcels between 35 and 160 acres, if the proposed initiative were to become law, would existing statutory provisions and rules affecting water supply, streets, and other public facilities need to be modified?
17. How does modification of the allowable acreage size in the merger provision found at section 30-28-101 (10) (c) (VIII), C.R.S., promote the intent of the proposed initiative? What effect would the proposed initiative have on merger and related transactions undertaken for the purpose of creating or maintaining open space or conserving other public lands?
18. Under the proposed initiative, would counties retain the power to set a threshold for subdivision review at a smaller acreage level than that specified in the proposed initiative?
19. To what extent would the proposed initiative affect the establishment of subdivision exemption plats for the purpose of correcting legal descriptions under part 3 of article 28 of title 30, C.R.S.?
20. Have you considered the need for any additional conforming amendments to statutes that make reference to 35-acre parcels of land? The following provisions make reference to 35-acre parcels and may require conforming amendments: Sections 32-9-106.7 (1) (a) and (1) (b), 37-92-602 (3) (b) (II) (A) and (3) (b) (II) (D), and 38-50-101 (5) (c), C.R.S.
21. An effective date is often presented alongside an applicability clause so the public has some sense of when the new law is to become effective as well as to what conduct or actions the new law is to govern. In this case, it is not clear what proceedings would be affected by the proposed initiative if it were to become law. For example, how would passage of the proposed initiative affect an application for subdivision approval pending with a particular county as of the effective date of the proposed initiative? Would you consider adding applicability language to the text of the proposed measure? In so doing, you may wish to consult the effective date provisions found in section 11 of article XXVII of the Colorado constitution (GOCO).