

# Colorado tax break intended for struggling farmers enriches developers, investors

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*The Denver Post*

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Appraiser David Niles of the Jefferson County assessor's office looks for signs of farming activity on vacant land off U.S. 36 in Jefferson County that is taxed as agricultural, receiving a significant tax break. In some cases, land designation has gone back and forth. (Joe Amon | The Denver Post)

*First of two parts*

One of the biggest players in Douglas County agriculture, at least for tax purposes, is not in the business of growing wheat or grazing cattle.

It builds subdivisions.

About one in six of the county's parcels taxed as agricultural are owned by subsidiaries of Denver home builder MDC Holdings Inc.

In Broomfield County, another hotbed of suburban growth, a staggering 95 percent of the county's agricultural parcels are controlled by developer, commercial or investor interests. No one owns more land on the agricultural tax rolls there than Pulte Homes of Bloomfield Hills, Mich., the nation's largest homebuilder.

From Denver's outskirts to exclusive mountain communities, the story line is similar. Developers and corporations more interested in bulldozing land for houses and strip malls than raising cattle or crops are saving millions of dollars in taxes by taking advantage of a state law meant to help struggling farmers.



**Southeast of Aurora.** Agricultural land owned by South Quincy Residential in unincorporated Arapahoe County comes right up against a housing development. One lot a little more than a tenth of an acre has an annual tax bill of \$1.66. (Google Images )

A Denver Post investigation of property-tax records sheds new light on the extent of the practice: Developers and firms with little or no ties to actual farming own at least 40 percent of the nearly 54,000 parcels classified as agricultural in eight Front Range counties.

The lenient tax structure saves developers, businesses and others who have no real mud on their boots an estimated \$366 million a year in those counties, according to a Post

analysis using data from CoStar Group, a Washington-based commercial real estate research firm.

In 10 mountain counties analyzed by The Post, developers and others that don't meet the traditional definition of farmer or rancher own at least 9 percent of the 23,244 agricultural parcels.

The practice has continued unabated even though assessors have been complaining for decades. The latest proposed fix making its way through the legislature makes only marginal changes and would have no effect on how developers use ag taxation.



**East of Castle Rock.** Land taxed as agricultural surrounds a subdivision near Franktown. The parcel is among more than 1,000 Douglas County ag parcels owned by a subsidiary of Denver homebuilder MDC Holdings. (The Denver Post)

An array of special interests finds common cause in keeping the status quo — from farmers who fear any weakening of the law to high-end resorts and homebuilders who contend higher taxes on undeveloped land will lead to higher home prices.

"The constituencies that currently benefit from the tax break don't want a change," said state Rep. Matt Jones, a Louisville Democrat. "And there's not a strong constituency for the average taxpayer."

Jones, a member of the House agriculture committee, said The Post's findings show the issue deserves more attention.

"All taxpayers should pay their way, and developers should not get a big ag exemption when they're holding property for speculation," he said.



**East of Thornton** Boxed in by homes in Adams County sit 86 acres owned by Clear Channel Communications Inc. The media conglomerate pays about \$86 in property taxes annually on those ag holdings. (The Denver Post)

Along the Front Range, big business also turns to the ag designation to slash tax bills — including the Clear Channel radio and communications conglomerate, Denver's Furniture Row Cos. and IBM.

Former Gov. Dick Lamm, who held the office in the 1980s when voters approved a constitutional change that allows the ag tax breaks, thinks new restrictions are warranted.

"I think it is a shame, and it adds to sprawl," Lamm said. "It is unfair, and it unjustly enriches people. It allows people to tie up land under so-called agriculture and use it as a speculator's device."

The financial impact depends on how counties navigate Colorado's tax limitation system. In some counties, the money would go to lower everyone else's property taxes. In others, the extra money would flow into the general funds of counties, special districts and any other taxing entity — and to school districts.



**Outside Centennial** Dove Valley Business Park Associates owns about 64 agricultural lots of about 5 acres each near the Denver Broncos practice facility in Arapahoe County. One 3.6-acre parcel had a property tax bill of \$68. (The Denver Post)

The state budget is also affected because the state must step up and help finance school districts when local tax revenue can't cover the cost.

Developers defend their use of the agricultural tax break, saying it gives them flexibility while they wait for an ailing real estate market to rebound. They also say the tax break lowers the costs of new homes and predict they'll have to pass increased costs on to homebuyers if the system is abolished.

"I don't think the objective of Colorado policy ought to be to make homes less affordable," said Steve Durham, a lobbyist who represents the Colorado Association of Home Builders.

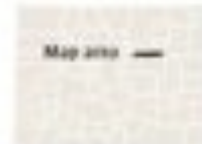
### Arapahoe County

Developer, commercial or investor interests own 40 percent of the agricultural parcels and 11 percent of the acreage, nearly all of it near developed areas in the northwest part of the county.

Ag land owned by developers Residential

#### Size of parcels

1 acre or less:	30% of all parcels
2 acres or less:	22%
5 acres or less:	27%
10 acres or less:	29%



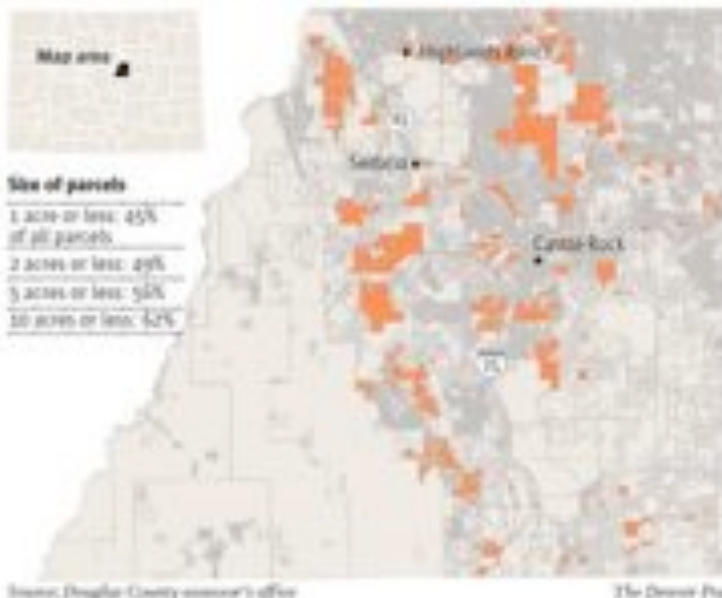
### Douglas County

Nearly a quarter of the agricultural acreage and more than 60 percent of the parcels in Douglas County are owned by developer, commercial or investor interests.

Ag land owned by developers Residential

#### Size of parcels

1 acre or less:	45% of all parcels
2 acres or less:	29%
5 acres or less:	50%
10 acres or less:	62%



But other states take a harder line. In Texas, developers who bulldoze land that once gave them ag tax breaks must pay back taxes for up to five years.

The Post review found developers claiming ag tax rates on prime development land already subdivided into lots as small as a tenth of an acre, a size assessors say is too small for any viable farming. In the suburbs of Denver, one out of every four parcels classified as agricultural is 1 acre or less.

"Where we are seeing problems is when a developer already has streets and utilities in place and lots for sale, and they put an electrical fence up and put a couple of animals on

there just to get the classification," said Montrose County Assessor Brad Hughes, a member of a state task force that studied Colorado's ag taxation issues last year.

The property owners aren't breaking any law. They're just doing the minimum required to clear the state's low bar to get the prized ag designation.

By one measure, the state has more land on the agricultural tax rolls than it has agricultural land.

In its 2010 farm census, the U.S. Department of Agriculture found 31.6 million acres of agricultural land in the state — 2 million acres less than what county assessors report.

### **Assessors' hands tied**

The Post analyzed ag land data in the Front Range counties of Adams, Arapahoe, Boulder, Broomfield, Douglas, Jefferson, Larimer and Weld.

It also studied the mountain counties of Gunnison, Grand, Summit, Moffat, Eagle, Montrose, Pitkin, San Miguel, Garfield and Mesa.

In all, developers and other nonfarm interests own at least 667,606 acres on the agricultural tax rolls investigated, nearly 10 percent of the total agricultural acreage.

In Douglas County, the beneficiaries include MDC Land Corp., Club Vista Properties of Las Vegas and the Sierra Ridge development in Parker. They own more than 800 acres subdivided into nearly 1,600 lots.

The annual ag property-tax bill for all three builders put together: \$1,160. If the land were not classified agricultural, they'd owe \$1.4 million, according to the assessor's office.

Representatives of MDC, which owns the most parcels, declined to comment. The corporation is a subsidiary of MDC Holdings, which builds under the Richmond American Homes brand.

Toby Damisch, a deputy assessor in Douglas County, said the rules provide a "huge opening" for property owners.

"They can throw some cows on there and then give us a lease and then fence it, and they could take the cow off after one day," he said. "We can do nothing."

However, he pointed out that the current system has no middle ground between low ag rates and the alternative high vacant-land rate.

"We're in a scenario where it is one extreme or another," he said.



Once an agricultural classification is granted, it's difficult to take away, he said. Property owners don't have to submit tax documents to show there is an agricultural enterprise, so the burden is on assessors to monitor the land use.

In Broomfield County, developers, investors and businesses own more than than 80 percent of the county's 5,634 agricultural acres. In that county, nearly 85 percent of the ag parcels are 1 acre or less.

"They operate within the letter of the law but probably not within the spirit of the law," said Broomfield Assessor John Storb.

Unlike other states, Colorado has no minimum acreage for agricultural land, no standards for crop production or minimum number of animals to qualify. The most stringent requirement is that an owner try to make a profit.

Pulte Homes won the ag designation for nearly 1,400 acres in Broomfield County by leasing land out to farmers, according to the assessor's office.

The property-tax bill for Pulte Homes' Broomfield ag land is \$30,800, a savings of more than \$2.8 million, according to calculations done by The Post and checked with the assessor's office. The firm did not respond to requests for comment.

In Adams County, Denver sports mogul Stan Kroenke's real estate firm owns 54 ag parcels in Brighton near Interstate 76, ranging from less than an acre to more than 500 acres. The tax bill is \$3,200.

But the plans for Kroenke's land don't include crops. The land is part of the massive Prairie Center housing, retail and commercial development.

### **Lofty goal, messy reality**

The ag tax benefit dates to 1969 and became a part of the state constitution when voters and the legislature took up broad property-tax reform in 1982. The idea was to lessen the burden on farmers and as a result keep food prices low, according to legislative testimony from the era.

The constitutional change ensures agricultural property-tax rates in Colorado are based on a production formula favorable to keeping values low, not on what the land would fetch if sold.

If developers couldn't turn to the agricultural designation, the land in most cases would be classified as vacant and carry much higher taxes because the land would be considered worth so much more.

The law's wording is so vague that the state Supreme Court ruled a 23.7-acre polo field in Parker could qualify for the ag designation even though the grass was the type used for golf courses and lawns, not grazing. The court ruled in 1996 that the field could have been part of a larger agricultural enterprise.

In another key case, the Colorado Supreme Court in 1992 granted the ag designation for 1,200 acres near Superior owned by M.D.C. Construction Co. The company purchased the land for \$12.74 million. The court's ruling slashed the annual property taxes to \$5,331 from \$123,090.

The Boulder County assessor's office argued in that case that the land should be taxed as developable because it was zoned and subdivided for new development. The Supreme Court instead ruled the land was agricultural because the builder was leasing it out for grazing, harvesting hay and boarding horses. The zoning of the land and future intent of the developer had no bearing.

In dissent, Colorado Supreme Court Justice George Lohr predicted the ruling would open a huge tax loophole for developers by allowing them to lease out land at below-market rates for the sole "purpose of obtaining a significant tax reduction."

Assessors say that court ruling left them with little legal recourse to rein in the way developers manipulate the ag tax to their benefit.

### **Far from the intent**

In the 1990s, Don Clifton struggled to apply Colorado's ag law when he was a member of the Colorado Board of Assessment Appeals, which adjudicates land valuation disputes between county assessors and landowners.

Clifton said he rejected the ag designation for small tracts of land owned by developers — only to have his findings reversed by the higher court.

"It's not fair and equitable," Clifton said. "It's who can cheat the best."

Clifton said he and others on the board pleaded with the legislature in the 1990s to tighten the law to no avail.

"The intent was to help the farmer and the rancher in the state of Colorado be competitive and be able to produce a crop and still make a profit," Clifton said. "But it's just gone crazy."

The legislature has revisited the issue over the years — to expand its scope, not tighten it. In 1990, the legislature created a forest ag program to help Christmas tree farmers.

Today, the forest ag program slashes the taxes of nearly 700 property owners.

Gov. John Hickenlooper has 260 forest ag acres in Park County with a tax bill of \$330.31. A conservation easement there restricts development.

If Granby Realty Holdings has its way, the company will go on the forest ag tax rolls in Grand County. The firm is battling Grand County Assessor Tom Weydert over its effort to have much of a 5,000-acre development with a golf course and ski village classified as forest agriculture. In many areas, the forest management consisted of bulldozing trees for new utilities and to prepare lots for resale, Weydert said.

Weydert said his review found Granby Realty sold \$3,000 worth of wood products in 2007 and 2008. During those years, the firm sold more than \$9 million in lots.

"That's my question and concern," Weydert said. "What truly is the primary purpose of all this property? Are we managing the forest, or are we really just a real estate development?"

The company's lawyer declined to comment, citing the pending case.

The Colorado Board of Assessment Appeals will hold a hearing on the issue May 4. If the developer wins, the value of the firm's disputed property holdings for tax purposes would drop from \$17.57 million to \$22,850. The tax bill would drop from a potential high of \$266,000 to at most \$700.

Assessors estimated the forest agricultural program slashed participants' property taxes by more than \$30 million from 1993 to 2005, the only years the state compiled data. About half the money would have gone to school districts.

And the forest ag program makes up only about 1 percent of the state's agricultural land.

### **\$8 tax on \$8 million of land**

In mountain resort counties, the ag tax savings can be enormous because land is so expensive.

About 8 miles from Aspen, Aspen Valley Ranch LLC has subdivided 813 agricultural acres it bought for \$37 million into 14 sites for luxury homes.

Just one 20-acre site cost the development firm \$8 million, records show, but grazing a few cattle and haying the land lowers the value for taxation to \$1,400. The annual property tax on the lot is \$8.44.

Richard Holland, the developer, said 200 acres of Aspen Valley will continue as a ranch.

"We like the idea of a maintaining a working ranch environment with or without the tax benefit," Holland said. "There is something to be said for that. We're not just playing a tax benefit game."

Developers aren't the only ones using the ag tax break, either. So is big business.

In Boulder County, IBM owns 464 acres of land designated as agricultural.

The San Antonio-based Clear Channel radio and communications conglomerate has a property-tax bill of \$86 on 86 agricultural acres it owns in Adams County.

Furniture Row Cos. owns more than 1,000 acres of agricultural land in Adams and Arapahoe counties.

Bill McKendry, Furniture Row's director of marketing and communications, said the firm is trying to assess what to do with the land. He said raising the taxes on such holdings would "disincentivize businesses and corporations from putting thoughts and ideas together that could eventually make land more valuable as a taxable piece of property."

JoAnn Groff, the state's property- tax administrator and chairwoman of the task force that studied the issue last year, said Colorado's Western heritage is part of the reason the state's laws have escaped an overhaul.

"But no one would think Utah, Wyoming or Arizona are any less Western than we are," Groff said, stressing that those states all are more stringent on doling out ag tax breaks. "I believe the legislature has an opportunity to revisit this issue and determine what it wants the policy to be."

Both Arizona and Utah require a minimum acreage for crops or grazing, with some exceptions. Production targets must be met in Utah.

Wyoming bars agricultural classification for land already platted and subdivided for development.

Colorado legislators are considering a change this year for only agricultural properties with homes, an effort mostly targeting ranchettes in wealthy resort areas.

The proposal would tax at the higher residential rate up to 2 acres of an agricultural property, including the land under a home, provided the home isn't considered an integral part of a farming operation.

The proposal would do nothing to how developers use the current system to lower taxes on land they've bought for new construction.

State Rep. Tom Massey, a Republican from Poncha Springs and the bill's sponsor, said that had he gone further, the farm lobby would have doomed any chance of passing the legislation. Although legislation could have been crafted to protect real farmers while reining in the breaks for developers, it wouldn't have mattered, Massey said.

"How do I put this gently?" Massey said. "The ag guys, they have great trepidation. They are really worried about losing their ag exemption entirely because if they do, they are entirely out of business."

He added that the way developers obtain ag taxation by leasing property for grazing and haying helps ranchers and farmers. Raising taxes on developers would increase the price to lease the land to farmers, he said.

Although Massey limited the scope of his bill to head off opposition, his effort is still generating pushback.

Real estate brokers say agricultural taxation is a tool that has helped them survive a steep downturn in the real estate market, and they're opposed to any effort to restrict its use.

George Harvey, president of the Colorado Association of Realtors and a real estate broker in Telluride, said now is not the time to make changes.

"We're facing the highest foreclosures we've seen since the early 1980s," he said. "Why would you increase the cost of real estate in a recession?"

### **Looking for signs of farming**

On a recent afternoon, land appraisers David Niles and Tammy Crowley with the Jefferson County assessor's office conduct a field check on 146 acres ripe for development — property hugging U.S. 36 with views of the Flatirons.

The land is owned by R. Dean Hawn Interests, an entity controlled by a Texas family in the oil and gas business, according to public records and their lawyer.

The assessor's office and the owners have been in a tug-of-war over how the land should be taxed, and some parcels have swung between agricultural and vacant land designations.

Although efforts to harvest wheat repeatedly failed, Niles says, the office determined last summer that enough work had been done to return four parcels to the ag tax rolls.

As a result, the property's annual tax bill dropped from more than \$84,000 to \$239.98, records show.

Denver lawyer Kenneth Kramer, who represents the landowners, said they plan to continue farming it.

But similar land nearby has been sold for development.

Crowley and Niles park and walk through a break in the fence, looking for evidence of farming.

The latest stated agricultural enterprise is to produce hay bales from a dryland pasture mix.

The appraisers visit a parcel that looks most promising and find two horses and grass that is still tall.

Miles says just growing grass does not qualify as agriculture, and it should have been cut last fall.

"How many years can you go without having a crop and still be a farmer?" he says.

The assessor's office is considering changing the designation again.

Kramer says hay was cut in the summer of 2009. But Niles says his office was never able to verify any harvest.

On Monday, Kramer says, a local farmer who tends the land will return and plant seed for the next cycle.

*Denver Post* staff writer Nancy Lofholm and Burt Hubbard of the Rocky Mountain Investigative News Network contributed to this report. Christopher N. Osher: 303-954-1747 or [cosher@denverpost.com](mailto:cosher@denverpost.com) Eric Gorski: 303-954-1971 or [egorski@denverpost.com](mailto:egorski@denverpost.com)

## **iNewsNetwork.org**

Burt Hubbard of the Rocky Mountain Investigative News Network assisted with analyzing the data for this story. I-News is a Colorado- based in-depth news collaborative. Find more information at [iNewsNetwork.org](http://iNewsNetwork.org).

## How The Post did the story

For this report, The Denver Post compiled agricultural data from all the counties analyzed. The newspaper then went through the data and segregated property belonging to developer, investor or commercial interests.

The Post then estimated the property-tax savings for agricultural land in developer and investor interests.

To do so, the newspaper calculated an average property tax for an acre of agricultural land in each of the Front Range counties investigated.

The Post then assigned an average tax value to an acre of raw, vacant residential land. The newspaper arrived at that figure by using 10-year sales figures for raw, vacant land supplied by CoStar Group, a Washington-based real estate research firm.

The newspaper applied the vacant- land assessment rate to the full market value to get an assessed value of what the land would be worth if it were classified as vacant.

The newspaper then calculated what the taxes would be if the developer- owned ag land were classified as vacant land by applying the average mill levy in the various counties analyzed.

Lastly, the newspaper subtracted the taxes those lands currently generate from the amount that would be generated if the property were classified as vacant.

The newspaper used only raw, vacant land values to arrive at the estimate.

## The findings

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The Post analyzed agricultural land data in nine Front Range counties. Shown are the total amounts of ag land and figures on parcel size and types of ownership.

## **Adams County**

Total ag land: 4,718 parcels; 561,871 acres

Ag parcels that are 1 acre or less: 21%

Owned by developer, investor or commercial interests: 1,633 parcels (35%); 58,688 acres (10%)

Interesting fact: Carma Colorado, developer of Brighton Crossing near East 168th Avenue and Interstate 76, has 840 of the parcels.

## **Arapahoe County**

Total ag land: 3,549 parcels; 337,374 acres

Ag parcels that are 1 acre or less: 20%

Owned by developer, investor or commercial interests: 1,421 parcels (40%); 43,000 acres (13%)

Interesting fact: Wal-Mart owns 64 acres between E-470 and Gun Club Road with a tax bill of \$77.

## **Boulder County**

Total ag land: 2,234 parcels; 68,606 acres

Ag parcels that are 1 acre or less: 8%

Owned by developer, investor or commercial interests: 420 parcels (19%); 9,694 acres (14%)

Interesting fact: James Guercio and his Caribou Estates own more than 2,300 acres. Guercio was a record producer who produced Blood, Sweat and Tears, Elton John, Chicago and other artists.



## **Broomfield**

Total ag land: 1,513 parcels; 5,634 acres

Ag parcels that are 1 acre or less: 84%

Owned by developer, investor or commercial interests: 1,441 parcels (95%); 4,550 acres (81%)

Interesting fact: Pulte Homes owns nearly 30 percent of all ag parcels.

## **Denver**

Total ag land: 53 parcels; 1,671 acres

Ag parcels that are 1 acre or less: 3

Owned by developer, investor or commercial interests: 47 parcels (89%); 1,367 acres (82%)

Interesting fact: DIBC Hotel Conference LLC, DIBC Commercial LLC, DIBC Retail LLC and DIBC Residential LLC own 15 parcels along Tower Road and East 64th Avenue totaling nearly 400 acres.

## **Douglas County**

Total ag land: 5,980 parcels; 191,003 acres

Ag parcels that are 1 acre or less: 45%

Owned by developer, investor or commercial interests: 3,748 parcels (63%); 45,402 acres (24%)

Interesting fact: MDC Land/Richmond American Homes has 1,019 parcels, averaging about one-third acre each.

## **Jefferson County**

Total ag land: 2,160 parcels; 77,205 acres

Ag parcels that are 1 acre or less: 17%

Owned by developer, investor or commercial interests: 642 parcels (30%); 7,024 acres (9%)

Interesting fact: Foothills Community Church of Arvada owns 125 ag parcels covering 33 acres near Indiana Street and West 90th Avenue, an area that had been platted as Village of Five Parks/Leander Parks.

## **Larimer County**

Total ag land: 8,774 parcels; 399,008 acres

Ag parcels that are 1 acre or less: 1%

Owned by developer, investor or commercial interests: 3,522 parcels (40%); 17,330 acres (4%)

Interesting fact: Key developers in Larimer County include Heron Lakes Investments LLC, East Ridge of Fort Collins LLC, and Timnath Farm Investments.

## **Weld County**

Total ag land: 25,006 parcels; 2 million acres

Ag parcels that are 1 acre or less: 30%

Owned by developer, investor or commercial interests: 8,339 parcels (33%); 68,084 acres (3%)

Interesting fact: Several companies, all entities of Bromley Cos. headed by developer Robert Lembke, have 1,769 parcels. Most are platted and in Lochbuie off Speer Canal.

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## **EXTRAS**

**The findings:** View the Post analyzed agricultural land data in nine Front Range counties.

**Got a tip?** The Post has been investigating the use and abuse of the agricultural tax designation. If you know of a story to pursue, contact us at 303-893-TIPS (8477) or toll-free at 866-748-TIPS, or e-mail us at [TIPS@denverpost.com](mailto:TIPS@denverpost.com).