

AGENDA ITEM SUMMARY

City Council

May 4, 2021

STAFF

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Kelly Smith, Senior City Planner
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SUBJECT

Resolution 2021-055 Directing the City Manager to Investigate and Evaluate the Regulation of Areas and Activities of State Interest Pursuant to Powers Established in State Law Commonly Referred to as 1041 Powers.

EXECUTIVE SUMMARY

The purpose of this item is to consider a resolution that directs staff to develop a feasibility evaluation and proposal to implement 1041 regulations for areas and activities of state interest. This item is being brought to Council because a councilmember requested more details on 1041 authority during the April 20, 2021 Council meeting. If Council adopts the Resolution, staff will investigate and evaluate ways in which 1041 powers and 1041 regulations may better allow the City to achieve its policy and regulatory goals and return to Council to report and discuss its findings.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

1041 powers allow local governments to identify, designate, and regulate areas and activities of state interest through a local permitting process. The term "1041" refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974 and the statutes regarding 1041 powers are also referred to as the *Areas and Activities of State Interest Act* ("AASIA"). The purpose of 1041 powers is to give local governments control over particular development projects occurring within their jurisdiction even when the project has statewide impacts. In order to exercise 1041 powers, a local government must identify the areas or activities of state interest and adopt guidelines for the administration of the designated areas or activities, all pursuant to statutory procedures and limitations. Regulations interpreting and applying the adopted guidelines may in turn be adopted in relation to specific development in areas of state interest and to specific activities of state interest. Currently, public projects are reviewed through the Site Plan Advisory Review ("SPAR") process and are not also reviewed under 1041 powers because the City has not adopted 1041 regulations.

At the April 20, 2021, regular Council meeting, a majority of Councilmembers expressed interest in exploring the adoption of 1041 regulations. Pursuant to that request, staff is bringing forward this resolution for Council to consider formalizing that direction to staff. If Council adopts the resolution, staff will investigate and evaluate ways in which 1041 powers and 1041 regulations may better allow the City to achieve its policy and regulatory goals and will return to Council to report and discuss its findings.

Areas and Activities Subject to 1041 Regulations

The AASIA defines the parameters of local regulatory control and establishes minimum standards that must be met or surpassed in local regulations.

Development projects that can be regulated under 1041 powers include areas or activities of state concern. AASIA defines areas of state concern as those that contain:

1. Mineral resources
2. Natural hazards
3. Historical/natural/archaeological resources of statewide importance
4. "Key facilities"(airports, highways, major public utility, etc).

AASIA defines activities of state concern as the selection, construction and/or development of:

1. Water supply and treatment systems
2. Waste disposal sites
3. Airports
4. Highways
5. Transit infrastructure
6. Utilities
7. New communities
8. Geothermal resource use
9. Nuclear detonations.

Several counties and municipalities have adopted 1041 regulations throughout the state. Based on community survey 2015 data collected by the Department of Local Affairs, 37 (or 57%) of Colorado counties and 61 (or 22%) of Colorado municipalities have adopted 1041 regulations. Below is a breakdown of how municipalities currently regulate development projects under 1041 powers.

**TABLE 1. 1041 MUNICIPAL BREAKDOWN:
Percentage of Municipalities Regulating by Area and Activity**

AREA				ACTIVITY							
MINERAL	NATURAL HAZARD	HISTORIC/ NATURAL/ARCH	KEY FACILITIES	WATER SUPPLY	WASTE	AIRPORT	HIGHWAY	TRANSIT	UTILITIES	COMMUNITIES	GEO THERMAL
14%	19%	22%	14%	10%	10%	3%	9%	5%	8%	6%	1%

Procedure for Designating Areas and Activities of State Interest and Adopting Guidelines

AASIA Section 24-65.1-404 describes the process that must be followed for the City to designate an area or activity of state interest and to adopt guidelines for the administration of designated matters of state interest.

- The City must hold a public hearing prior to designating an area or activity of state interest and adopting guidelines.
 - Notice of the date, time, and place of the public hearing and where materials relating to the matter proposed to be designated and the proposed guidelines must be published in a newspaper of general circulation at least 30 days and not more than 60 days prior to the hearing.

- Within 30 days after completion of the public hearing, the City may adopt, adopt with modification, or reject the particular designation and guidelines, but the City is obligated to designate any matter that has been finally determined to be a matter of state interest and adopt guidelines for the administration thereof.
- After a matter of state interest has been designated, no person may engage in development in a designated area and no designated activity may be conducted until the designation and guidelines for such area or activity been finally determined by the City pursuant to the AASIA.

Once the City has designated particular areas and activities of state interest and adopted guidelines and regulations, any person wishing to develop in a designated area or engage in a designated activity apply for a permit to do so. The City must conduct a public hearing on the application may approve an application if it complies with the guidelines and regulations and must deny it if it does not.

ATTACHMENTS

1. Local Governments' Use of 1041 Regulations (PDF)
2. Areas and Activities of State Interest Act (PDF)



Colorado Local Governments' Use of 1041 Regulations

Audrey Dakan

A Project for the
Colorado Department of Local Affairs | Community Development Office

May 11, 2017

Acknowledgements

John Cumming, Ph.D., Jefferson County Public Schools and University of Colorado Denver

Barbara J.B. Green, Esq., Sullivan Green Seavy

Andy Hill, Colorado Department of Local Affairs, Community Development Office

Anne Miller, AICP, Colorado Department of Local Affairs, Community Development Office

Jennifer Steffel Johnson, Ph.D., University of Colorado Denver

Special Thanks to the Local Government Participants

Arapahoe County

Boulder County

Clear Creek County

City of Golden

Otero County

Park County

Routt County

Town of Silt

Town of Silverthorne

Summit County

City of Superior

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EXECUTIVE SUMMARY

INTRODUCTION

In 1974, House Bill 74-1041 was introduced to address issues surrounding land use planning in Colorado (Warner, 1977, p. 1731). Later that year, the bill was enacted as the Areas and Activities of State Interest Act (AASIA) (Panos, 1994, p. 1309). AASIA defines a set of activities and areas of state interest and delegates power to local governments to regulate the development of such areas or such activities (C.R.S. §§ 24-65.1-101, *et seq.*, 2016). The delegated powers are commonly referred to and known as “1041 Powers,” and the regulations as “1041 Regulations,” and primarily consist of area-and/or activity-designation, adoption of development guidelines, and permit issuance (C.R.S. §§ 24-65.1-101, *et seq.*, 2016).

Though 1041 Powers have existed since 1974, information about how they are being used by Colorado local governments has never been assembled. In 2016, during an examination of web traffic to their site, the Community Development Office (CDO) of the Colorado Department of Local Affairs (DOLA), Division of Local Government, discovered numerous people looking to their office for information on 1041 Regulations. The CDO currently shares some basic information about 1041 Regulations and recognized an opportunity for its office to fill the gaps in the current understanding and provide more comprehensive information.

OBJECTIVE

The objective of this project was to research how local governments are using 1041 Regulations by assembling case studies and lessons learned that can be accessed by Colorado local governments interested in learning more about 1041 Powers. To uncover how local governments are using 1041 Regulations, questions about the experience of using 1041s, the effectiveness and usefulness of 1041s, and when 1041s should be used needed to be answered.

BACKGROUND AND HISTORY OF 1041 REGULATIONS

The desire for state-level oversight in local planning decisions in the early 1970s led to the creation of the Land Use Act (LUA), the Land Use Commission (LUC), and 1041 Regulations. As support for state control waned, the LUC’s role was changed, from oversight and approval to guidance and support. Throughout the evolution of the LUC, the authority delegated to local governments remained intact. Challenges to AASIA and the authority delegated to local governments confirmed the validity and constitutionality of 1041 Powers and 1041 Regulations. The abolishment of the LUC ultimately removed all state oversight from the 1041 Regulation process, and solidified local governments’ authority to enact 1041 Regulations. See also Figure 1.

METHODOLOGY

THE DATA. The data that needed to be collected for this study was, broadly, about how local governments are using 1041 Regulations. To obtain more in-depth information from local governments, the researcher and the CDO crafted

a series of closed-ended and open-ended questions. The questions were sorted into two different collection instruments: closed-ended questions (plus two open-ended questions) were used in an online questionnaire and open-ended questions were asked during telephone interviews.

THE SAMPLE. Communities known to have 1041 Regulations were identified for participation in the study. The goal was to have a representative sample of communities from across Colorado, such that any community interested in learning about 1041 Regulations could find information with which they could identify and from which they could gain insight: the communities identified for inclusion represented different areas of the state, different population sizes, and were a mix of counties and municipalities. Forty communities were identified for inclusion in the sample. Eleven local governments responded to the online questionnaire and seven governments participated in telephone interviews.

RESULTS

KEY FINDINGS

- All respondents adopted 1041 Regulations pro-actively because they desired local control and the ability to regulate projects and developments in a manner that protected their communities.
- Most respondents have found their 1041 Regulations to be effective because of the ability to control large-scale projects at the local level. Many of the development types designated in AASIA are not subject to local control through other regulatory tools.
- Most respondents would recommend 1041s to other local governments because of the additional authority granted to local governments, the ability to regulate and mitigate adverse impacts, and ensure project coordination.

LESSONS LEARNED

1041s expand local government authority. It is the expanded authority to oversee and review projects and entities that are not subject to other local controls that helps explain why a community would elect to use 1041s. The authority to coordinate with landowners, project developers, and other agencies is key. Additionally, 1041 designations enable counties with large areas of federal land to regulate development therein, an authority they do not have with other land use regulations.

1041s are customizable to suit specific needs and unique circumstances. The ability for local governments to adopt more stringent criteria than is described in AASIA makes these regulations incredibly useful and powerful. With the same regulation, the respondent communities have each made designations and incorporated criteria that enable them to address needs specific to their community.

1041s enable coordination between the public and private realms. 1041s also enable a local government to regulate development on private land to protect the public welfare. 1041s cover all affected land or activities within the

local government's boundaries and apply regardless of the existing uses or who owns the land. This is especially helpful with activities such as pipelines or transmission lines that cross miles of land, private and public, because it enables the local government to regulate the entire project in a coordinated and consistent manner.

1041s connected to legitimate community concerns are unlikely to be opposed. While one might expect that property owners would be reluctant to support regulations that could interfere with their own use of their land, the respondent communities' experiences demonstrate that community members will support the adoption of 1041 Regulations when the benefits of adoption are reasonable and protect resources or assets of special value to the community.

1041s are working as intended to protect natural assets and resources. The intent of AASIA is to protect "the utility, value, and future of all lands within the state" (C.R.S. § 24-65.1-101, 2016) and, as opined by Panos (1994) and Warner (1977), and echoed by one respondent, 1041s are an environmental regulation. Though AASIA does not require it, all the interviewed communities require submission of an environmental impact analysis from any applicant (not just CDOT or other agencies), and many require it regardless of the development type or impacts. Despite the state no longer overseeing this process, 1041 Regulations provide a means for enacting broad environmental regulations through voluntary and context-specific adoption at the local level.

CONCLUSION

In the years since 1041 Powers and 1041 Regulations were authorized through AASIA, many local governments adopted and used the regulations. AASIA and some governments' 1041 Regulations were challenged in the courts but emerged intact, with important confirmations made about the constitutionality and validity of the powers and authority conferred to local governments. Despite their use and court rulings over the years, the information about how 1041s are being used has never been collected from the various sources and made easily available. The CDO recognized an opportunity for their office to assemble and share in-depth information about 1041 Regulations. Thus, the objective of this project was to research the use of 1041 Regulations by local governments and assemble and package that information for easy access by other local governments interested in learning more.

The background research assembled in this project provides important contextual information about the history of 1041 Regulations and provides a short breakdown of the most important elements of AASIA. Summaries of the legal opinions published about AASIA and 1041 Regulations highlight the most important and relevant—for planners and land managers—decisions and findings from the courts. The case studies developed from the questionnaire data, interviews, and review of each local governments' 1041 Regulations provide useful information about the experience of using 1041s, the effectiveness and usefulness of 1041s, and when 1041s are appropriate for use.

INTRODUCTION

BACKGROUND | CONTEXT | PROBLEM STATEMENT

In 1974, House Bill 74-1041 was introduced to address issues surrounding land use planning in Colorado (Warner, 1977, p. 1731). Later that year, the bill was enacted as the Areas and Activities of State Interest Act (AASIA) (Panos, 1994, p. 1309). AASIA defines a set of activities and areas of state interest and delegates power to local governments to regulate the development of such areas or such activities (C.R.S. §§ 24-65.1-101, *et seq.*, 2016). The delegated powers are commonly referred to and known as “1041 Powers,” and the regulations as “1041 Regulations,” and primarily consist of area-and/or activity-designation, adoption of development guidelines, and permit issuance (C.R.S. §§ 24-65.1-101, *et seq.*, 2016).

Though 1041 Powers have existed since 1974, information about how they are being used by Colorado local governments has never been assembled. The Community Development Office (CDO), located within the Colorado Department of Local Affairs (DOLA), Division of Local Government, collected data from local governments in 2015 that showed many across the state have adopted 1041 Regulations (DOLA, 2015(a), p. 31-33; DOLA, 2015(b), p. 11). That data showed the areas and/or activities designated by some local governments, but did not include any other information about the communities’ 1041s. Over the years, lawyers have written about the regulations, and various provisions of AASIA and local governments’ 1041 Regulations have been challenged and upheld in the courts. So while there is a wide range of information and knowledge available about local governments’ use of 1041s, it has never been pulled together and made available for reference in one place.

In 2016, during an examination of web traffic to their site, the CDO discovered numerous people looking to their office for information on 1041 Regulations. The CDO currently shares some basic information about 1041 Regulations, and recognized an opportunity for its office to fill the gaps in the current understanding and provide more comprehensive information. In particular, local governments need case studies and lessons learned about how to effectively and successfully use 1041 Regulations.

OBJECTIVE

The objective of this project was to research how local governments are using 1041 Regulations by assembling case studies and lessons learned that can be accessed by Colorado local governments interested in learning more about 1041 Powers. To uncover how local governments are using 1041 Regulations, questions about the experience of using 1041s, the effectiveness and usefulness of 1041s, and when 1041s should be used needed to be answered. The case studies and other findings will provide guidance on developing and adopting 1041 Regulations, and might inspire local governments to consider modifying or adopting regulations in ways not previously considered or thought feasible.

OUTLINE OF REMAINDER OF REPORT

What follows next is a summarization of background research on AASIA and 1041 Regulations. This will include the historical context in which House Bill 74-1041 was born and ultimately enacted, a narrative summary of AASIA, and legal decisions about 1041 Powers and local 1041 Regulations. The background research will conclude with a brief discussion of the Land Use Commission, a body that was charged with oversight of the 1041 process when AASIA was first enacted, but which is no longer in existence (and, thus, no longer plays a role in the implementation of AASIA). Following the background research, the methodology for collecting data will be briefly discussed, including the data collection instruments, sampling method to identify communities for participation, methodology for data analysis, and the response rate. The results section will describe, both generally and specifically, the findings from the questionnaires and interviews. The findings will be analyzed and discussed in the section on lessons learned and case studies detailing the communities' experiences with 1041s will complete the paper.

BACKGROUND RESEARCH

The purpose of reviewing the existing literature was to understand the history of AASIA and 1041 Powers and how they have been understood and viewed over the years. The existing literature was written primarily by lawyers and the courts and is approached from a legal perspective. The literature provides historical information about AASIA and 1041 Powers, as well as confirmation of the validity of the regulation, but does not include any research on the use of 1041 Regulations by local governments.

HISTORY AND BACKGROUND

After World War II, states across the U.S. began looking for ways to assert some control over local land use planning decisions, motivated in part by President Nixon's National Land Use Policy Act (Bosselman and Callies, 1971). Nixon's act was never adopted but it would have required states to oversee development in sensitive environmental areas, to ensure that regional planning efforts were not thwarted by local governments, and to manage the development of large-scale projects and land use around "key facilities," all in order to receive certain federal funds (Bosselman and Callies, 1971, p. i).

Colorado's population boomed in the post-WWII era. The state's population grew by 32 percent during the 1950s and by another 26 percent in the 1960s, growing from 1.3 million to 2.2 million people in just 20 years (State Demographer's Office, n.d.; Warner, 1977; Wickersham, 1977). The influx of people had politicians and Coloradans, both long-time residents and new transplants, worried about how the state was changing (Wickersham, 1977). In Denver, the rapid population growth and development of the 1950s, 1960s, and 1970s had transformed the capital city from a "Cow Town" to an urban city, but not without negative effects (Wickersham, 1977). Traffic congestion and

pollution worsened, development sprawled outward, and taxes were raised to fund the construction of utilities (Wickersham, 1977). Older residents saw their way of life disappearing and new residents worried that their “Colorado lifestyle” was being destroyed (Wickersham, 1977, p. 1780). To address the concerns of Coloradans about the rapid development taking place, and in order to introduce state oversight into the planning process,¹ the Colorado Land Use Act (LUA) was enacted in 1970 (Green and Seibert, 1990). The LUA’s legislative declaration read, “the rapid growth and development of the state and the resulting demands on its land resources make new and innovative measures necessary to encourage planned and orderly land use development” (Warner, 1977, p. 1731, quoting C.R.S. § 24-65-102(1), 1973 (repealed)). The LUA created a “statewide system of land use” (Warner, 1977, p. 1731), with the intent to develop a “state land use map” (Dischinger, 2005, p. 80), a project that was to be coordinated and overseen by the Land Use Commission (Dischinger, 2005).

In 1974, House Bill 74-1041 was introduced in the Colorado legislature to address issues surrounding land use planning in Colorado (Warner, 1977). The intent of HB 74-1041 was to protect the environment and lifestyle of the state. Panos (1994) writes, “The clear objective of H.B. 1041 is to assure that environmental impacts of new development are considered and mitigated” (p. 1311). Warner (1977) writes, “The intent of ... H.B. 1041 is distinctly environmental” (p. 1732).

Beginning in January and continuing through April of 1974, House Bill 74-1041 moved through House and Senate Committees (Colorado State Archives, n.d.). As enacted, it became the Areas and Activities of State Interest Act, as part of the LUA (Dischinger, 2005). AASIA granted “broadened authority and a permit-type procedure to local governments, yet reserve[d] to state level decision-makers the ability to ensure responsible action at the local level” (Kurtz-Phelan, 1977, p. 1719). Essentially, AASIA introduced a layer of state oversight to certain local planning and development decisions—those of “state interest”—that had not previously existed (Kurtz-Phelan, 1977; Panos, 1994; Warner, 1977). At the same time, AASIA granted to local governments express control of the impacts of development (Panos, 1994) and was “a distinct shift from the traditional zoning methods by which local governments exercise[d] their police power over land development (White and Petros, 1977, p. 1697). Control at the state level was exercised through the Land Use Commission and a few other state agencies, and at the local level through the delegated authority to local governments to designate matters of state interest, adopt development guidelines, and issue permits. However, as explained further below, state-level control would disappear over the years as the Land Use Commission’s role and responsibilities were amended and minimized, ultimately leading to its

¹ Dischinger (2005), quoting the Commentary on Article 7 of the Model Land Development Code, writes “Most of the states are now giving serious study to a variety of proposals to reform land use regulation, and almost all these proposals involve some new powers for state or regional agencies” (p. 80).

abolishment. Despite the evolving nature of state-level control under AASIA, local control remained in full effect; 1041 Regulations have been adopted by many local governments as an effective land-use planning tool.

AASIA AND 1041 REGULATIONS

The legislative declaration of AASIA reads, “The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest. . . Local governments shall be encouraged to designate areas and activities of state interest” (C.R.S. § 24-65.1-101, 2016). AASIA defines “areas” of state interest as those that contain “mineral resources ... natural hazards ... significant impact upon historical, natural, or archaeological resources ... [and are] around key facilities” (C.R.S. § 24-65.1-201, 2016). “Activities” include the selection, construction, and/or development of water supply and treatment systems, waste disposal sites, airports, highways and transit infrastructure, utilities, new communities, and geothermal resource use (C.R.S. § 24-65.1-203, 2016). It establishes a set of criteria for each of the four areas and ten activities, describing the minimum standards for development that must be met to be in compliance with AASIA. For example, “[a]irports shall be located or expanded in a manner which will minimize disruption to the environment of existing communities, minimize the impact on existing community services, and complement the economic and transportation needs of the state and the area” (C.R.S. § 24-65.1-201(3), 2016).

If a local government wishes to invoke its 1041 Powers and adopt 1041 Regulations, it must first hold a public meeting (C.R.S. § 24-65.1-401(1), 2016), providing notice of such meeting between 30 and 60 days beforehand (C.R.S. § 24-65.1-404(2), 2016). If the designation includes designation of an area, the designation must describe the physical boundaries of the area. AASIA also sets forth the necessary findings that a local government must make prior to designation of an area or activity of state interest (C.R.S. § 24-65.1-401(2), 2016). Once a designation is made, development in an area of state interest or the conduct of an activity of state interest is prohibited (C.R.S. § 24-65.1-404(4), 2016) until the local government “develop[s] guidelines” that are consistent with the minimum standards set forth in AASIA (C.R.S. § 24-65.1-402(1), 2016). The designation and guidelines also may be made and adopted in a single hearing. No less than 30 days following the public meeting, the local government “may adopt, adopt with modification, or reject the particular designation and guidelines” (C.R.S. § 24-65.1-404(3), 2016). Importantly, local governments are authorized to adopt regulations stricter than the minimum standards set out in AASIA (C.R.S. § 24-65.1-402(3), 2016).

Local governments are authorized to adopt regulations stricter than the minimum standards set out in AASIA.

Once an area or activity of state interest has been designated, and regulations have been adopted, the local government can issue permits for development in a designated area of state interest or for an activity of state interest. The government must hold a public meeting (with notice) where a “decision, and its findings and conclusions” are made (C.R.S. § 24-65.1-501(1)(a), (2)(a), (5), 2016). The local government “shall” deny a permit for any development or activity that

does not meet the statutory guidelines or the local regulations adopted by the government (C.R.S. § 24-65.1-501(3), (4), 2016). If a permit is sought for an activity or development in an area that has not yet been designated, the local government still has time to act; it can hold a public meeting “for determination of designation and guidelines and granting or denying the permit” (C.R.S. § 24-65.1-501(2)(b), 2016).

A local government can make 1041 designations upon receiving an application for development.

LEGAL CHALLENGES TO AASIA AND 1041 REGULATIONS

A number of court cases have been decided that challenged different aspects of AASIA and 1041 Regulations adopted by local governments. The following cases represent published opinions of the Colorado Court of Appeals or Supreme Court of Colorado.

***Tri-State Generation and Transmission Ass’n, Inc. v. Board of County Com’rs of Lincoln County*, 600 P.2d 103 (Colo.App. 1979):** *site selection and construction of public utilities (C.R.S. § 24-65.1-203(f), 2016) designated as an activity of state interest.* In a 1979 case brought by Tri-State Generation against Lincoln County, the Court of Appeals held that Lincoln County could designate an activity of state interest and enforce its 1041 Powers even when there was a “vested property right” (*Tri-State Generation and Transmission Ass’n, Inc. v. Board of County Com’rs of Lincoln County*, 600 P.2d 103, p. 104). Importantly, the court found that the county’s application of its newly adopted 1041 Regulations to the activity in question (construction of power lines) was not an unconstitutional taking because, while money had been expended for right-of-way acquisition, plan making, and site studies, construction had not yet begun when the 1041 Regulations were adopted in accordance with AASIA. Further, the court ruled that the county’s denial of Tri-State’s permit was not an abuse of discretion because it was based on the plan submitted by Tri-State; the county was under no obligation to consider an alternative that was not presented to it.

***City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d 656 (Colo.App. 1988):** *site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems (C.R.S. § 24-65.1-203(a), 2016), and the efficient utilization of municipal and industrial water projects (C.R.S. § 24-65.1-203(h), 2016) designated as activities of state interest.* In 1988, Denver’s Board of Water Commissioners (Denver Water) filed a facial challenge² to AASIA and the 1041 Regulations adopted by Eagle County and Grand County. Denver first argued that AASIA’s delegation of authority to local governments to designate matters of state interest was unconstitutional because the delegation granted too much discretion to local governments. The Court of Appeals did not rule on the constitutionality of AASIA itself, but found that, as adopted, the counties’ regulations were well within their authority and, thus, valid (*City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d

² A facial challenge alleges that a statute is unconstitutional and, thus, void.

656, p. 660-61). Second, Denver Water claimed that it was exempt from the 1041 Regulations adopted by the counties because of its home rule status under the state Constitution, arguing that it had a right to construct water projects wherever it holds water rights. Specifically, Denver Water believed “it [was] empowered to construct or add to its water works facilities outside its territorial limits free from regulatory interference by the Counties” (*City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d 656, p. 660-62). The court disagreed and ruled that regulation of matters of state interest supersedes Denver Water’s local interest in water projects outside its boundaries, and thus, Denver must comply with the counties’ 1041 Regulations. Third, Denver Water argued that the 1041 Regulations interfered with its constitutional right to water access and use. The Court disagreed, finding that the county regulations did not deny Denver Water its right to use its water, the regulations only required that Denver Water seek a permit and comply with the adopted regulations (*City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d 656, p. 662). Denver Water’s last claim, that it was exempt from complying with the counties’ 1041 Regulations based on “the express provision of the Act” (*City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d 656, p. 662) was denied because: 1) Denver Water met the definition of a “person” as defined in AASIA; and 2) because the counties’ regulations simply addressed the manner in which Denver Water could appropriate water (*City & County of Denver v. Board of County Commissioners of Grand County*, 760 P.2d 656, pp. 662, 663).

Regulation of matters of state interest supersedes Denver Water’s local interest in water projects outside its boundaries.

City and County of Denver v. Board of County Commissioners of Grand County, 782 .2d 753 (Colo. 1989). Unhappy with the Court of Appeals’ decision, Denver brought the case before the Colorado Supreme Court. In 1989, the Supreme Court upheld the Court of Appeals’ rulings. The Supreme Court also held that the provision of AASIA that authorizes local governments to adopt stricter requirements for approving permits was “an understandable provision” and a constitutional delegation of authority (*City and County of Denver v. Board of County Commissioners of Grand County*, 782 .2d 753, p. 760). It also ruled that the overall authority delegated to local governments through the Land Use Act was constitutional (*City and County of Denver v. Board of County Commissioners of Grand County*, 782 .2d 753, p. 766).

The provision of AASIA that authorizes local governments to adopt stricter requirements for approving permits is a constitutional delegation of authority.

City of Colorado Springs v. Board of County Commissioners of Eagle County, 895 P.2d 1105 (Colo.App. 1994): *site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems (C.R.S. § 24-65.1-203(a), 2016), and the efficient utilization of municipal and industrial water projects (C.R.S. § 24-65.1-203(h), 2016) designated as activities of state interest.* In this case, Eagle County denied a permit for a water project proposed by the Cities of Colorado Springs and Aurora on federal land within the Holy Cross Wilderness Area because the cities’ project did not satisfy the Eagle County regulations. In particular, Eagle County decided that the cities failed to prove that the impacts of the project to wetlands would be adequately mitigated. The cities then sued Eagle County on a number of claims. In 1994, the Colorado Court of Appeals

ruled on the case, and upheld the decision of the Eagle County Commissioners to deny the permit. First, the court referred to the provision of AASIA that requires the local government to deny a permit if all criteria of regulation are not met, concluding that “if a proposed project fails to satisfy **even one criterion**, the Board must deny the requested permits” (*City of Colorado Springs v. Board of County Commissioners of Eagle County*, 895 P.2d 1105, p. 1110 (emphasis added)). The court, relying on *City & County of Denver v. Board of County Commissioners of Grand County* ruled and agreed that AASIA, and any 1041 Regulations adopted by a local government, authorize a local government to regulate home rule city water projects located outside of the cities’ jurisdictional boundaries (“...the regulations enacted by the Board are applicable to development of water diversion projects which are located within Eagle County even if the end users of the water are not” (*City of Colorado Springs v. Board of County Commissioners of Eagle County*, 895 P.2d 1105, p. 1113)). The court also ruled that when a conflict between AASIA and another statute exists, AASIA controls once a designation of state interest has been made, regardless of which statute is newest (*City of Colorado Springs v. Board of County Commissioners of Eagle County*, 895 P.2d 1105, p. 1118). The court made additional rulings on claims similar to those made in *City & County of Denver v. Board of County Commissioners of Grand County*, relying upon the Supreme Court and Court of Appeals determinations about constitutionality and the delegation of authority. The Eagle County case is uniquely important because it is the only challenge to a denial of a 1041 permit and the only case that confirms that 1041 authority applies to projects on federal land.

“...if a proposed project fails to satisfy even one criterion, the Board must deny the requested permits.”

Once a designation of state interest has been made, AASIA is the controlling statute, regardless of which statute is newest.

1041 Powers and 1041 Regulations apply to projects on federal land.

***Dill v. Board of County Commissioners of Lincoln County*, 928 P.2d 809 (Colo.App. 1996):** site selection and development of solid waste disposal sites (C.R.S. § 24-65.1-203(b), 2016) designated as an activity of state interest. In 1982, Lincoln County adopted 1041 Regulations addressing solid waste disposal sites. In 1994, Dill notified Lincoln County that it intended to build and operate a landfill. Before receiving any application from Dill, the county received complaints from citizens about the proposed development and adopted two resolutions, effectively preventing Dill from proceeding with its development plan. Dill sued the county, in part, on the basis that it had exceeded its authority by adopting a moratorium. The Court of Appeals ruled that, based on the language of AASIA, a local government has the authority to revise its 1041 Regulations as it sees fit and to cease approving permits “for a reasonable time such that regulations can be updated” (*Dill v. Board of County Commissioners of Lincoln County*, 928 P.2d 809, p. 814).

***Board of County Com’rs of the County of Douglas v. Gartrell Inv. Co., LLC*, 33 P.3d 1244 (2001):** site selection and development of new communities (C.R.S. § 24-65.1-203(1)(g), 2016) designated as an activity of state interest. AASIA defines new communities as “the major revitalization of existing municipalities or the establishment of urbanized growth centers in unincorporated areas” (C.R.S. § 24-65.1-104(13), 2016). Douglas County adopted 1041 Regulations under this provision that defined urbanized growth centers as “[a]ny incorporation or annexation of an existing or proposed urbanized growth center

in Douglas County when located outside the MPAs [municipal planning areas] as identified on the Douglas County Master Plan Land Use Map, as amended” (*Board of County Com’rs of the County of Douglas v. Gartrell Inv. Co., LLC*, 33 P.3d 1244, p. 1247, quoting Regulations, Areas & Activities of Douglas County Designated as Matter of State Interest). The County argued that a developer in an urbanized growth center needed a 1041 permit before the land could be annexed into Aurora. The court disagreed with the county’s contention, noting that AASIA “did not expressly list annexation as an activity of state interest” (*Board of County Com’rs of the County of Douglas v. Gartrell Inv. Co., LLC*, 33 P.3d 1244, p. 1248) and thus, the county could not define an urbanized growth as an annexation. The court further noted that the developer did not need a 1041 permit from Douglas County because the land would not be developed unless or until it was annexed into Aurora, thereby removing the land from unincorporated territory. Under AASIA, county 1041 Regulations only apply in unincorporated areas of a county.

***Department of Transp. v. City of Idaho Springs*, 192 P.3d 490 (Colo.App. 2008):** site selection of arterial highways and interchanges and collector highways (C.R.S. § 24-65.1-203(1)(e), 2016) designated as an activity of state interest. The City of Idaho Springs adopted 1041 Regulations governing highways in anticipation of the widening of I-70. The Colorado Department of Transportation (CDOT) sued Idaho Springs claiming that it was not subject to Idaho Springs’ 1041 Regulations because CDOT was not a “person” under AASIA. The court disagreed, finding that “[b]ecause the site selection of arterial highways is an activity often conducted by CDOT (under the provisions of Title 43), the context suggests that the legislature intended to subject CDOT to some degree of local regulatory control under the AASIA” (*Department of Transp. v. City of Idaho Springs*, 192 P.3d 490, p. 493). CDOT also argued that AASIA and Title 43 of the Colorado Revised Statutes, which “places CDOT in charge of developing the state transportation plan” (*Department of Transp. v. City of Idaho Springs*, 192 P.3d 490, p.492), conflict with one another, thus relieving CDOT from being controlled by AASIA or 1041 Regulations because Title 43 is newer and more detailed. The court disagreed with CDOT, noting that there was no conflict between AASIA and Title 43 “because the schemes advance compatible goals” (*Department of Transp. v. City of Idaho Springs*, 192 P.3d 490, p.494). The court held that the Idaho Springs 1041 Regulations could be applied harmoniously with state highway regulations and thus, were not preempted by state regulations.

1041 Regulations are not preempted by state highway regulations because they “advance compatible goals.”

With these seven rulings, the courts confirmed that the authority delegated to local governments to adopt 1041 Regulations, and the provision authorizing local governments to adopt more stringent development guidelines than those outlined in AASIA, are constitutional. The courts also confirmed that a local government reserves the right to deny a permit if all criteria under the statute has not been satisfied, to update its 1041 Regulations as it deems necessary, and to hold off on approving permits during the updating process. The courts’ rulings in *City and County of Denver* and *City of Colorado Springs* confirmed that 1041 Regulations can be successfully implemented with regards to water

projects that have multi-jurisdictional impacts and that originate from home-rule municipalities. The *City of Colorado Springs* case also importantly provides confirmation that 1041 Regulations can be used to control development on federal lands and that AASIA is the controlling statute when conflicts between statutes might exist.

THE LAND USE COMMISSION

The Land Use Commission (LUC) was established in 1970 through the Land Use Act (Dischinger, 2005), and, initially, “was charged with developing a statewide land use plan” (Wickersham, 1977, p. 1780). At its inception, the LUC was housed in the governor’s office and consisted of nine appointed members serving four-year terms (Evans and Stafford, 2011). The LUC’s responsibilities changed during its first few years (Dischinger, 2005); by the time AASIA went into effect, instead of engaging in land use planning, the LUC had become an organizing body, “coordinating and unifying policies in planning for growth and development” (Dischinger, 2005, p. 80).

Through AASIA, the LUC was initially given a broad range of powers. It had the authority to pro-actively trigger the designation process simply by requesting a local government make a designation, even if the local government had no intent to do so (Panos, 1995; Warner, 1977). It could temporarily block development, by making the request for designation (Dischinger, 2005), or halt development already underway by issuing “a cease and desist order” if it feared that a development might cause harm (Warner, 1977, p. 1735). For designations being made by a local government, the LUC had “authority to approve or suggest modifications to local rules” (Dischinger, 2005, p. 80). The LUC also issued model regulations and enforced minimum development standards (Kurtz-Phelan, 1977). And, it had the authority to bring lawsuits or initiate *de novo*³ review (Kurtz-Phelan, 1977; Warner, 1977). It did not have the power, however, to overrule a local government’s decision not to make a designation if the government followed the established guidelines in making its determination (Kurtz-Phelan, 1977; Panos, 1994; Warner, 1977). According to Dischinger (2005) and Warner (1977), the LUC’s most significant and meaningful contributions came in the form of providing advisement, support, and guidance to local governments.

The Land Use Commission’s most significant and meaningful contributions came in the form of providing advisement, support, and guidance to local governments.

The Land Use Commission was not without controversy. In 1977, the LUC made itself unpopular by flip-flopping on its request to Morgan County about power plant construction. Initially, it voted against requesting the county to designate the Pawnee power plant as an activity of state interest. It reversed itself shortly thereafter and requested Morgan County to make such designation, then modified its request to exclude the Pawnee power plant from designation

³ Dischinger (2005) explains, “The trial *de novo* is to evaluate the legality of the county’s proceedings and to determine whether there has been an abuse of discretion, not to judge the merits of the county’s decision” (p. 82).

(Dischinger, 2005; Warner, 1977). The LUC's authority was modified by the state legislature shortly thereafter; it was no longer allowed to stop ongoing construction activity simply by requesting that a designation be made (Warner, 1977). That same year, staffing for the LUC was moved from the Governor's Office to DOLA (Warner, 1977).

After being moved to DOLA in 1977, the state legislature cut the LUC's budget by almost 75 percent in 1978, and by 1983 it was no longer being funded (Dischinger, 2005; Panos, 1995). Despite having no dedicated staff or funding (Panos, 1995), the LUC continued to minimally function through much of the 1990s in an emergency capacity, invoking its authority to halt ongoing construction and hold public hearings upon request only (Panos, 1995). By 1998, the LUC "had ceased meeting altogether" (Dischinger, 2005, p. 82). Despite the requirement under AASIA that the LUC review all designations of state interest, such review no longer took place.

It was not until 2004 that the LUC's vanished existence became a problem. That year, the Boulder County District Court ruled that Boulder County's designation of both an area and activity of state interest was invalid "because there was no review and comment by the LUC" (Dischinger, 2005, p. 83). The state legislature responded to the ruling by reconvening the LUC, "approv[ing] Boulder County's 1041 regulations," and then eliminating the LUC (Dischinger, 2005, p. 84). House Bill 05-1063 amended AASIA; it removed all references to the LUC—its authority and responsibilities—and officially delegated all authority under AASIA to local governments (Dischinger, 2005; Pommer and Entz, 2005).

SUMMARY

The desire for state-level oversight in local planning decisions in the early 1970s led to the creation of the LUA, LUC, and 1041 Regulations. As support for state control waned, the LUC's role was changed, from oversight and approval to guidance and support. Throughout the evolution of the LUC, the authority delegated to local governments remained intact. Challenges to AASIA and the authority delegated to local governments confirmed the validity and constitutionality of 1041 Powers and 1041 Regulations. The abolishment of the LUC ultimately removed all state oversight from the 1041 Regulation process, and solidified local governments' authority to enact 1041 Regulations. See also Figure 1.

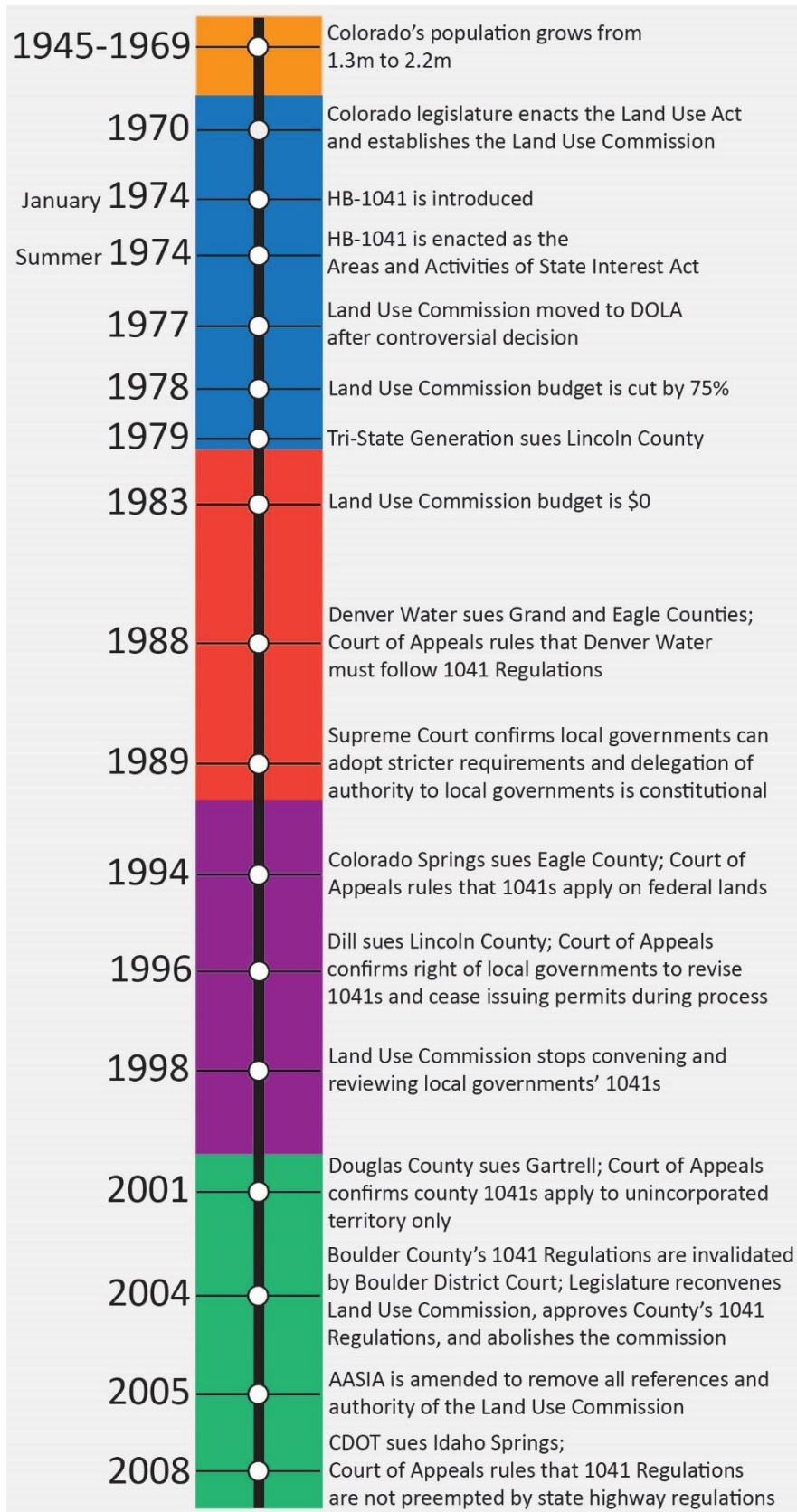


Figure 1. Timeline of 1041 Events.

METHODOLOGY

With the objective of researching how local governments are using 1041 Regulations, the data collected from the research participants was intended to fill a gap in the understanding of 1041s and provide guidance to interested local governments about 1041s.

THE DATA

The data that needed to be collected for this study was, broadly, about how local governments are using 1041 Regulations. To obtain that information, the researcher and the CDO crafted a series of closed-ended and open-ended questions. The questions were sorted into two different collection instruments: a mix of closed- and open-ended questions were asked in the online questionnaire and additional open-ended questions asked during the telephone interviews. See Text Box 1; Appendix A, Online Questionnaire.

THE SAMPLE

Communities known to have 1041 Regulations were identified for participation in the study. The goal was to have a representative sample of communities from across Colorado, such that any community interested in learning about 1041 Regulations could find information with which they could identify and from which they could gain insight: the communities identified for inclusion represented different areas of the state, different population sizes, and were a mix of counties and municipalities. Forty communities—18 counties and 22 municipalities—were identified for inclusion in the sample. See Map 1, Local Governments Selected for Inclusion in the Sample; Appendix D, Participants Selected for Inclusion in the Sample.

COLLECTING THE DATA

The data was collected in two stages. The first stage of data collection was conducted by online questionnaire. The second stage of data collection was conducted by telephone interview. The sample for the second stage was assembled from the respondents to the questionnaire. A combination of structured and unstructured telephone interviews were conducted: the interview questions were asked in order (as they had been provided to each participant) and additional questions not on the questionnaire were asked at the end.

ANALYZING THE DATA

Analysis was focused on answering the overarching research questions—How are the 1041 Regulations being used? What are the lessons learned?—and developing case studies. The questionnaire and interview data were analyzed and compared to ensure consistency of the emergent concepts, and was combined to develop short case studies.

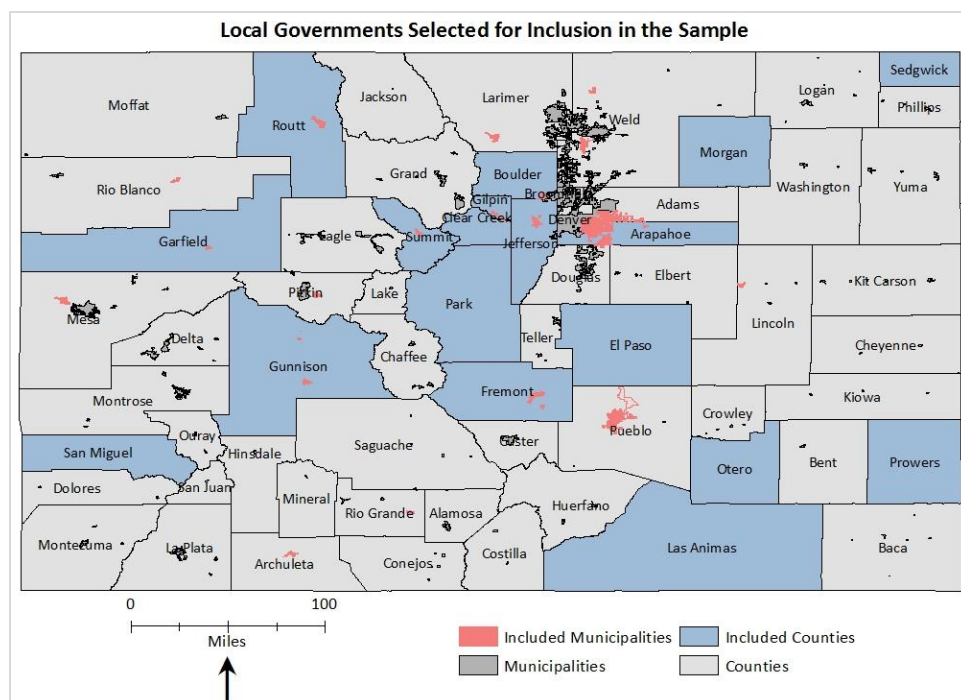
Online Questionnaire Questions

1. Which areas and/or activities do you have designated in your 1041 Regulations?
2. What year were your 1041 Regulations first adopted?
3. What prompted the development of the 1041 Regulations (e.g., pro-active, in response to an anticipated development, etc.)?
4. Have you updated or changed your 1041 Regulations over time?
 - a. If yes, when?
5. Did you adopt development guidelines that were more stringent than the minimum criteria set in the Areas and Activities of State Interest Act?
 - a. If yes, on which areas or activities did you adopt more stringent guidelines?
6. How many permit applications for designated areas or activities have you approved since adopting your 1041 Regulations?
7. What is your current permit fee(s)? (If you have more than one, list by type.)
8. Have your 1041 Regulations been an effective tool for regulating development in your community?
 - a. Why or why not?
9. Based on your experience, would you recommend other communities use 1041 Regulations?
 - a. Why or why not?

Telephone Interview Questions

1. Why did you elect to use 1041 Regulations instead of another regulatory tool (e.g., special review permits, etc.)?
2. Who were the parties involved in developing and adopting your 1041 Regulations?
3. Where are your 1041 Regulations codified (e.g. land use code, county code, or other regulation)?
4. Were there parties opposed to your 1041 Regulations? Who were they? Why were they opposed?
5. What types of challenges (for instance, from developers, community members, or elected body) did you have to respond to get the 1041 Regulations adopted?
6. Did you seek any outside guidance, advice, or expertise in the process of developing your 1041 Regulations?
 - a. If so, from who or where? In what form?
 - b. If so, did you include any specific procedure or technical language that was recommended to you? Please describe.
7. Have there been any legal challenges made related to the adoption or application of your 1041 Regulations?
8. If applicable, why did your community decide to update or change your 1041 Regulations after they were first adopted?
9. In what ways have your 1041 Regulations been effective for regulating development in your community?
 - a. Is there anything about the way your 1041 Regulations are written that you believe help them to be effective?
10. What advice and strategies/tips do you have for other communities interested in adopting 1041 Regulations?

Text Box 1. Research questions.



THE RESPONSE RATE

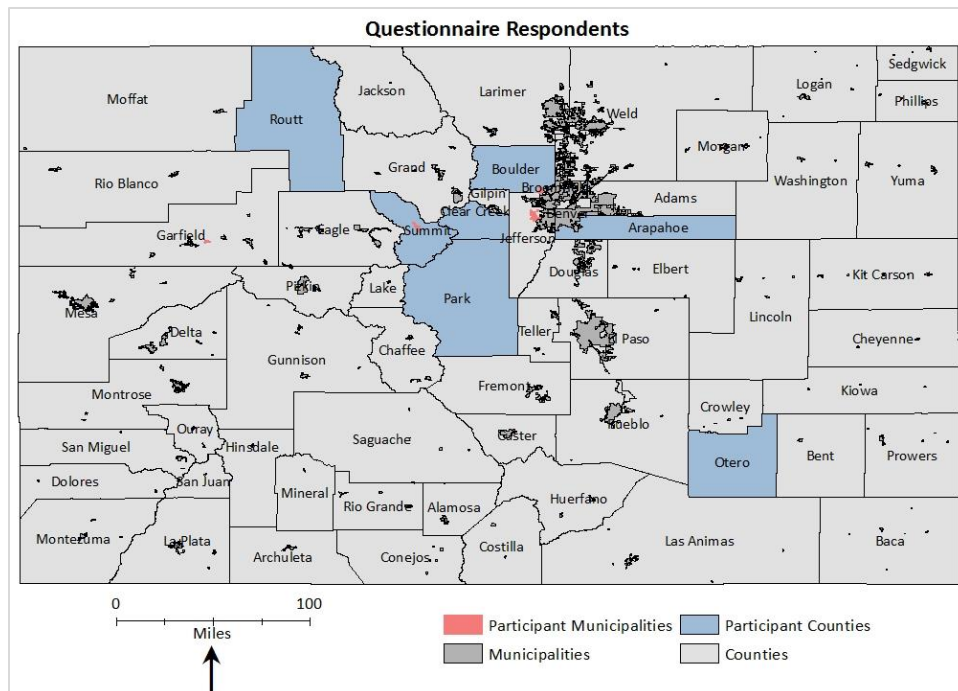
Questionnaire. Forty communities were identified for inclusion in the sample and 37 were contacted successfully (defined as e-mails sent that did not get returned as undeliverable). In all, 11 questionnaire responses (out of a total of 37 potential responses) were received.

Interviews. All 11 questionnaire respondents were asked to participate in the second stage of data collection. Seven agreed to participate in the interviews (63.6% response rate). Two declined (Golden and Superior) and two (Boulder County and Park County) did not respond.

RESULTS

QUESTIONNAIRES

Eleven local governments responded to the questionnaire: Arapahoe County, Boulder County, Clear Creek County, City of Golden, Otero County, Park County, Routt County, Town of Silt, Town of Silverthorne, Summit County, and City of Superior. See Map 2, Questionnaire Respondents. Overall, their responses indicate that 1041s are an effective land use regulation because they grant greater oversight and control over development than other regulatory tools.



Map 2.

Areas of State Interest (C.R.S. § 24-65.1-201)

- (a) Mineral resource areas;
- (b) Natural hazard areas;
- (c) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance; and
- (d) Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.

Activities of State Interest (C.R.S. §24-65.1-203)

- (a) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;
- (b) Site selection and development of solid waste disposal sites;
- (c) Site selection of airports;
- (d) Site selection of rapid or mass transit terminals, stations, and fixed guideways;
- (e) Site selection of arterial highways and interchanges and collector highways;
- (f) Site selection and construction of major facilities of a public utility;
- (g) Site selection and development of new communities;
- (h) Efficient utilization of municipal and industrial water projects;
- (i) Conduct of nuclear detonations; and
- (j) The use of geothermal resources for the commercial production of electricity.

Text Box 2. Areas and Activities for Designation.

Question 1: Which areas and/or activities do you have designated in your 1041 Regulations? Site selection and construction of water and sewage treatment systems is the most designated matter of state interest, with nine communities having such 1041 designation. Site selection and construction of public utilities and efficient utilization of water projects are each designated by seven communities. Areas of significant impact on historical, natural, or archaeological resources and the site selection of highways are each designated by six communities. Five communities have 1041 designation of airport site selection. Natural hazard areas and site selection and development of new communities are each designated by four communities. Areas around key facilities, site selection of rapid transit, and site selection and development of solid waste disposal sites are all designated by three communities. Two communities have mineral resource areas under 1041 designation, and only one community regulates the conduct of nuclear detonations. None of the respondent communities have designated the use of geothermal resources. See Table 1. To see each of the respondents' designated areas and activities, refer to Appendix E, Online Questionnaire Responses, Question 1. For a complete listing of available areas and activities, see Text Box 2.

Table 1. Ranked Designations by Local Government Respondents.	
Site Selection/Construction of Major New or Expanded Domestic Water/Sewer Treatment Systems	9
Efficient Utilization of Municipal/Industrial Water Projects	7
Site Selection/Construction of Major Facilities of a Public Utility	7
Historical, Natural or Archaeological Resource	6
Site Selection of Arterial Highways/Interchanges/Collector Highways	6
Site Selection of Airports	5
Natural Hazard	4
Site Selection/Development of New Communities	4
Areas around key facilities...	3
Site Selection of Rapid/Mass Transit Facilities	3
Site Selection/Development of Solid Waste Disposal Sites	3
Mineral Resource	2
Conduct of Nuclear Detonations	1
Use of Geothermal Resources for Commercial Production of Electricity	0

Question 2: What year were your 1041 Regulations first adopted? 1041s were adopted by the respondent communities at different times based on their individual needs. Summit County was the first of the respondents to adopt 1041s, putting theirs on the books on July 1, 1974. Clear Creek County adopted their 1041s two years later, in 1976. None of the respondent communities

adopted 1041s during the 1980s, but during the 1990s Boulder County (1994), Park County (1997), and Golden (1999) all adopted 1041s. Six of the respondent communities adopted their 1041s in the 2000s: Arapahoe and Otero Counties in 2004, Silverthorne in 2005, Routt County and Silt in 2007, and Superior in 2010.

Question 3. What prompted the development of the 1041 Regulations (e.g., pro-active, in response to an anticipated development, etc.)? None of the respondent communities adopted their 1041 Regulations in response to an application for development in an area or activity that was not previously designated, as permitted under AASIA (C.R.S. § 24-65.1-501(2)(b)). All communities⁴ adopted their regulations pro-actively, either shortly after being authorized to do so, as in the case of Summit County and Clear Creek County, or in response to identified development pressures and a desire for more local control. Silverthorne adopted theirs with the specific objective of regulating water pipelines, and Silt adopted theirs to control the development of gravel mines. Park County was responding to an increase in subdivision development and Golden to pressure it was facing from adjacent communities to allow for completion of a beltway. Both Arapahoe County and Routt County saw the benefits, and necessity, of being able to interact with and oversee major developments and projects. Otero County wanted to protect its natural resources and Clear Creek County wanted to control development in environmentally sensitive areas. Overall, these communities desired local control and the ability to regulate projects and developments in order to protect their communities. See Appendix F, Online Questionnaire Responses, Question 3.

The communities adopted their 1041s pro-actively, in response to identified development pressures and with a desire for more local control.

Question 4: Have you updated or changed your 1041 Regulations over time? If yes, when? Five of the respondent communities have updated their 1041 Regulations since they were first adopted. Summit County updated theirs in 1988, 1995, 2002, 2004, 2005, and 2013. Clear Creek County has also updated theirs a number of times, adopting revisions in 1989, 1998, 2006, 2007, 2009, and 2012. Boulder County has made three updates to their 1041s, in 1998, 2001, and 2011. Arapahoe County and Otero County both updated their 1041s in 2006, and Otero County just recently (in April of 2017) revised theirs again. Golden, Park County, Routt County, Silt, Silverthorne, and Superior have not made any changes to their 1041s since adoption.

Question 5: Did you adopt development guidelines that were more stringent than the minimum criteria set in the Areas and Activities of State Interest Act? If yes, for which areas or activities did you adopt more stringent guidelines? Most of the respondent communities were unsure if their regulations went beyond the minimums described in the statute, but many have adopted submittal and approval criteria that go beyond the statutory minimums. Arapahoe, Clear Creek, Routt, and Summit Counties, and the Town of

⁴ Boulder County did not respond to this question; thus, the reference to all communities here is applicable to the respondents to this question.

Silverthorne all follow a similar template for their 1041 Regulations, and require environmental impact statements, socioeconomic impact statements, traffic studies, or mitigation plans (and many other documents) for all applicants regardless of which area or activity will be impacted by development, and have additional submittal and approval criteria specific to each area or activity (Arapahoe County, 2006; Clear Creek County, 2012; Routt County, 2007; Summit County, 2013, Town of Silverthorne, 2005). Otero County requires much of the same documentation, but applicants must also submit a revegetation plan for development in natural resource areas (Otero County, 2006).

Arapahoe, Clear Creek, Routt, and Summit Counties, and the Town of Silverthorne all follow a similar template for their 1041 Regulations.

Question 6: How many permit applications for designated areas or activities have you approved since adopting your 1041 Regulations? Neither Silt nor Silverthorne has received any applications since adopting their 1041 Regulations, and, so far, Golden's only applicant was itself. Routt County has had two or three applicants, but all were approved through a less restrictive, Finding of No Significant Impact (FONSI) administrative approval. Arapahoe County has approved between six and 12 1041 permit applications and Clear Creek County between 15 and 20. Park County has approved 10, Summit County has approved 47, and Boulder County approved 53 1041 permit applications.

Question 7: What is your current permit fee(s)? (If you have more than one, list by type.) Permit fees varied greatly between the respondent communities. See Table 2.

Question 8. Have your 1041 Regulations been an effective tool for regulating development in your community? Why or why not? Most respondent communities have found their 1041s to be effective. Park County's are effective because of local development control. Arapahoe County points to the ability to ask for multiple documents and an expansive list of information for projects that they would not otherwise be able to require. Clear Creek County appreciates the ability to review and regulate projects and large-scale activities that would not otherwise be applicable to zoning authority. Otero County has used theirs to ensure that historically irrigated lands continue to be vegetated, something they could not do with any other regulatory tool. Summit County notes that their 1041s have enabled them to control growth and development to ensure consistency with their goals and priorities, to protect the public welfare, and to regulate developments that are normally outside of their authority. While Silverthorne has not processed any 1041 applications, they believe they will be effective for regulating development because they have a lengthy list of requirements and criteria. Similarly, Silt has not received any applications but believes theirs will be effective for regulating any proposed mineral extraction. Overall, these communities have found their 1041s very effective for expanding their authority to control development. Many of the development types designated in AASIA are not subject to local control through any other regulatory tool. See Appendix G, Online Questionnaire Responses, Question 8.

Table 2. 1041 Permit Fees	
Arapahoe County	\$10,000 initially with a draw down based upon planners and hours
Boulder County	Application fee \$750, then \$103.83 per hour
Clear Creek County	Permit fees are based on staff's hourly rate
Golden (City of)	Application Fee per state regulations
Otero County	The applicant pays all costs associated with permit. Legal fees, publication costs, employees hourly wage plus fringe costs and hours (Paralegal, Land Use Administrator)
Park County	\$5,000
Routt County	Since there is a corresponding County approval required (SUP, PUD, etc.), the project is billed out at \$120 per hour for planner time spent. At this time, no additional base fee for 1041.
Silt (Town of)	\$1,000
Silverthorne (Town of)	As determined by the Community Development Department and in accordance with rates set in Appendix A in Charter and Municipal Code
Summit County	\$1,870 for the pre-application fee, which is the first step in the process to cover costs associated with determining the level of permit review. If the project is determined to be a "Minor" permit review, the fee is \$9,415; if it is going to be processed as a "Major" permit, the fee is \$28,300. Both the Minor and Major permit fees are "initial deposits" that are required to be paid at the time of permit submittal. Staff then tracks the actual time it takes to review the application, as well as other costs, such as adjacent property owner notification, mailing costs, etc., and will determine the final fee at the end of the approval process. The difference between the actual costs and the initial deposit will then be determined and a refund will be given or supplemental fees will be assessed.
Superior (City of)	Would depend on scope of project, but range from \$5,000 to \$10,000

Question 9. Based on your experience, would you recommend other communities use 1041 Regulations? Why or why not? All but two⁵ of the respondent communities would recommend 1041s to others. Arapahoe County highly recommends 1041s and believes that all local governments should adopt them. Clear Creek County recommends them based on the additional authority 1041s give to local governments. Park County points to the ability to regulate developments to prevent adverse impacts on the economy and local area. Routt County recommends them because 1041s provide an extra layer of protection for unincorporated areas in rural counties. Summit County has found their 1041s powerful, allowing them to review significant projects for potential impacts. Superior notes that their 1041s have been effective not only for regulating and controlling against adverse impacts, but also for ensuring that projects are being appropriately coordinated. Otero County, Silt, and Silverthorne recommend them because 1041s are a valuable and effective tool for regulating development. Overall, 1041s come highly recommended by almost all of the respondent communities as an effective regulatory tool that allows for additional authority and control. See Appendix H, Online Questionnaire Responses, Question 9.

1041s are highly recommended as an effective regulatory tool that allows for additional authority and control.

INTERVIEWS

Interviews were conducted with seven communities: Arapahoe County, Clear Creek County, Otero County, Routt County, Town of Silt, Town of Silverthorne, and Summit County. Ten questions were asked of each community and their responses are briefly summarized below. Additional questions were also asked of each community to help clarify responses. For more detailed information, case studies detailing each community's experience with 1041 Regulations can be found starting on page 26.

Question 1. Why did you elect to use 1041 Regulations instead of another regulatory tool (e.g., special review permits, etc.)? Overwhelmingly, each community adopted 1041s because of the authority they confer to the local level to control development. This has been particularly important to these communities because of the types of development they are able to control and the fact that no other regulatory tools grant them this type of oversight.

Question 2. Who were the parties involved in developing and adopting your 1041 Regulations? Unsurprisingly, 1041s were developed by planning staff, county and city attorneys, retained attorneys with 1041 expertise, boards of county commissioners, and town councils.

Question 3. Where are your 1041 Regulations codified (e.g., land use code, county code, or other regulation)? See Table 3.

⁵ Boulder County did not respond to this question and Golden did not believe their experience provided a basis to recommend or not.

Table 3. Codified 1041 Regulations	
Arapahoe County	A separate set of regulations under the Land Development Code
Clear Creek County	A distinct set of guidelines and regulations
Otero County	A separate set of regulations under the Land Use Code
Routt County	A separate set regulations under the Zoning & Subdivision Regulations
Silt (Town of)	A set of regulations under the Zoning Code
Silverthorne (Town of)	A set of guidelines and regulations under the Municipal Code
Summit County	A set of regulations under the Land Use and Development Code

Question 4. Were there parties opposed to your 1041 Regulations? Who were they? Why were they opposed? Overall, most communities did not face any opposition to their 1041s. When there was opposition, it was in the form of concern from community members that the 1041 Regulations were not doing enough to regulate development or that the types of development that would be allowed would be detrimental to their community.

Question 5. What types of challenges (for instance, from developers, community members, or elected body) did you have to respond to to get the 1041 Regulations adopted? Most communities did not have to respond to any challenges to get public approval or get their elected body to adopt the regulations. Clear Creek County had to respond to concerns from residents about noise pollution from wind turbines and one of Summit County's updates responded to concerns over the complexity of the process.

Question 6. Did you seek any guidance, advice, or expertise in the process of developing your 1041 Regulations? If so, from who or where? In what form? If so, did you include any specific procedure or technical language that was recommended to you. Clear Creek County retained a sound consultant to address community concerns over noise pollution, reviewed other communities 1041s for guidance (Golden, Idaho Springs, and Douglas County for highways; Eagle County for water; and Weld County for wind and solar), and borrowed language from others' 1041 Regulations that they knew had survived legal challenge. Otero County retained an attorney with expertise in 1041s and land use who gave them legal advice and a template for their regulations. Routt County had a staff member with 1041 experience, and they looked to and borrowed language from other communities' 1041s. Silt sought guidance from geologists, biologists, and water and air quality professionals for expertise, commissioned a traffic study, and referred to Frederick's 1041s because that town had recently revised their 1041s after losing a case that challenged their

procedural language. Summit County hired a land use attorney and an attorney with expertise in water quality to rewrite their 1041s in 2002.

Question 7. Have there been any legal challenges made related to the adoption or application of your 1041 Regulations? None of the communities interviewed were aware of any legal challenges to their 1041s.

Question 8. If applicable, why did your community decide to update or change your 1041 Regulations after they were first adopted? Only four communities interviewed have updated their 1041s since they were first adopted. Arapahoe County updated theirs in 2006 simply to make some technical updates to new water and sewage developments to better serve growth. Clear Creek County updated their 1041s six times since first adopted, to add new designations to go along with zoning changes and to strengthen their language around highway development. Otero County made an important update to their regulations in 2006, adding an Historically Irrigated Acreage Map to support their objective of keeping land vegetated, and is in the process of making another update to clarify verbiage. Summit County has updated their 1041s six times, most significantly in 2002 when they substantially rewrote their regulations and added a designation.

Question 9. In what ways have your 1041 Regulations been effective for regulating development in your community? Is there anything about the way your 1041 Regulations are written that you believe help them to be effective? Many pointed to the level of control and authority they can assert over projects and entities they would not otherwise be allowed to oversee. Others to the ability to tailor the regulations to meet their community's unique and specific needs. As to how the regulations are written, many pointed to the broad, clear language of their 1041s, as well as their incorporation of other communities tested 1041 language. A couple of communities pointed to their tiered permit review processes which they believe effective for streamlining the process. And, one community pointed to its incorporation of construction impacts, in addition to project impacts, as effective for protecting their community members from adverse effects during the construction phase of a project.

Question 10. What advice and strategies/tips do you have for other communities interested in adopting 1041 Regulations? More than one community has emphasized the importance of identifying the unique needs and circumstances of a community and designating only those areas or activities that are best suited to address them. One suggested getting professional advice and devising a fee schedule that adequately covers the time and expense of approving a permit application. Another warns that if all local elected officials, planning staff, and county or town attorneys are not on the same page, enforcement of the 1041s can become a challenge.

LESSONS LEARNED

1041s expand local government authority. It is a given that 1041 Regulations confer control to local governments to regulate development and nearly every community identified this as key to their interest in using them and critical to their effectiveness. But, it is the expanded authority to oversee and review projects and entities that are not subject to other local controls that helps explain why a community would elect to use 1041s. Local governments do not have authority over CDOT or Denver Water, and without 1041s are not guaranteed an opportunity to review or negotiate how those entities expand or develop in their communities. Thus, the authority to coordinate with landowners, project developers, and other agencies is key. Additionally, 1041 designations enable counties with large areas of federal land to regulate development therein, an authority they do not have with other land use regulations.

1041s are customizable to suit specific needs and unique circumstances. The ability for local governments to adopt more stringent criteria than is described in AASIA, a power upheld by the Supreme Court in *City and County of Denver v. Board of County Commissioners of Grand County*, 782 P.2d 753 (Colo. 1989), makes these regulations incredibly useful and powerful. The list of designations in AASIA, while not exhaustive of all development types, is expansive and broad, and the ability to add application and approval criteria, to require assessments, management plans, or impact studies, gives a local government the ability to control development in a context sensitive manner. Otero County uses the natural resource area and water system activity designations to prevent the loss of top soil while Silverthorne uses their water system activity designation for the sole purpose of negotiating with Denver Water about the potential placement of water pipelines. With the same regulation, the respondent communities have tailored their designations to address needs specific to their community.

1041s enable coordination between the public and private realms. 1041s also enable a local government to regulate development on private land to protect the public welfare. 1041s cover all affected land or activities within the local government's boundaries and apply regardless of the existing uses or who owns the land. This is especially helpful with activities such as pipelines or transmission lines that cross miles of land, private and public, because it enables the local government to regulate the entire project in a coordinated and consistent manner.

1041s connected to legitimate community concerns are unlikely to be opposed. While one might expect that property owners would be reluctant to support regulations that could interfere with their own use of their land, the respondent communities' experiences demonstrate that community members will support the adoption of 1041 Regulations when the benefits of adoption are reasonable and protect resources or assets of special value to the community.

1041s are working as intended to protect natural assets and resources. The intent of AASIA is to protect “the utility, value, and future of all lands within the state” (C.R.S. § 24-65.1-101, 2016) and, as opined by Panos (1994) and Warner (1977), and echoed by one respondent, 1041s are an environmental regulation. Though the minimum criteria in AASIA does not require it, all the interviewed respondent communities require submission of an environmental impact analysis from any applicant (not just CDOT or other agencies), and many require it regardless of the development type or impacts. Despite the state no longer overseeing this process or land use planning at the local level, 1041 Regulations provide a means for enacting broad environmental regulations through voluntary and context-specific adoption at the local level. Otero County’s use of 1041s to enforce revegetation to minimize the loss of top soil (a local environmental and economic concern as well as a concern for the state as a whole) demonstrates the effectiveness of 1041s for addressing unique environmental concerns.

CONCLUSION

In the years since 1041 Powers and 1041 Regulations were authorized through AASIA, many local governments adopted and used the regulations. AASIA and some governments’ 1041 Regulations were challenged in the courts but emerged intact, with important confirmations made about the constitutionality and validity of the powers and authority conferred to local governments. Despite their use and court rulings over the years, the information about how 1041s are being used has never been collected from the various sources and made easily available. The CDO recognized an opportunity for their office to assemble and share such in-depth information about 1041 Regulations. Thus, the objective of this project was to research the use of 1041 Regulations by local governments and assemble and package that information for easy access by other local governments interested in learning more. The need for this project was confirmed in feedback from local governments who participated in this study, most of which relied on dispersed sources—outside experts and other local governments’ 1041 Regulations—when developing their own.

The background research assembled in this project provides important contextual information about the history of 1041 Regulations and provides a short breakdown of the most important elements of AASIA. Summaries of the legal opinions published about AASIA and 1041 Regulations highlight the most important and relevant—for planners and land managers—decisions and findings from the courts. The case studies developed from the questionnaire data, interviews, and review of each local governments’ 1041 Regulations provide useful information about the experience of using 1041s, the effectiveness and usefulness of 1041s, and when 1041s are appropriate for use.

Of course, the information gathered in this study about the experience of using 1041 Regulations is specific to the respondent communities and may not be shared by every other local government with 1041s. To continue to build and develop the information about 1041s, further study is needed. Additional case

studies should be developed to more fully understand the experience of using 1041s. To gain an understanding about why a local government would not want to use 1041s, those that have considered them but ultimately opted not to adopt them should also be interviewed. And, to get an outsider's perspective, agencies such as CDOT and Denver Water should be interviewed for their experience with the 1041 process. Finally, the expertise and practical knowledge of the attorneys with 1041 experience should also be gathered.

CASE STUDIES

ARAPAHOE COUNTY

Population: 608,310 (U.S. Census Bureau, 2015)

Location: Eastern metro-Denver and into the Eastern Plains

1041 Designations:

- Site Selection of Arterial Highways/Interchanges/Collector Highways
- Site Selection of Rapid/Mass Transit Facilities
- Site Selection/Construction of Major Facilities of a Public Utility
- Site Selection/Construction of Major New Domestic Water and Sewage Treatment Systems
- Major Extensions of Existing Domestic Water and Sewer Treatment Systems
- Site Selection/Development of Solid Waste Disposal Sites
- Site Selection/Development of New Communities
- Site Selection of Airports



Source: <http://www.villagerpublishing.com/67715/free-articles/centennial-airport-faces-future-putting-lid-airport-noise/>

Year of 1041 Adoption: 2004; Amended 2006

Number of Permits Approved Since 2004: 6-12

1041 Story

Arapahoe County is the third most populated county in Colorado with a mix of urban, suburban, and rural elements. As a part of the metro-Denver region, Arapahoe County faces a wide array of development pressures and leading up to 2004, bigger developments started appearing in the County. The County needed more tools to address these new developments and regulate growth, and adopted 1041 Regulations because of their depth and flexibility. In 2006 they amended and readopted their 1041 Regulations, refining the language of the requirements for new water and sewage projects to more effectively address growth.

Developing and Implementing their 1041s

Development of Arapahoe County's 1041s was done in-house. The county attorney's office drafted and reviewed the regulations for compliance with the enabling legislation. The planning commission and county commissioners reviewed the regulations and, after the public hearing process, the Board of County Commissioners adopted them as a separate set of regulations under their Land Use Code.

Some Key Features of Arapahoe County's 1041s

The County has a three-tiered permit review process: Finding of No Significant Impact (FONSI), minor permit review, and major permit review. If a FONSI determination is made, a permit is not required for the project to move forward (Arapahoe County, 2006). Major permit review is triggered when "a significant adverse impact" of two or more approval criteria, or a "severe adverse impact" of one approval criteria is likely (Arapahoe County, 2006, p. 12).

The County drafted their 1041s to require multiple different documents from applicants. All applications, regardless of the type of development, require documentation addressing compliance with all applicable regional water quality management plans, an environmental impact analysis, a traffic impact analysis, a socio-economic impact study, and engineering studies (Arapahoe County, 2006), amongst other broad requirements. Additional application requirements are also outlined for each designated activity of interest (Arapahoe County, 2006). Similarly, for a permit to be issued, the project must comport with both “General Approval Criteria” (Arapahoe County, 2006, p. 28-30), and additional criteria established for each designated activity of interest (Arapahoe County, 2006).

Effectiveness of the 1041s for Regulating Development

Arapahoe County needed more tools to effectively address its growth. The County’s regulations are effective because they are straight-forward and clearly written, and because the county can ask more questions and get more answers from developers at the outset of a project.

Advice | Tips | Strategies for Adopting 1041s from Arapahoe County

All local governments should adopt 1041s. 1041s give a planning agency the authority to get information from developers that other regulatory tools do not. The regulations are flexible and adaptable, allowing for as much or as little regulation as is needed.

Takeaways

When a community is facing wide ranging development pressures, 1041s provide a layer of control and protection over development that are not offered in other regulations. Arapahoe County exercises its control, in part, by requiring the submission of documents and studies that they are not otherwise necessarily authorized to require.

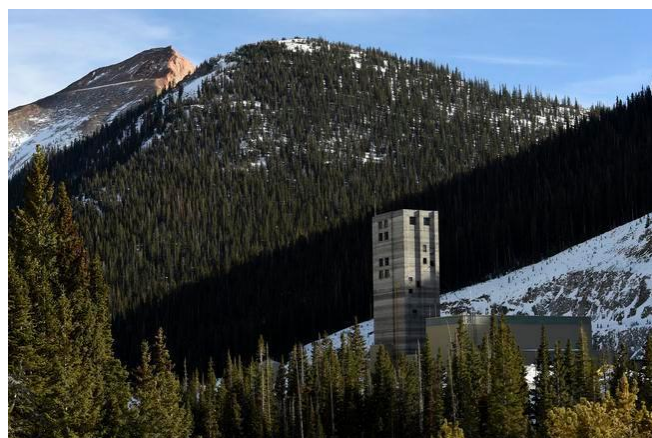
CLEAR CREEK COUNTY

Population: 9,136 (U.S. Census Bureau, 2015)

Location: Eastern Slope of mountains along I-70

1041 Designations:

- Natural Hazard Areas
- Historical, Natural or Archaeological Resource Areas
- Areas around key facilities in which development may have a material effect upon the key facility or surrounding community
- Site Selection of Arterial Highways/Interchanges/Collector Highways
- Site Selection of Rapid/Mass Transit Facilities
- Site Selection/Construction of Major Facilities of a Public Utility
- Site Selection/Construction of Major New or Expanded Domestic Water and Sewage Treatment Systems
- Efficient Utilization of Municipal/Industrial Water Projects
- Site Selection/Development of New Communities
- Site Selection of Airports



Source: <http://www.denverpost.com/2015/12/10/looming-henderson-mine-closure-stokes-big-fears-in-clear-creek-county/>

Year of 1041 Adoption: 1976; Amended 1989, 1998, 2006, 2007, 2009, 2012

Number of Permits Approved since 1976: 15-20

1041 Story

Clear Creek County has a rich mining history, with gold and silver mining booming in the mid-1880s before busting in the 1930s (Clear Creek County, n.d.). Today, Clear Creek County attracts tourists and skiers, interstate travelers and outdoors enthusiasts, and is home to the Henderson molybdenum mine (Clear Creek County, n.d.). Through its history, mining has been a significant factor in the growth and development of the County. In 1976, the County was facing development pressure and grew concerned that residential development could interfere with mineral extraction in adverse ways. The County first adopted 1041s to help resolve the conflict between future mining and future development, to preserve their hard rock mineral resources and ensure that mineral interest holders could continue to access those resources, and to regulate development in natural hazard areas as well as environmentally sensitive areas. Clear Creek County has updated their regulations several times since 1976, to add designations, to clarify and strengthen the criteria for approval, and to respond to increased and changing development pressures.

Developing and Implementing their 1041s

The Board of County Commissioners adopted the 1041 Regulations and the updates over the years as a distinct set of guidelines and regulations. The County looked to other communities' 1041 Regulations for guidance and borrowed the language from others' 1041s that they knew had survived legal challenge.

In the mid-2000s, the County completed a zoning update to allow for the development of wind and solar energy facilities. Around the same time, they updated their 1041s to incorporate large wind and solar facilities as public utilities. Some residents were opposed to allowing such facilities because of potential

adverse impacts to the natural environment. Residents were also concerned about noise pollution from wind facilities, so the County retained a noise control expert to help them respond to the community's concerns with specific noise standards.

Some Key Features of Clear Creek County's 1041s

The County's 1041s are written to address not only the impacts of a proposed project, but the impacts of the construction of the project. Applicants must provide plans for vehicular circulation and detours, the impacts of circulation and detours on community members, and detail what time of day construction will occur.

Clear Creek County allows applicants to request a FONSI evaluation during the pre-application process in order to get an early determination of the applicability of 1041 Regulations to a particular project (Clear Creek County, 2012)

Effectiveness of the 1041s for Regulating Development

Clear Creek County's 1041s have given them a larger seat at the table when dealing with large-scale activities that are not otherwise applicable to local zoning authority. This has enabled the County to effectively review projects for potential impacts on its communities and neighborhoods and allows them to require additional information and considerations.

Their 1041s are also effective because their permit approval process is similar to the NEPA process, requiring much of the same documentation and information for review. For applicants such as CDOT, this has made Clear Creek's permit process predictable and has helped reduce incomplete application submittals.

Advice | Tips | Strategies for Adopting 1041s from Clear Creek County

Before adopting 1041s, make sure you have identified clear goals and objectives for their use. Do not adopt 1041 Regulations for the sake of adopting them for their authority; ensure that the designations support your priorities and address development issues specific to your community. Be careful not to adopt designations in a way that might deter or prevent the types of development that you want to encourage or allow. Finally, make sure 1041s are the most appropriate regulatory tool for addressing your community's needs; there could be more effective tools depending on the need.

Takeaways

Clear Creek County's 1041s started out as a means to negotiate between mineral interest holders and their rights to access those minerals and the pressure to grow and develop. Over the years, their 1041s have evolved to incorporate more protections for the public's benefit. Their 1041s have given them a voice and a seat at the table that has enabled them to negotiate with developers and agencies to ensure that their communities are not adversely impacted by large-scale projects. This is of particular importance to the County as CDOT continues to look for ways to address congestion issues along I-70 through the County. Without the highway activity designation, the County would have less negotiating power or authority to work with CDOT and ensure CDOT's plans will not adversely impact Clear Creek County's residents and economy.

OTERO COUNTY

Population: 18,572 (U.S. Census Bureau, 2015)

Location: East of Pueblo County on Colorado's Eastern Plains.

1041 Designations:

- Historical, Natural or Archaeological Resource Areas
- Site Selection/Construction of Major Facilities of a Public Facility
- Site Selection/Construction of Major New or Expanded Domestic Water/Sewer Treatment Systems
- Efficient Utilization of Municipal/Industrial Water Projects



Source: Lex Nichols, Otero County

Year of 1041 Adoption: 2004; Amended 2006, 2017

Number of Permits Approved since 2004: 4

1041 Story

Otero County is a right-to-farm county and agriculture is their primary economic activity. Water is a necessary and sustaining resource in Otero County, and having seen the devastating effects from the loss of irrigation water in Crowley County (also, Sanchez, n.d.), knew it was important to take steps to protect their land and keep it vegetated. There are also miles of oil and gas pipelines running through the county and construction of pipelines disturbs the rangeland. The County was looking for more local control and chose to adopt 1041 Regulations because of the ability to tailor the regulations to their specific needs.

Developing and Implementing their 1041s

Otero County's 1041 process was started by the Board of County Commissioners. An attorney was retained to provide legal advice and provided the county with a template to follow for drafting their regulations. The county attorney and paralegal reviewed the regulations for compliance with the enabling legislation. The county commissioners also reviewed the regulations and, after the public hearing process, adopted them as a separate set of regulations under their Land Use Code.

The County updated their 1041s in 2006 to add a map of historically irrigated acreage in support of their requirement for revegetation plans. Otero County updated their 1041s again in 2017 to refine and clarify some language.

There were no direct challenges to Otero County's 1041 Regulations. The County made the case for why these regulations were necessary and community members were on board.

Some Key Features of Otero County's 1041s

The County drafted their 1041s to include provisions that specifically address one of their most pressing concerns: preventing the loss of top soil. The language in their designations on natural resource areas and water systems ensure that landowners cannot sell or transfer water rights from, or simply stop irrigating, historically irrigated land without plans to revegetate. The map added in 2006 is reviewed

upon receipt of a 1041 permit application to determine if the proposed project will impact acreage irrigated as of 2004, providing an important baseline of irrigated land in the County and justification for requiring revegetation plans. The County's 1041 Regulations also give them the ability to impose fines and force compliance with the 1041 process even after water rights have been transferred or sold (Otero County, 2004).

Effectiveness of the 1041s for Regulating Development

Otero County was looking for a way to protect and preserve its agriculture-based economy. Specifically, it was looking for a way to prevent the loss of top soil and ensure that future generations could continue to farm the land. Their 1041 Regulations have given them the ability to regulate the way property owners manage their land and are a tool the County uses to ensure that revegetation of the rangeland is done, and done correctly.

Advice | Tips | Strategies for Adopting 1041s from Otero County

It is important that everyone—commissioners, administrators of the regulations, and the county attorney—is on board and in agreement about the 1041 Regulations. If everyone does not have the same goals for the use of the 1041s, then enforcement can become difficult. Public input is also an important and critical component for developing the regulations.

Takeaways

The County was looking for a tool that would enable it to protect its most valuable resources—top soil and water. Though they cannot prevent a landowner from selling or transferring their water rights away from irrigated land, they were able to craft development guidelines that enable them to regulate the treatment of irrigated land in such an event. Because the enabling legislation allows a local government to enact guidelines that are more stringent than the statutory criteria, Otero County was able to incorporate language regarding irrigation and revegetation in its 1041s, making the 1041s extremely effective for addressing their specific needs. 1041 Regulations gave the County a degree of local control that other regulatory tools could not.

ROUTT COUNTY

Population: 23,606 (U.S. Census Bureau, 2015)

Location: Northwest Colorado

1041 Designations:

- Site Selection/Construction of Major Facilities of a Public Utility
- Site Selection/Construction of Major New Domestic Water and Sewage Treatment Systems
- Major Extensions of Existing Domestic Water and Sewer Treatment Systems
- Efficient Utilization of Municipal/Industrial Water Projects
- Site Selection of Airports



Source: <http://www.thedenverchannel.com/news/local-news/colorado-hunting-retreat-in-routt-county-back-on-market-as-smaller-parcels>

Year of 1041 Adoption: 2007

Number of Permits Approved since 2007: 2-3

1041 Story

Routt County is a rural, mountainous county in Northwest Colorado. It is a tourist destination, attracting visitors from around Colorado and across the globe, contributing to the state's tourism economy (Routt County, 2007). Around 50 percent of land in the County is U.S. Forest Service land and the County is home to "one of the last river basins in Colorado in which water is not fully appropriated or over-appropriated" (Routt County, 2007, p. 2). Because of the desire to maintain their rural character, to protect or have a say in trans mountain diversion of water, to protect their natural amenities, and continue to be a tourist destination, the County was looking for a way to regulate development that would match those development pressures and priorities, especially water. The County wanted to ensure they could control the development of new water infrastructure because of anticipated demand for water from the Front Range and the Board of County Commissioners elected to adopt 1041s because of their ability to control developments from governmental entities, which other regulations do not allow them to do.

Developing and Implementing their 1041s

Planning staff, county attorneys, and the planning commission helped to draft the regulations. The Board of County Commissioners adopted the 1041s as a set of separate regulations under their Zoning & Subdivision Regulations.

Some Key Features of Routt County's 1041s

Like other respondent counties, Routt County's 1041s require documentation on compliance with regional water quality management plans, an environmental impact analysis, transportation impact analysis, and engineering studies, amongst other items (Routt County, 2007). Routt County also includes additional submittal requirements and approval criteria for all five designated activities. The County's 1041s also explicitly invoke the right to deny a 1041 application if it is determined the application has or could fail to "comply with any one of the approval criteria" (Routt County, 2007, p. 24).

The County also has a three-tiered permit review process: Finding of No Significant Impact (FONSI), Level 1 permit review, and Level 2 permit review. If a FONSI determination is made by the Planning Director, a permit is not required for the project to move forward (Routt County, 2007). Level 2 permit review is triggered when “a significant adverse impact” of two or more approval criteria, or a “severe adverse impact” of one approval criteria is likely (Routt County, 2007, p. 14). Naturally, Level 1 permit review is triggered when the impacts are less substantial than Level 2, but more substantial than FONSI (Routt County, 2007).

Effectiveness of the 1041s for Regulating Development

Routt County wanted to protect its rural character and adopted 1041 designations that would help them meet that goal. Routt County’s 1041 Regulations explicitly connect the activities designated with real development pressures or potentials, connecting them clearly to the goals and objectives outlined in their master plan. The County has a special use permit process in place for most land use applications but they chose to add 1041s to strengthen their special use process and because of the expanded authority that could be exercised using 1041s that they do not get with other permitting processes.

Advice | Tips | Strategies for Adopting 1041s from Routt County

When developing 1041s, keep in mind that not all proposed projects will be large-scale or have major impacts. Create a FONSI review process to make sure smaller projects can be reviewed quickly and less expensively than the process for reviewing the bigger projects that require more regulation.

Takeaways

Routt County has made maintaining its rural character a priority. This included controlling the development of water pipelines and reservoirs that could negatively impact their landscape. The County also made a connection in their 1041s between the local contribution to the tourism economy of the state and the need to protect that economy. In so doing, the County makes the case that the public benefit of regulating these types of developments outweigh the private rights to develop without oversight.

TOWN OF SILT

Population: 2,976 (U.S. Census Bureau, 2015)

Location: 68 miles east of Grand Junction along I-70 in Garfield County

1041 Designations:

- Mineral Resource Areas
- Natural Hazard Areas
- Historical, Natural or Archaeological Resource Areas

Year of 1041 Adoption: 2007

Number of Permits Approved since 2007: 0

1041 Story

Silt is a bedroom community of Aspen and other ski towns and provides a lot of the more affordable housing in the area. It sits along the Colorado River and is home to a 132-acre river preserve and other natural resources that need to be protected. It is also in an area where there are a number of gravel deposits. In 1999 Garfield County approved an application for a gravel pit mine along Silt's borders without giving any notice to Silt. In 2004, Silt received an application for a gravel pit mine near the Colorado River and was working with the applicant to include provisions to protect a blue heron rookery and other wildlife habitats near the river. The applicant abruptly pulled its application, applied to the County, and the gravel mine was approved without the protections Silt was attempting to put into place. In 2005, Silt became a home rule municipality. The Town wanted to control its destiny and chose to adopt 1041 Regulations because of the control that those regulations give to the local government.

Developing and Implementing their 1041s

Silt's 1041 process began in the Town's Community Development Office with a review of other communities' 1041 Regulations (specifically, Frederick's). Air and water quality professionals were consulted and a biologist, geologist, and traffic engineer were retained to provide expertise and guidance. Town attorneys reviewed the regulations for compliance with the enabling legislation. Town council adopted the regulations within their zoning code.

There was no opposition or direct challenge made to Silt's 1041 Regulations, though some in the community were concerned that the regulations were not strict enough, particularly with protecting the environment and regarding oil and gas extraction. Silt responded to these concerns and assured the community that they would be good stewards of the land and would work to protect their resources.

Some Key Features of Silt's 1041 Regulations

The application requirements under its mineral resource areas designation include a fire protection plan, identification of water sources and use rights, and a traffic plan that includes "the numbers and types of vehicles entering and exiting the site" (Silt, 2017, § 17.77.070(J)). Applicants must also submit a wildlife study demonstrating their compliance with all "regulations and standards concerning wildlife and endangered species" (Silt, 2017, § 17.77.210). Silt's 1041s also establish setback requirements from all buildings and public roads for extraction sites or processing plants (Silt, 2017).



Source: http://www.townofsilt.org/silt_river_preserve.
Photo by M. Lundeen.

Effectiveness of the 1041s for Regulating Development

Silt was looking for a way to control the development of mineral extraction activities and 1041s are an effective tool for that objective. There are very critical commercial areas directly across the Colorado River from the 2004 gravel pit and nearby property owners appreciate that there is a level of control that can be exercised that helps protect their properties against any adverse impacts from mineral extraction activities. While Silt has not had any applications for development under its 1041 Regulations, the regulations are in place if and when an application is received.

Advice | Tips | Strategies for Adopting 1041s from Silt

Be pro-active and utilize 1041 Regulations to address areas of high community priority and concern. Take an inventory of the properties, land uses, assets, and resources in your community to identify which types of areas or activities are most pressing. Make 1041 designations that address those pressing issues first.

Takeaways

The two gravel pit applications approved by Garfield County made Silt realize that they had no regulations in place should they receive an application for such development within their borders. Though their regulations will not impact development outside their boundaries, there is now a mechanism in place that protects their natural areas and minimizes adverse impacts for their community members when such applications are received. By taking an inventory of their existing conditions, the Town was able to identify specific areas of potential development, prioritize those that they were most likely to see, and develop regulations that specifically addressed those needs without adding other, unneeded regulations.

TOWN OF SILVERTHORNE

Population: 4,117 (U.S. Census Bureau, 2015)

Location: 67 miles west of Denver along I-70 in Summit County

1041 Designations:

- Site Selection/Construction of Major New or Expanded Domestic Water Treatment Systems
- Efficient Utilization of Municipal/Industrial Water Projects

Year of 1041 Adoption: 2005

Number of Permits Approved since 2005: 0



Source: <http://www.denveraerialphoto.com/denver-aerial-photography-gallery/residential-real-estate-denver-aerial-photography/>

1041 Story

Silverthorne sits north of I-70 near the towns of Frisco and Dillon. The town attracts tourists rear-round to its outlet mall and because of its proximity to several ski resorts and natural areas. It is surrounded by U.S. Forest Service land and sits below Dillon Reservoir, Denver Water's "largest water storage facility" (Town of Frisco, n.d.). In the early 2000s, Silverthorne heard of a potential transmountain water diversion project aiming to bring more water into Dillon Reservoir. Silverthorne was concerned that new water pipelines would need to come through their town and go through private property. Silverthorne wanted to control the construction and placement of any new water pipelines and adopted 1041s for that purpose.

Developing and Implementing their 1041s

Silverthorne's 1041s were drafted and developed by the town attorney and adopted by the town council under their municipal code.

Some Key Features of Silverthorne's 1041s

Silverthorne's 1041s go far beyond the minimum statutory criteria, requiring from all applicants an environmental impact analysis, socioeconomic impact analysis, and mitigation plan, amongst other documents. Additional submittal requirements are described for both 1041 designations. The criteria for approval is also expansive, and aimed at preventing adverse impacts to their land use patterns, economy, the use and enjoyment of outdoor recreational areas, and air and water quality, amongst others. Permit approval hinges on whether the benefits of the project outweigh any losses the town might experience.

Effectiveness of the 1041s for Regulating Development

Silverthorne needed a means to control the construction of any new water pipelines feeding into Dillon Reservoir and 1041s were the best tool for that objective. While Silverthorne has not yet had any applications since they adopted their 1041s, the regulations are in effect when or if they are needed.

Advice | Tips | Strategies for Adopting 1041s from Silverthorne

Select the areas and activities for designation based on the needs of your community and the development pressures being faced. Adopt the areas and activities that are best suited to addressing your needs. Do not designate an area or activity that is not needed.

Takeaways

The construction of new pipelines through Silverthorne could have a significant impact on the town, its residents, and its continuing prosperity. Without 1041s, Silverthorne would be unable to control where new pipelines or other attendant structures would be placed or how they might adversely impact their residents. This concerned Silverthorne because of the potential significant impact to private property, over which they would have less control without 1041s. With their 1041s, Silverthorne will be included in any negotiations between private property owners and water providers should the latter decide to expand their water systems.

SUMMIT COUNTY

Population: 28,940 (U.S. Census Bureau, 2015)

Location: Central mountains along I-70, east side of Vail Pass

1041 Designations:

- Site Selection of Arterial Highways/Interchanges/Collector Highways
- Site Selection of Rapid/Mass Transit Facilities
- Site Selection/Construction of Major Facilities of a Public Utility
- Site Selection/Construction of Major New Domestic Water and Sewage Treatment Systems
- Major Extensions of Existing Domestic Water and Sewer Treatment Systems
- Efficient Utilization of Municipal/Industrial Water Projects
- Site Selection/Development of Solid Waste Disposal Sites
- Site Selection of Airports



Source: <https://summitcountyvoice.com/tag/summit-county-wildflowers/>

Year of 1041 Adoption: 1974; Amended 1988, 1995, 2002, 2004, 2005, 2013

Number of Permits Approved since 1974: 47

1041 Story

Summit County first adopted their 1041s on July 1, 1974, not long after the enabling legislation was passed. The County adopted their regulations pro-actively because they wanted to control their destiny and saw the advantages of exercising this new level of delegated authority. The White River National Forest occupies over 80% of the total land area in Summit County. Without 1041s, the County government did not previously have authority to regulate development within these federal lands. 1041 Regulations gave the County the authority to review development that would otherwise be outside their control, greatly expanding the County's ability to regulate growth and development within the designated areas and activities. Summit County's 1041s have been updated over the years, to clarify language or add additional designations, and were substantially rewritten in 2002.

Developing and Implementing their 1041s

When Summit County updated their 1041s in 2002, the County hired an attorney with expertise in land use and 1041 Regulations and another attorney with expertise in water quality issues. The Board of County Commissioners reviewed and adopted the amended regulations in July of 2002 under the County's Land Use and Development Code.

There have been no legal challenges to Summit County's 1041 Regulations, though over the years some applicants expressed concern over the complexity of the process. The County responded to this concern by amending the regulations in 2002 to clarify and simplify the provisions. The key changes included allowing for a coordinated approach with other regulatory agencies, improvements to the permit application, review, and hearing procedures; clarifying, expanding, and improving the definitions, applicability, exemptions, financial guarantee, and permit administration and enforcement sections of the Code.

Some Key Features of Summit County's 1041s

Like other respondent communities, Summit County's 1041s require substantial submittal documentation for all applicants, additional documentation specified for each designated activity, and compliance with approval criteria that go beyond the minimum criteria set in AASIA. The County's streamlined permit review process provides for an early determination of the impacts of a proposed development or project. Like other communities, the County has a three-tiered permit review process: Finding of No Significant Impact (FONSI), minor permit review, and major permit review (Summit County, 2013, pp. 12-13). FONSI determinations are most often made for proposed revisions or changes to previously approved permits or completed projects. A minor permit review designation allows the project to skip review by the planning commission and go straight to the Board of County Commissioners.

Effectiveness of the 1041s for Regulating Development

Summit County adopted their 1041s to ensure that growth and development in the County occurs in a safe, efficient, and coordinated manner that is consistent with legitimate environmental concerns, and to ensure that adequate community services and facilities are provided to serve the community's needs (Summit County, 2013, p.4.) 1041s gave Summit County authority to review and regulate developments that were not otherwise previously within their jurisdictional authority. In particular, Summit County successfully uses their 1041s to review projects on U.S. Forest Service land, exercising a level of oversight of development that did not otherwise exist.

The County's 1041s have been effective for controlling development to protect and preserve environmental resources, public lands and welfare, and the rights of property owners. Summit County's 1041s have given the County the ability to ensure that development of designated areas or activities of state interest is not in conflict with the community's goals or the County's duties to manage and coordinate growth and development.

Advice | Tips | Strategies for Adopting 1041s from Summit County

Seek the advice of knowledgeable professionals so you can be confident your 1041s are consistent and fully comply with the enabling legislation. Also, make sure you have permitting fees that adequately cover the staff time and costs incurred by your office to process a 1041 permit approval.

Takeaways

Summit County was an early adopter of 1041 Regulations and has used them successfully for over 40 years to regulate development that would not otherwise fall under their jurisdictional purview. The fact that 1041s are applicable to projects on U.S. Forest Service land is critically important because over 80% of the land in Summit County is in the White River National Forest. Without 1041s, the County would be unable to regulate development or projects over large swaths of its land area, areas that are critical tourist destinations (ski resorts) and natural resource areas.

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APPENDIX A, ONLINE QUESTIONNAIRE

Questionnaire: Local Government Use of 1041 Regulations

QUESTIONS

RESPONSES 11

Questionnaire: Local Government Use of 1041 Regulations

Form description

1. Which areas and/or activities do you have designated in your 1041 Regulations? Check all that apply.

- ☐ Mineral Resource Areas
- ☐ Natural Hazard Areas
- ☐ Historical, Natural or Archaeological Resource Areas
- ☐ Areas around key facilities in which development may have a material effect upon the key facility or surrounding community
- ☐ Site Selection of Arterial Highways/Interchanges/Collector Highways
- ☐ Site Selection of Rapid/Mass Transit Facilities
- ☐ Site Selection/Construction of Major Facilities of a Public Utility
- ☐ Site Selection/Construction of Major New or Expanded Domestic Water/Sewer Treatment Systems
- ☐ Efficient Utilization of Municipal/Industrial Water Projects
- ☐ Site Selection/Development of Solid Waste Disposal Sites
- ☐ Site Selection/Development of New Communities
- ☐ Site Selection of Airports
- ☐ Use of Geothermal Resources for Commercial Production of Electricity



2. What year were your 1041 Regulations first adopted?

Long answer text

3. What prompted the development of the 1041 Regulations (e.g., pro-active, in response to an anticipated development, etc.)?

Long answer text

4. Have you updated or changed your 1041 Regulations over time?

- ☐ Yes
- ☐ No
- ☐ Don't know or unsure

4a. If yes, when?

Long answer text

5. Did you adopt development guidelines that were more stringent than the minimum criteria set in the Areas and Activities of State Interest Act?

- ☐ Yes
- ☐ No
- ☐ Don't know or unsure

5a. If yes, for which areas or activities did you adopt more stringent guidelines? Check all that apply.

- ☐ Mineral Resource Areas
- ☐ Natural Hazard Areas



- ☐ Areas around key facilities in which development may have a material effect upon the key facility or surrounding community
- ☐ Site Selection of Arterial Highways/Interchanges/Collector Highways
- ☐ Site Selection of Rapid/Mass Transit Facilities
- ☐ Site Selection/Construction of Major Facilities of a Public Utility
- ☐ Site Selection/Construction of Major New or Expanded Domestic Water/Sewer Treatment Systems
- ☐ Efficient Utilization of Municipal/Industrial Water Projects
- ☐ Site Selection/Development of Solid Waste Disposal Sites
- ☐ Site Selection/Development of New Communities
- ☐ Site Selection of Airports
- ☐ Use of Geothermal Resources for Commercial Production of Electricity
- ☐ Conduct of Nuclear Detonations

6. How many permit applications for designated areas or activities have you approved since adopting your 1041 Regulations?

Long answer text

7. What is your current permit fee(s)? (If you have more than one, list by type.)

Long answer text

8. Have your 1041 Regulations been an effective tool for regulating development in your community?

- ☐ Yes
- ☐ No
- ☐ Other



Long answer text

9. Based on your experience, would you recommend other communities use 1041 Regulations?

- ☐ Yes
- ☐ No
- ☐ Other

9a. Why or why not?

Long answer text

10. Your Name *

Long answer text

10a. Organization *

Long answer text

10b. Job Title *

Long answer text

10c. Email *

Long answer text

10d. Phone Number

Long answer text



APPENDIX B, COUNTIES WITH 1041 REGULATIONS

Counties with 1041 Regulations				
County	Population	Location	# of AAs	
Clear Creek	9,153	Mo E	9	
Gilpin	5,830	Mo E	13	
Huerfano	6,428	SC	5	
Jackson	1,388	Mo N	2	
Kiowa	1,385	EP C	1	
Phillips	4,380	EP N	1	
Saguache	6,206	Mo SC	9	
San Miguel	7,823	WS S	7	
Sedgwick	2,331	EP N	2	
Alamosa	15,870	SC	1	Location Codes Me = Metro Mo = Mountain SC = South Central EP = Eastern Plains WS = Western Slope N = North E = East S = South W = West C = Central
Archuleta	12,249	Mo S	1	
Chaffee	18,454	Mo C	4	
Gunnison	15,660	Mo C	13	
Las Animas	14,060	SC	8	
Otero	18,380	EP SW	8	
Park	16,383	Mo C	3	
Prowers	11,985	EP S	4	
Yuma	10,132	EP N	2	
Elbert	24,144	C	3	
Fremont	46,294	Mo C	3	
Morgan	28,254	EP NW	7	
Routt	23,896	WS N	4	
Summit	29,399	Mo C	9	
Teller	23,394	Mo C	2	
Adams	480,317	Me	10	
Arapahoe	618,341	Me EP W	14	
Boulder	313,708	Me	8	
Broomfield	61,826	Me	3	
Denver	664,220	Me	2	
Douglas	314,592	Me	5	
Eagle	52,831	Mo C	2	
El Paso	665,070	SC	5	
Garfield	57,548	WS C	5	
Jefferson	558,532	Me Mo C	10	
Larimer	323,863	Mo E N	7	
Pueblo	161,782	SC	9	
Weld	276,079	EP W N	2	

APPENDIX C, MUNICIPALITIES WITH 1041 REGULATIONS

Municipalities with 1041 Regulations				
Municipality	Population	Location	County	# of AAs
Black Hawk	125	Mo E	Gilpin	1
Brookside	244	Mo C	Fremont	2
Central City	722	Mo E	Gilpin	6
Cheraw	245	EP SW	Otero	1
Cokedale	117	SC	Las Animas	1
Crested Butte	1,541	Mo C	Gunnison	5
Elizabeth	1,395	C	Elbert	2
Georgetown	1,000	Mo E	Clear Creek	1
Hudson	1,570	N	Weld	1
Ignacio	719	Mo S	La Plata	2
Kersey	1,541	N	Weld	2
La Jara	807	Mo SC	Conejos	2
Lake City	370	Mo S	Hinsdale	1
Limon	1,909	EP C	Lincoln	6
Mt. Crested Butte	806	Mo C	Gunnison	1
Nunn	441	N	Weld	4
Oak Creek	886	Mo N	Routt	1
Olney Springs	332	EP SW	Crowley	1
Ouray	1,007	Mo SC	Ouray	3
Pagosa Springs	1,766	Mo S	Archuleta	5
Rockvale	497	Mo SC	Ouray	5
Victor	375	Mo C	Teller	2
Winter Park	944	Mo E	Grand	2
Bennett	2,454	EP W	Adams Arapahoe	3
Dacono	4,469	N	Weld	1
Eaton	4,810	N	Weld	1
Leadville	2,600	Mo C	Lake	2
Mead	3,908	N	Weld	1
Meeker	2,411	Mo W	Rio Blanco	4
Monte Vista	4,295	Mo SC	Rio Grande	4
New Castle	4,577	Mo W	Garfield	4
Silt	3,013	Mo W	Garfield	5
Silverthorne	4,116	Mo C	Summit	10
Snowmass Village	2,889	Mo C	Pitkin	1
Telluride	2,457	Mo SW	San Miguel	2
Aspen	6,840	Mo C	Pitkin	2
Avon	2,478	Mo C	Eagle	2
Estes Park	6,197	Mo E N	Larimer	3
Gunnison	5,935	Mo C	Gunnison	5
Gypsum	6,797	Mo C	Eagle	1

Municipalities with 1041 Regulations

Municipality	Population	Location	County	# of AAs
La Junta	6,903	EP SW	Otero	1
Manitou Springs	5,357	Mo SC	El Paso	2
Milliken	6,072	N	Weld	9
Rifle	9,289	WS C	Garfield	1
Canon City	16,235	Mo SC	Fremont	8
Durango	17,818	Mo SW	La Plata	2
Frederick	10,908	N	Weld	2
Fruita	12,691	WS C	Mesa	10
Golden	20,096	Me Mo E	Jefferson	3
Lafayette	26,786	Me	Boulder	2
Louisville	20,047	Me	Boulder	1
Steamboat Springs	12,291	WS N	Routt	3
Superior	12,857	Me	Boulder	10
Windsor	21,732	N	Weld	4
Aurora	350,773	Me	Arapahoe	11
Broomfield	61,826	Me	Broomfield	3
Centennial	107,501	Me	Arapahoe	1
Denver	664,220	Me	Denver	2
Grand Junction	61,847	WS C	Mesa	1
Greeley	98,666	N	Weld	5
Pueblo	108,177	SC	Pueblo	4
Thornton	129,403	Me	Adams	2

APPENDIX D, PARTICIPANTS SELECTED FOR INCLUSION IN THE SAMPLE

Participants Selected for Inclusion in the Sample

Name of County	Location	Population Category	# of AAs
Garfield	WS	Large Pop	5
San Miguel	WS	Small Pop	7
Routt	WS N	Medium Pop	4
Morgan	EP N	Medium Pop	7
Sedgwick	EP N	Small Pop	2
Summit	Mo C	Medium Pop	9
Otero	EP SC	Small-Medium Pop	8
Prowers	EP SC	Small-Medium Pop	4
El Paso	SC	Large Pop	7
Las Animas	SC	Small-Medium Pop	8
Boulder	Me	Large Pop	3
Arapahoe	Me EP W	Large Pop	14
Jefferson	Me Mo C	Large Pop	10
Fremont	Mo C	Medium Pop	3
Gunnison	Mo C	Medium Pop	13
Park	Mo C	Small-Medium Pop	3
Clear Creek	Mo E	Small Pop	9
Gilpin	Mo E	Small Pop	13

Name of Municipality	Location	Population Category	# of AAs
Limon	EP C	Small	6
Bennett	EP W	Small-Medium	3
Nunn	N	Small	4
Milliken	N	Medium	9
Pueblo	SC	Large	4
Superior	Me	Medium-Large	10
Aurora	Me	Large	11
Golden	Me Mo E	Medium-Large	3
Estes Park	Mo E N	Medium	3
Central City	Mo E	Small	6
Aspen	Mo C	Medium	2
Crested Butte	Mo C	Small	5
Silverthorne	Mo C	Small-Medium	10
Gunnison	Mo C	Medium	5
Pagosa Springs	Mo S	Small	5
Rockvale	Mo SC	Small	5
Monte Vista	Mo SC	Small-Medium	4
Canon City	Mo SC	Medium-Large	8
Meeker	Mo W	Small-Medium	4
Silt	Mo W	Small-Medium	5
Fruita	WS C	Medium-Large	10
Steamboat Springs	WS N	Medium-Large	3

APPENDIX E, ONLINE QUESTIONNAIRE RESPONSES, QUESTION 1

Online Questionnaire Responses

1. Which areas and/or activities do you have designated in your 1041 Regulations? Check all that apply.

Arapahoe County	Mineral Resource																			
Boulder County			X																	
Clear Creek County			X		X		X		X											
Golden (City of)								X												
Otero County					X															
Park County					X															
Routt County																				
Silt (Town of)	X		X		X															
Silverthorne (Town of)																				
Summit County																				
Superior (City of)	X		X		X		X		X		X		X		X		X		X	
Total	2	4	6	3	6	3	7	9	7	3	4	5	0	1						

Online Questionnaire Responses

3. What prompted the development of the 1041 Regulations (e.g., pro-active, in response to an anticipated development, etc.)?

Arapahoe County	The need for Counties to interact with major development types that impact Arapahoe County
Boulder County	
Clear Creek County	To be pro-active in response to potential development in environmentally sensitive areas.
Golden (City of)	Concern for state or regional transportation project design
Otero County	To be pro-active and protect our natural resources.
Park County	increased subdivision development
Routt County	The areas and activities selected could involve major projects and the County saw the benefit of having 1041 to address such projects.
Silt (Town of)	In response to a couple of gravel pit applications through the county.
Silverthorne (Town of)	To regulate water pipelines within jurisdiction.
Summit County	Pro-active
Superior (City of)	Pro-active

APPENDIX G, ONLINE QUESTIONNAIRE RESPONSES, QUESTION 8

Online Questionnaire Responses

	8. Have your 1041 Regulations been an effective tool for regulating development in your community?	8a. Why or why not?
Arapahoe County	Yes	
Boulder County		
Clear Creek County	Yes	1041 Regulations provide additional authority above a community's zoning authority for a local community to effectively review impacts caused by very large-scale activities that would otherwise not be applicable to local zoning authority.
Golden (City of)	Other	Only application was for a city sponsored project
Otero County	Yes	A major part of ours is making sure that if water is removed from land, proper steps are taken to ensure that the land is re-vegetated. If a pipeline goes through our County we make sure that all disturbed rangeland is properly re-vegetated.
Park County	Yes	local development control
Routt County	Other	We really have not had major projects that trigger a full 1041 review.
Silt (Town of)	Yes	The Town did not want to see a plethora of mineral extraction businesses, and it hasn't.
Silverthorne (Town of)	No	No applications.
Summit County	Yes	Our 1041 regs allow us to ensure that growth and development in Summit County is consistent with legitimate environmental concerns and occurs in a safe, efficient and coordinated manner and, further, ensures that adequate community services and facilities are provided in a manner consistent with the constitutional rights of property owners, community goals and the protection of the public welfare.
Superior (City of)	Yes	I have not processed a 1041 permit during my time with the Town of Superior.

APPENDIX H, ONLINE QUESTIONNAIRE RESPONSES, QUESTION 9

Online Questionnaire Responses

	9. Based on your experience, would you recommend other communities use 1041 Regulations?	9a. Why or why not?
Arapahoe County	Yes	
Boulder County		
Clear Creek County	Yes	See answer in 8a above. 1041 Regulations provide additional authority above a community's zoning authority for a local community to effectively review impacts caused by very large-scale activities that would otherwise not be applicable to local zoning authority.
Golden (City of)	Other	Our experience does not provide basis to recommend or not
Otero County	Yes	You need a means to regulate matters of state interest. If all staff and Commissioners are on board it is a valuable tool.
Park County	Yes	can regulate those developments that have impacts to local area & economy
Routt County	Yes	Extra layer of protection for rural counties.
Silt (Town of)	Yes	Effective tool.
Silverthorne (Town of)	Yes	1041 regulations can be effective in regulating development.
Summit County	Yes	They are a very powerful set of regulations that allow our community to adequately review the potential impacts associated with the significant types of projects that are regulated by the 1041 Permit regulations.
Superior (City of)	Yes	It is an effective tool for controlling/mitigating the impacts of development and ensuring community awareness and project coordination.

[West's Colorado Revised Statutes Annotated](#)[Title 24. Government--State](#)[Planning--State](#)[Article 65.1. Areas and Activities of State Interest \(Refs & Annos\)](#)[Part 1. General Provisions \(Refs & Annos\)](#)

C.R.S.A. § 24-65.1-101

§ 24-65.1-101. Legislative declaration

(1) The general assembly finds and declares that:

(a) The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest;

(b) Adequate information on land use and systematic methods of definition, classification, and utilization thereof are either lacking or not readily available to land use decision makers; and

(c) It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.

(2) It is the purpose of this article that:

(a) The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities;

(b) Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof; and

(c) Appropriate state agencies shall assist local governments to identify, designate, and adopt guidelines for administration of matters of state interest.

[West's Colorado Revised Statutes Annotated](#)

[Title 24. Government--State](#)

[Planning--State](#)

[Article 65.1. Areas and Activities of State Interest \(Refs & Annos\)](#)

[Part 1. General Provisions \(Refs & Annos\)](#)

C.R.S.A. § 24-65.1-102

§ 24-65.1-102. General definitions

As used in this article, unless the context otherwise requires:

- (1) “Development” means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs.
- (2) “Local government” means a municipality or county.
- (3) “Local permit authority” means the governing body of a local government with which an application for development in an area of state interest or for conduct of an activity of state interest must be filed, or the designee thereof.
- (4) “Matter of state interest” means an area of state interest or an activity of state interest or both.
- (5) “Municipality” means a home rule or statutory city, town, or city and county or a territorial charter city.
- (6) “Person” means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the state.

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C.R.S.A. § 24-65.1-103

§ 24-65.1-103. Definitions pertaining to natural hazards

As used in this article, unless the context otherwise requires:

- (1) “Aspect” means the cardinal direction the land surface faces, characterized by north-facing slopes generally having heavier vegetation cover.
- (2) “Avalanche” means a mass of snow or ice and other material which may become incorporated therein as such mass moves rapidly down a mountain slope.
- (3) “Corrosive soil” means soil which contains soluble salts which may produce serious detrimental effects in concrete, metal, or other substances that are in contact with such soil.
- (4) “Debris-fan floodplain” means a floodplain which is located at the mouth of a mountain valley tributary stream as such stream enters the valley floor.
- (5) “Dry wash channel and dry wash floodplain” means a small watershed with a very high percentage of runoff after torrential rainfall.
- (6) “Expansive soil and rock” means soil and rock which contains clay and which expands to a significant degree upon wetting and shrinks upon drying.
- (7) “Floodplain” means an area adjacent to a stream, which area is subject to flooding as the result of the occurrence of an intermediate regional flood and which area thus is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Mainstream floodplains;

(b) Debris-fan floodplains; and

(c) Dry wash channels and dry wash floodplains.

(8) “Geologic hazard” means a geologic phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes;

(b) Seismic effects;

(c) Radioactivity; and

(d) Ground subsidence.

(9) “Geologic hazard area” means an area which contains or is directly affected by a geologic hazard.

(10) “Ground subsidence” means a process characterized by the downward displacement of surface material caused by natural phenomena such as removal of underground fluids, natural consolidation, or dissolution of underground minerals or by man-made phenomena such as underground mining.

(11) “Mainstream floodplain” means an area adjacent to a perennial stream, which area is subject to periodic flooding.

(12) “Mudflow” means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff.

(13) “Natural hazard” means a geologic hazard, a wildfire hazard, or a flood.

- (14) “Natural hazard area” means an area containing or directly affected by a natural hazard.
- (15) “Radioactivity” means a condition related to various types of radiation emitted by natural radioactive minerals that occur in natural deposits of rock, soil, and water.
- (16) “Seismic effects” means direct and indirect effects caused by an earthquake or an underground nuclear detonation.
- (17) “Siltation” means a process which results in an excessive rate of removal of soil and rock materials from one location and rapid deposit thereof in adjacent areas.
- (18) “Slope” means the gradient of the ground surface which is definable by degree or percent.
- (19) “Unstable or potentially unstable slope” means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.
- (20) “Wildfire behavior” means the predictable action of a wildfire under given conditions of slope, aspect, and weather.
- (21) “Wildfire hazard” means a wildfire phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:
- (a) Slope and aspect;
 - (b) Wildfire behavior characteristics; and
 - (c) Existing vegetation types.
- (22) “Wildfire hazard area” means an area containing or directly affected by a wildfire hazard.

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C.R.S.A. § 24-65.1-104

§ 24-65.1-104. Definitions pertaining to other areas and activities of state interest

Effective: August 11, 2010

As used in this article, unless the context otherwise requires:

- (1) “Airport” means any municipal or county airport or airport under the jurisdiction of an airport authority.
- (2) “Area around a key facility” means an area immediately and directly affected by a key facility.
- (3) “Arterial highway” means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the department of transportation.
- (4) “Collector highway” means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers and constructed under guidelines and standards established by, or under the supervision of, the department of transportation. “Collector highway” does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.
- (5) “Domestic water and sewage treatment system” means a wastewater treatment facility, water distribution system, or water treatment facility, as defined in [section 25-9-102\(5\)](#), (6), and (7), C.R.S., and any system of pipes, structures, and facilities through which wastewater is collected for treatment.
- (6) “Historical or archaeological resources of statewide importance” means resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.
- (7) “Key facilities” means:

(a) Airports;

(b) Major facilities of a public utility;

(c) Interchanges involving arterial highways;

(d) Rapid or mass transit terminals, stations, and fixed guideways.

(8) “Major facilities of a public utility” means:

(a) Central office buildings of telephone utilities;

(b) Transmission lines, power plants, and substations of electrical utilities; and

(c) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.

(9) “Mass transit” means a coordinated system of transit modes providing transportation for use by the general public.

(10) “Mineral” means an inanimate constituent of the earth, in solid, liquid, or gaseous state, which, when extracted from the earth, is usable in its natural form or is capable of conversion into usable form as a metal, a metallic compound, a chemical, an energy source, a raw material for manufacturing, or a construction material. “Mineral” does not include surface or groundwater subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include geothermal resources.

(11) “Mineral resource area” means an area in which minerals are located in sufficient concentration in veins, deposits, bodies, beds, seams, fields, pools, or otherwise as to be capable of economic recovery. “Mineral resource area” includes but is not limited to any area in which there has been significant mining activity in the past, there is significant mining activity in the present, mining development is planned or in progress, or mineral rights are held by mineral patent or valid mining claim with the intention of mining.

(12) “Natural resources of statewide importance” is limited to shorelands of major, publicly owned reservoirs and significant wildlife habitats in which the wildlife species, as identified by the division of parks and wildlife of the department of natural resources, in a proposed area could be endangered.

(13) “New communities” means the major revitalization of existing municipalities or the establishment of urbanized growth centers in unincorporated areas.

(14) “Rapid transit” means the element of a mass transit system involving a mechanical conveyance on an exclusive lane or guideway constructed solely for that purpose.

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C.R.S.A. § 24-65.1-105

§ 24-65.1-105. Effect of article--public utilities

(1) With regard to public utilities, nothing in this article shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the public utilities commission. Any order, rule, or directive issued by any governmental agency pursuant to this article shall not be inconsistent with or in contravention of any decision, order, or finding of the public utilities commission with respect to public convenience and necessity. The public utilities commission and public utilities shall take into consideration and, when feasible, foster compliance with adopted land use master plans of local governments, regions, and the state.

(2) Nothing in this article shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

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C.R.S.A. § 24-65.1-106

§ 24-65.1-106. Effect of article--rights of property owners--water rights

(1) Nothing in this article shall be construed as:

(a) Enhancing or diminishing the rights of owners of property as provided by the state constitution or the constitution of the United States;

(b) Modifying or amending existing laws or court decrees with respect to the determination and administration of water rights.

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C.R.S.A. § 24-65.1-107

§ 24-65.1-107. Effect of article--developments in areas of state interest and activities of state interest meeting certain conditions

(1) This article shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of May 17, 1974:

(a) The development or activity is covered by a current building permit issued by the appropriate local government; or

(b) The development or activity has been approved by the electorate; or

(c) The development or activity is to be on land:

(I) Which has been conditionally or finally approved by the appropriate local government for planned unit development or for a use substantially the same as planned unit development; or

(II) Which has been zoned by the appropriate local government for the use contemplated by such development or activity; or

(III) With respect to which a development plan has been conditionally or finally approved by the appropriate governmental authority.

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C.R.S.A. § 24-65.1-108

§ 24-65.1-108. Effect of article--state agency or commission responses

(1) Whenever any person desiring to carry out development as defined in [section 24-65.1-102\(1\)](#) is required to obtain a permit, to be issued by any state agency or commission for the purpose of authorizing or allowing such development, pursuant to this or any other statute or regulation promulgated thereunder, such agency or commission shall establish a reasonable time period, which shall not exceed sixty days following receipt of such permit application, within which such agency or commission must respond in writing to the applicant, granting or denying said permit or specifying all reasonable additional information necessary for the agency or commission to respond. If additional information is required, said agency or commission shall set a reasonable time period for response following the receipt of such information.

(2) Whenever a state agency or commission denies a permit, the denial must specify:

- (a) The regulations, guidelines, and criteria or standards used in evaluating the application;
- (b) The reasons for denial and the regulations, guidelines, and criteria or standards the application fails to satisfy; and
- (c) The action that the applicant would have to take to satisfy the state agency's or commission's permit requirements.

(3) Whenever an application for a permit, as provided under this section, contains a statement describing the proposed nature, uses, and activities in conceptual terms for the development intended to be accomplished and is not accompanied with all additional information, including, without limitation, engineering studies, detailed plans and specifications, and zoning approval, or, whenever a hearing is required by the statutes, regulations, rules, ordinances, or resolutions thereof prior to the issuance of the requested permit, the agency or commission shall, within the time provided in this section for response, indicate its acceptance or denial of the permit on the basis of the concept expressed in the statement of the proposed uses and activities contained in the application. Such conceptual approval shall be made subject to the applicant filing and completing all prerequisite detailed additional information in accordance with the usual filing requirements of the agency or commission within a reasonable period of time.

(4) All agencies and commissions authorized or required to issue permits for development shall adopt rules and regulations,

or amend existing rules and regulations, so as to require that such agencies and commissions respond in the time and manner required in this section.

(5) Nothing in this section shall shorten the time allowed for responses provided by federal statute dealing with, or having a bearing on, the subject of any such application for permit.

(6) The provisions of this section shall not apply to applications approved, denied, or processed by a unit of local government.

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C.R.S.A. § 24-65.1-201

§ 24-65.1-201. Areas of state interest as determined by local governments

(1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain areas of state interest from among the following:

(a) Mineral resource areas;

(b) Natural hazard areas;

(c) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance; and

(d) Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.

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C.R.S.A. § 24-65.1-202

§ 24-65.1-202. Criteria for administration of areas of state interest

Effective: April 16, 2019

(1)(a) Mineral resource areas designated as areas of state interest shall be protected and administered in such a manner as to permit the extraction and exploration of minerals therefrom, unless extraction and exploration would cause significant danger to public health and safety. If the local government having jurisdiction, after weighing sufficient technical or other evidence, finds that the economic value of the minerals present therein is less than the value of another existing or requested use, such other use should be given preference; however, other uses which would not interfere with the extraction and exploration of minerals may be permitted in such areas of state interest.

(b) Areas containing only sand, gravel, quarry aggregate, or limestone used for construction purposes shall be administered as provided by part 3 of article 1 of title 34, C.R.S.

(c) The extraction and exploration of minerals from any area shall be accomplished in a manner which causes the least practicable environmental disturbance, and surface areas disturbed thereby shall be reclaimed in accordance with the provisions of article 32 of title 34, C.R.S.

(d) Repealed by [Laws 2019, Ch. 120 \(S.B. 19-181\), § 2, eff. April 16, 2019](#).

(2)(a) Natural hazard areas shall be administered as follows:

(I)(A) Floodplains shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado water conservation board shall promulgate a model floodplain regulation no later than September 30, 1974. Open space activities such as agriculture, horticulture, floriculture, recreation, and mineral extraction shall be encouraged in the floodplains. Any combination of these activities shall be conducted in a mutually compatible manner. Building of structures in the floodplain shall be designed in terms of the availability of flood protection devices, proposed intensity of use, effects on the acceleration of floodwaters, potential significant hazards to public health and safety or to property, and other impact of such development on downstream communities such as the creation of obstructions during floods. Activities shall be discouraged that, in time of flooding, would create significant hazards to public health and safety or to property. Shallow

wells, solid waste disposal sites, and septic tanks and sewage disposal systems shall be protected from inundation by floodwaters. Unless an activity of state interest is to be conducted therein, an area of corrosive soil, expansive soil and rock, or siltation shall not be designated as an area of state interest unless the Colorado conservation board, through the local conservation district, identifies such area for designation.

(B) Nothing in sub-subparagraph (A) of this subparagraph (I), as amended by House Bill 05-1180,¹ as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(II) Wildfire hazard areas in which residential activity is to take place shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado state forest service shall promulgate a model wildfire hazard area control regulation no later than September 30, 1974. If development is to take place, roads shall be adequate for service by fire trucks and other safety equipment. Firebreaks and other means of reducing conditions conducive to fire shall be required for wildfire hazard areas in which development is authorized.

(III) In geologic hazard areas all developments shall be engineered and administered in a manner that will minimize significant hazards to public health and safety or to property due to a geologic hazard. The Colorado geological survey shall promulgate a model geologic hazard area control regulation no later than September 30, 1974.

(b) After promulgation of guidelines for land use in natural hazard areas by the Colorado water conservation board, the Colorado conservation board through the conservation districts, the Colorado state forest service, and the Colorado geological survey, natural hazard areas shall be administered by local government in a manner that is consistent with the guidelines for land use in each of the natural hazard areas.

(3) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.

(4) The following criteria shall be applicable to areas around key facilities:

(a) If the operation of a key facility may cause a danger to public health and safety or to property, as determined by local government, the area around the key facility shall be designated and administered so as to minimize such danger; and

(b) Areas around key facilities shall be developed in a manner that will discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by local government. Compatibility with nonmotorized traffic shall be encouraged. A development

that imposes burdens or deprivation on the communities of a region cannot be justified on the basis of local benefit alone.

(5) In addition to the criteria described in subsection (4) of this section, the following criteria shall be applicable to areas around particular key facilities:

(a) Areas around airports shall be administered so as to:

(I) Encourage land use patterns for housing and other local government needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas; and

(II) Avoid danger to public safety and health or to property due to aircraft crashes.

(b) Areas around major facilities of a public utility shall be administered so as to:

(I) Minimize disruption of the service provided by the public utility; and

(II) Preserve desirable existing community patterns.

(c) Areas around interchanges involving arterial highways shall be administered so as to:

(I) Encourage the smooth flow of motorized and nonmotorized traffic;

(II) Foster the development of such areas in a manner calculated to preserve the smooth flow of such traffic; and

(III) Preserve desirable existing community patterns.

(d) Areas around rapid or mass transit terminals, stations, or guideways shall be developed in conformance with the applicable municipal master plan adopted pursuant to [section 31-23-206, C.R.S.](#), or any applicable master plan adopted pursuant to [section 30-28-108, C.R.S.](#) If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public

requirements. Such development in such areas shall be made with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.

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C.R.S.A. § 24-65.1-203

§ 24-65.1-203. Activities of state interest as determined by local governments

Effective: August 11, 2010

(1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain activities of state interest from among the following:

(a) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;

(b) Site selection and development of solid waste disposal sites except those sites specified in [section 25-11-203\(1\), C.R.S.](#), sites designated pursuant to part 3 of article 11 of title 25, C.R.S., and hazardous waste disposal sites, as defined in [section 25-15-200.3, C.R.S.](#);

(c) Site selection of airports;

(d) Site selection of rapid or mass transit terminals, stations, and fixed guideways;

(e) Site selection of arterial highways and interchanges and collector highways;

(f) Site selection and construction of major facilities of a public utility;

(g) Site selection and development of new communities;

(h) Efficient utilization of municipal and industrial water projects;

(i) Conduct of nuclear detonations; and

(j) The use of geothermal resources for the commercial production of electricity.

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C.R.S.A. § 24-65.1-204

§ 24-65.1-204. Criteria for administration of activities of state interest

(1)(a) New domestic water and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.

(b) Major extensions of domestic water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.

(2) Major solid waste disposal sites shall be developed in accordance with sound conservation practices and shall emphasize, where feasible, the recycling of waste materials. Consideration shall be given to longevity and subsequent use of waste disposal sites, soil and wind conditions, the potential problems of pollution inherent in the proposed site, and the impact on adjacent property owners, compared with alternate locations.

(3) Airports shall be located or expanded in a manner which will minimize disruption to the environment of existing communities, minimize the impact on existing community services, and complement the economic and transportation needs of the state and the area.

(4)(a) Rapid or mass transit terminals, stations, or guideways shall be located in conformance with the applicable municipal master plan adopted pursuant to [section 31-23-206, C.R.S.](#), or any applicable master plan adopted pursuant to [section 30-28-108, C.R.S.](#) If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Activities shall be conducted with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.

(b) Proposed locations of rapid or mass transit terminals, stations, and fixed guideways which will not require the demolition of residences or businesses shall be given preferred consideration over competing alternatives.

(c) A proposed location of a rapid or mass transit terminal, station, or fixed guideway that imposes a burden or deprivation on a local government cannot be justified on the basis of local benefit alone, nor shall a permit for such a location be denied solely because the location places a burden or deprivation on one local government.

(5) Arterial highways and interchanges and collector highways shall be located so that:

(a) Community traffic needs are met;

(b) Desirable community patterns are not disrupted; and

(c) Direct conflicts with adopted local government, regional, and state master plans are avoided.

(6) Where feasible, major facilities of public utilities shall be located so as to avoid direct conflict with adopted local government, regional, and state master plans.

(7) When applicable, or as may otherwise be provided by law, a new community design shall, at a minimum, provide for transportation, waste disposal, schools, and other governmental services in a manner that will not overload facilities of existing communities of the region. Priority shall be given to the development of total communities which provide for commercial and industrial activity, as well as residences, and for internal transportation and circulation patterns.

(8) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.

(9) Nuclear detonations shall be conducted so as to present no material danger to public health and safety. Any danger to property shall not be disproportionate to the benefits to be derived from a detonation.

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C.R.S.A. § 24-65.1-301

§ 24-65.1-301. Functions of local government

(1) Pursuant to this article, it is the function of local government to:

(a) Designate matters of state interest after public hearing, taking into consideration:

(I) The intensity of current and foreseeable development pressures; and

(II) Applicable guidelines for designation issued by the applicable state agencies;

(b) Hold hearings on applications for permits for development in areas of state interest and for activities of state interest;

(c) Grant or deny applications for permits for development in areas of state interest and for activities of state interest;

(d) Receive recommendations from state agencies and other local governments relating to matters of state interest;

(e) Send recommendations to other local governments relating to matters of state interest.

(f) Deleted by [Laws 2005, Ch. 192, § 2, eff. June 1, 2005](#).

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C.R.S.A. § 24-65.1-302

§ 24-65.1-302. Functions of other state agencies

Effective: April 16, 2019

(1) Pursuant to this article, it is the function of other state agencies to:

(a) Send recommendations to local governments relating to designation of matters of state interest on the basis of current and developing information; and

(b) Provide technical assistance to local governments concerning designation of and guidelines for matters of state interest.

(2) Primary responsibility for the recommendation and provision of technical assistance functions described in subsection (1) of this section is upon:

(a) The Colorado water conservation board, acting in cooperation with the Colorado conservation board, with regard to floodplains;

(b) The Colorado state forest service, with regard to wildfire hazard areas;

(c) The Colorado geological survey, with regard to geologic hazard areas, geologic reports, and the identification of mineral resource areas;

(d) The division of reclamation, mining, and safety, with regard to mineral extraction and the reclamation of land disturbed thereby;

(e) The Colorado conservation board and conservation districts, with regard to resource data inventories, soils, soil suitability,

erosion and sedimentation, floodwater problems, and watershed protection; and

(f) The division of parks and wildlife of the department of natural resources, with regard to significant wildlife habitats.

(3) Repealed by [Laws 2019, \(S.B. 19-181\), § 2, eff. April 16, 2019](#).

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[Part 4. Designation of Matters of State Interest--Guidelines for Administration \(Refs & Annos\)](#)

C.R.S.A. § 24-65.1-401

§ 24-65.1-401. Designation of matters of state interest

[Currentness](#)

(1) After public hearing, a local government may designate matters of state interest within its jurisdiction, taking into consideration:

(a) The intensity of current and foreseeable development pressures.

(b) Repealed by [Laws 2005, Ch. 192, § 1, eff. June 1, 2005](#).

(2) A designation shall:

(a) Specify the boundaries of the proposed area; and

(b) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

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Part 4. Designation of Matters of State Interest--Guidelines for Administration (Refs & Annos)

C.R.S.A. § 24-65.1-402

§ 24-65.1-402. Guidelines--regulations

(1) The local government shall develop guidelines for administration of the designated matters of state interest. The content of such guidelines shall be such as to facilitate administration of matters of state interest consistent with [sections 24-65.1-202](#) and [24-65.1-204](#).

(2) A local government may adopt regulations interpreting and applying its adopted guidelines in relation to specific developments in areas of state interest and to specific activities of state interest.

(3) No provision in this article shall be construed as prohibiting a local government from adopting guidelines or regulations containing requirements which are more stringent than the requirements of the criteria listed in [sections 24-65.1-202](#) and [24-65.1-204](#).

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[Article 65.1. Areas and Activities of State Interest \(Refs & Annos\)](#)

[Part 4. Designation of Matters of State Interest--Guidelines for Administration \(Refs & Annos\)](#)

C.R.S.A. § 24-65.1-403

§ 24-65.1-403. Technical and financial assistance

(1) Appropriate state agencies shall provide technical assistance to local governments in order to assist local governments in designating matters of state interest and adopting guidelines for the administration thereof.

(2)(a) The department of local affairs shall oversee and coordinate the provision of technical assistance and provide financial assistance as may be authorized by law.

(b) The department of local affairs shall determine whether technical or financial assistance or both are to be given to a local government on the basis of the local government's:

(I) Showing that current or reasonably foreseeable development pressures exist within the local government's jurisdiction; and

(II) Plan describing the proposed use of technical assistance and expenditure of financial assistance.

(3)(a) Any local government applying for federal or state financial assistance for floodplain studies shall provide prior notification to the Colorado water conservation board. The board shall coordinate and prescribe the standards for all floodplain studies conducted pursuant to this article, including those conducted by federal, local, or other state agencies, to the end that reasonably uniform standards can be applied to the identification and designation of all floodplains within the state and to minimize duplication of effort.

(b) No floodplains shall be designated by any local government until such designation has been first approved by the Colorado water conservation board as provided in [sections 30-28-111](#) and [31-23-301, C.R.S.](#)

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C.R.S.A. § 24-65.1-404

§ 24-65.1-404. Public hearing--designation of an area or activity of state interest and adoption of guidelines by order of local government

(1) The local government shall hold a public hearing before designating an area or activity of state interest and adopting guidelines for administration thereof.

(2)(a) Notice, stating the time and place of the hearing and the place at which materials relating to the matter to be designated and guidelines may be examined, shall be published once at least thirty days and not more than sixty days before the public hearing in a newspaper of general circulation in the county.

(b) Any person may request, in writing, that his name and address be placed on a mailing list to receive notice of all hearings held pursuant to this section. If the local government decides to maintain such a mailing list, it shall mail notices to each person paying an annual fee reasonably related to the cost of production, handling, and mailing of such notice. In order to have his name and address retained on said mailing list, the person shall resubmit his name and address and pay such fee before January 31 of each year.

(3) Within thirty days after completion of the public hearing, the local government, by order, may adopt, adopt with modification, or reject the particular designation and guidelines; but the local government, in any case, shall have the duty to designate any matter which has been finally determined to be a matter of state interest and adopt guidelines for the administration thereof.

(4) After a matter of state interest is designated pursuant to this section, no person shall engage in development in such area, and no such activity shall be conducted until the designation and guidelines for such area or activity are finally determined pursuant to this article.

(5) Deleted by [Laws 2005, Ch. 192, § 4, eff. June 1, 2005](#).



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Colorado Revised Statutes Annotated

Title 24. Government--State

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Article 65.1. Areas and Activities of State Interest (Refs & Annos)

Part 5. Permits for Development in Areas of State Interest and for Conduct of Activities of State Interest

C.R.S.A. § 24-65.1-501

§ 24-65.1-501. Permit for development in area of state interest or to conduct an activity of state interest required

(1)(a) Any person desiring to engage in development in an area of state interest or to conduct an activity of state interest shall file an application for a permit with the local government in which such development or activity is to take place. A reasonable fee determined by the local government sufficient to cover the cost of processing the application, including the cost of holding the necessary hearings, shall be paid at the time of filing such application.

(b) The requirement of paragraph (a) of this subsection (1) that a public utility obtain a permit shall not be deemed to waive the requirements of article 5 of title 40, C.R.S., that a public utility obtain a certificate of public convenience and necessity.

(2)(a) Not later than thirty days after receipt of an application for a permit, the local government shall publish notice of a hearing on said application. Such notice shall be published once in a newspaper of general circulation in the county, not less than thirty days nor more than sixty days before the date set for hearing.

(b) If a person proposes to engage in development in an area of state interest or to conduct an activity of state interest not previously designated and for which guidelines have not been adopted, the local government may hold one hearing for determination of designation and guidelines and granting or denying the permit.

(c) The local government may maintain a mailing list and send notice of hearings relating to permits in a manner similar to that described in [section 24-65.1-404\(2\)\(b\)](#).

(3) The local government may approve an application for a permit to engage in development in an area of state interest if the proposed development complies with the local government's guidelines and regulations governing such area. If the proposed development does not comply with the guidelines and regulations, the permit shall be denied.

(4) The local government may approve an application for a permit to conduct an activity of state interest if the proposed activity complies with the local government's regulations and guidelines for conduct of such activity. If the proposed activity does not comply with the guidelines and regulations, the permit shall be denied.

(5) The local government conducting a hearing pursuant to this section shall:

(a) State, in writing, reasons for its decision, and its findings and conclusions; and

(b) Preserve a record of such proceedings.

(6) After May 17, 1974, any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest who does not obtain a permit pursuant to this section may be enjoined by the appropriate local government from engaging in such development or conducting such activity.

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[Article 65.1. Areas and Activities of State Interest \(Refs & Annos\)](#)

[Part 5. Permits for Development in Areas of State Interest and for Conduct of Activities of State Interest](#)

C.R.S.A. § 24-65.1-502

§ 24-65.1-502. Judicial review

The denial of a permit by a local government agency shall be subject to judicial review in the district court for the judicial district in which the major development or activity is to occur.

RESOLUTION 2021-055
OF THE COUNCIL OF THE CITY OF FORT COLLINS
DIRECTING THE CITY MANAGER TO INVESTIGATE AND EVALUATE
THE REGULATION OF AREAS AND ACTIVITIES OF STATE INTEREST
PURSUANT TO POWERS ESTABLISHED IN STATE LAW
COMMONLY REFERRED TO AS 1041 POWERS

WHEREAS, in 1974, Colorado enacted House Bill 74-1041, the Areas and Activities of State Interest Act (the “Act”), that allows municipalities and counties by means of a statutorily defined process to designate certain areas and activities of state interest and to adopt certain regulations for the review of permits for development in such designated areas and for such activities; and

WHEREAS, the Act is set forth in Title 24, Article 65.1, of the Colorado Revised Statutes and the regulatory powers granted by the Act are commonly referred to as “1041 powers” and the regulations adopted by a municipality or county pursuant to the Act are commonly referred to as “1041 regulations”; and

WHEREAS, 1041 powers provide a possible regulatory tool by which the City may better achieve its policy and regulatory goals in furtherance of the best interests of the citizens of Fort Collins; and

WHEREAS, City staff investigation and evaluation of the 1041 powers and possible 1041 regulations is necessary to enable City Council to determine whether initiating the process for adopting certain 1041 regulations is desirable.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Council hereby directs the City Manager to investigate and evaluate ways in which 1041 powers and 1041 regulations may better allow the City to achieve its policy and regulatory goals and to report its findings to City Council.

Section 3. That this Resolution is not intended to initiate the process for designating an area or activity of state interest and adopting guidelines set forth in Colorado Revised Statutes § 24-65.1-404.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of May, A.D. 2021.

Mayor

ATTEST:

City Clerk