

Colorado Statutes - **CRS 24-65**:

Title 24 Government - State:

Planning - State:

Article 65 -

## COLORADO LAND USE ACT

### **24-65-101 to 24-65-106. (Repealed)**

**Source: L. 2005:** Entire article repealed, p. 667, § 1, effective June 1.

**Editor's note:** This article was numbered as article 4 of chapter 106 in C.R.S. 1963. For amendments prior to its repeal in 2005, consult the red book table distributed with the session laws; the 1997 to 2004 Colorado Revised Statutes; the 1982 and 1988 replacement volumes, the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1997; the comparative table located in the back of the index; and C.R.S. 1963.

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Colorado Statutes - **CRS 24-65.1**:

Title 24 Government - State:

Planning - State:

Article 65.1-

## AREAS AND ACTIVITIES OF STATE INTEREST

**Law reviews:** For article, "Local Government and House Bill 1041: A Voice in the Wilderness", see 19 Colo. Law. 2245 (1990); for article, "H.B. 1041 as a Tool for Municipal Attorneys", see 23 Colo. Law. 1309 (1994).

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**PART 1 GENERAL PROVISIONS**

**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.

**Source: L. 74:** Entire article added, p. 335, § 1, effective May 17. **L. 2005:** IP(1) amended, p. 671, § 13, effective June 1.

**ANNOTATION**

**Law reviews.** For article, "Synthetic Fuels -- Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Quality Versus Quantity: The Continued Right to Appropriate -- Part I", see 15 Colo. Law. 1035 (1986).

**Land use controls to bear rational relationship to community's health, safety, and welfare.** The exercise of the police power, be it in the enactment of land use controls or in decisions enforcing those regulations, must bear a rational relationship to the health, safety, and welfare of the community. *Tri-State Generation & Transmission Ass'n v. Bd. of County Comm'rs*, 42 Colo. App. 479, 600 P.2d 103 (1979).

**Court may interfere only when exercise of police power capricious and arbitrary.** It is axiomatic that every exercise of the police power applying land use regulations is apt to affect adversely someone's property interests and that a reviewing court should intervene only when such power is exercised capriciously and arbitrarily. *Tri-State Generation & Transmission Ass'n v. Bd. of County Comm'rs*, 42 Colo. App. 479, 600 P.2d 103 (1979).

**Counties are delegated power to supervise land use involving "state interest".** This article delegates to the counties power to supervise land use with regard to areas and activities of "state interest", i.e., which may have an impact on the people of the state beyond the immediate scope of the project. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988), *aff'd*, 782 P.2d 753 (Colo. 1989).

**Applied** in *Bd. of County Comm'rs v. District Court*, 623 P.2d 1017 (Colo. 1981).

**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.

**Source:** **L. 74:** Entire article added, p. 336, § 1, effective May 17. **L. 90:** (6) amended, p. 449, § 19, effective April 18.

**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.

**Source: L. 74:** Entire article added, p. 336, § 1, effective May 17.

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

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 plant, water supply system, or water treatment plant, 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 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.

**Source: L. 74:** Entire article added, p. 338, § 1, effective May 17. **L. 91:** (3) and (4) amended, p. 1067, § 34, effective July 1.

**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.

**Source: L. 74:** Entire article added, p. 339, § 1, effective May 17.

#### ANNOTATION

**Although subsection (1) may provide the courts with a basis for invalidating particular local regulations,** it does not exempt municipally operated utilities from every conceivable regulatory scheme. *City & County of Denver v. Bd. of County Comm'rs*, 782 P.2d 753 (Colo. 1989); *Colorado Springs v. Eagle Co. Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

**Exemption inapplicable to municipal utilities serving outside boundaries.** The exemption conferred by this section does not apply to municipal utilities serving outside their territorial boundaries. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981).

#### **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.

**Source: L. 74:** Entire article added, p. 340, § 1, effective May 17.

#### ANNOTATION

**Law reviews.** For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Law and the American West: The Search for an Ethic of Place", see 59 U. Colo. L. Rev. 401 (1988).

**Applied** in *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988), *aff'd*, 782 P.2d 753 (Colo. 1989); *Colorado Springs v. Eagle County Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

#### **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.

**Source: L. 74:** Entire article added, p. 340, § 1, effective May 17.

#### ANNOTATION

"Electorate", as used in subsection (1)(b), refers to the appropriate local electorate which is affected by the approval of a project and which accepts, by its approval, the consequences of a exemption from land use control under this article. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988), *aff'd*, 782 P.2d 753 (Colo. 1989).

**Under § 29-20-107, a county cannot disregard a limitation of its authority found in another statute. The zoned land exemption contained in subsection (1)(c)(II) is not, however, a "requirement" that is meant to "control" under §29-20-107.** *Droste v. Bd. of County Comm'rs*, 85 P.3d 585 (Colo. App. 2003).

#### **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.

**Source: L. 74:** Entire article added, p. 340, § 1, effective May 17.

**PART 2 AREAS AND ACTIVITIES DESCRIBED -**  
**CRITERIA FOR ADMINISTRATION**

**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.

**Source: L. 74:** Entire article added, p. 341, § 1, effective May 17.

**ANNOTATION**

**Law reviews.** For article, "Synthetic Fuels -- Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980).

For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

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

- (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) Unless an activity of state interest has been designated or identified or unless it includes part or all of another area of state interest, an area of oil and gas or geothermal resource development shall not be designated as an area of state interest unless the state oil and gas conservation commission identifies such area for designation.
- (2) (a) Natural hazard areas shall be administered as follows:
- (l) (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, 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.

**Source:** **L. 74:** Entire article added, p. 341, § 1, effective May 17. **L. 75:** (5)(a) amended, p. 1270, § 4, effective July 1. **L. 88:** (1)(c) amended, p. 1436, § 34, effective June 11. **L. 2002:** (2)(a)(I) and (2)(b) amended, p. 514, § 3, effective July 1. **L. 2005:** (2)(a)(I) amended, p. 348, § 3, effective August 8.

**Editor's note:** Subsection (2)(a)(I) was contained in a 2005 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

#### ANNOTATION

**Board of county commissioners lacked authority under subsection (1) to impose conditions upon the operation of exploratory oil well,** as statute specifically prohibits area of oil and gas development from being designated area of state interest without identification of area by state oil and gas conservation commission and such designation was not made by commission. *Osborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

**24-65.1-203. Activities 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 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; and
  - (i) Conduct of nuclear detonations.

**Source: L. 74:** Entire article added, p. 344, § 1, effective May 17. **L. 79:** (1)(b) amended, p. 1067, § 9, effective June 15; (1)(b) amended, p. 1070, § 2, effective January 1, 1980. **L. 83:** (1)(b) amended, p. 1105, § 26, effective June 3.

**Editor's note:** Amendments to subsection (1)(b) by Senate Bill 79-335 and House Bill 79-1156 were harmonized in the version of that subsection that took effective January 1, 1980.

**ANNOTATION**

**Law reviews.** For article, "Synthetic Fuels -- Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Quality Versus Quantity: The Continued Right to Appropriate -- Part I", see 15 Colo. Law. 1035 (1986).

**The designations of activities of state interest made pursuant to this section** do not amount to an unconstitutional delegation of legislative power to local government. The act provides adequate protection against the uncontrolled exercise of power by local governments. *Denver v. Bd. of County Comm'rs*, 782 P.2d 753 (Colo. 1989).

**County may not require developer to obtain a permit to pursue its annexation to municipality pursuant to the provisions of the Areas and Activities of State Interest Act.** General assembly did not expressly list annexation as an activity of state interest that counties are authorized to regulate under the act. General assembly provided for comprehensive regulation of annexation by municipalities through statutory

provisions governing municipal annexation. Although county may regulate new communities insofar as they concern urbanized growth centers in its unincorporated areas, here developer has proposed to develop its property only in the event it becomes annexed to municipality. Because county's regulations concerning annexation exceed the scope of the statutory provisions of the act, such regulation may not stand. Developer may proceed to have its property annexed to municipality without obtaining a permit under the act from the county. *Bd. of County Comm'rs v. Gartrell Inv. Co., LLC*, 33 P.3d 1244 (Colo. App. 2001).

**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.

**Source: L. 74:** Entire article added, p. 344, § 1, effective May 17. **L. 75:** (4)(a) amended, p. 1270, § 5, effective July 1.

**ANNOTATION**

**Law reviews.** For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

**Board of commissioners was authorized to enact wetlands and nuisance regulations that were more stringent than those embodied in this section.** Colorado Springs v. Eagle County Bd. of County Comm'rs, 895 P.2d 1105 (Colo. App. 1994).

**Authority to regulate development of water projects under this section** extends to projects within a county, even if end users of water were outside the county. Colorado Springs v. Eagle County Bd. of County Comm'rs, 895 P.2d 1105 (Colo. App. 1994).

## **PART 3 LEVELS OF GOVERNMENT INVOLVED AND THEIR FUNCTIONS**

### **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 amendment, L. 2005, p. 667, § 2, effective June 1, 2005.)

**Source: L. 74:** Entire article added, p. 346, § 1, effective May 17. **L. 2005:** (1)(e) and (1)(f) amended, p. 667, § 2, effective June 1.

### **24-65.1-302. Functions of other state agencies.**

- (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 minerals and geology, 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 wildlife of the department of natural resources, with regard to significant wildlife habitats.

(3) Pursuant to section 24-65.1-202 (1) (d), the oil and gas conservation commission of the state of Colorado may identify an area of oil and gas development for designation by local government as an area of state interest.

**Source: L. 74:** Entire article added, p. 346, § 1, effective May 17. **L. 92:** (2)(d) amended, p. 1970, § 74, effective July 1. **L. 2002:** (2)(a) and (2)(e) amended, p. 514, § 4, effective July 1. **L. 2005:** (1)(a) amended, p. 667, § 3, effective June 1.

**PART 4 DESIGNATION OF MATTERS OF STATE INTEREST**  
**- GUIDELINES FOR ADMINISTRATION**

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

- (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.
- (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.

**Source: L. 74:** Entire section added, p. 347, § 1, effective May 17. **L. 2005:** (1)(b) repealed, p. 667, § 1, effective June 1.

**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.

**Source: L. 74:** Entire article added, p. 347, § 1, effective May 17.

**ANNOTATION**

**Board of commissioners was authorized to enact wetlands and nuisance regulations that were more stringent than those embodied in § 24-65.1-204.** Colorado Springs v. Eagle County Bd. of County Comm'rs, 895 P.2d 1105 (Colo. App. 1994).

**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.

**Source: L. 74:** Entire article added, p. 347, § 1, effective May 17. **L. 77:** (3) added, p. 1241, § 1, effective June 3.

**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 amendment, L. 2005, p. 668, § 4, effective June 1, 2005.)

**Source: L. 74:** Entire article added, p. 348, § 1, effective May 17. **L. 2005:** (2)(a) and (5) amended, p. 668, § 4, effective June 1.

#### ANNOTATION

**Failure to give land use commission notice of hearing minor defect.** Failure to give formal notice to the Colorado land use commission, as required by subsection (2)(a), is a minor defect which cannot render otherwise valid regulations void. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981).

**Board of county commissioners had authority to revise its regulations** with regard to solid waste disposal. *Dill v. Bd. of County Comm'rs of Lincoln County*, 928 P.2d 809 (Colo. App. 1996).

#### **24-65.1-405. Report of local government's progress. (Repealed)**

**Source: L. 74:** Entire article added, p. 348, § 1, effective May 17. **L. 2005:** Entire section repealed, p. 667, § 1, effective June 1.

#### **24-65.1-406. Colorado land use commission review of local government order containing designation and guidelines. (Repealed)**

**Source: L. 74:** Entire article added, p. 349, § 1, effective May 17. **L. 2005:** Entire section repealed, p. 667, § 1, effective June 1.

#### **24-65.1-407. Colorado land use commission may initiate identification, designation, and promulgation of guidelines for matters of state interest. (Repealed)**

**Source: L. 74:** Entire article added, p. 349, § 1, effective May 17. **L. 2005:** Entire section repealed, p. 667, § 1, effective June 1.

**PART 5 PERMITS FOR DEVELOPMENT IN AREAS OF STATE INTEREST  
AND FOR CONDUCT OF ACTIVITIES OF STATE INTEREST**

**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.

**Source: L. 74:** Entire article added, p. 350, § 1, effective May 17. **L. 2005:** (1)(a), (2)(a), and (6) amended, p. 668, § 5, effective June 1.

#### ANNOTATION

**Law reviews.** For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

**Permit procedure under this section**, which is effectuated by local government regulations, is reasonably designed to achieve the general assembly's power to regulate the manner of effecting an appropriation or diversion of water through legislation. *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988), *aff'd*, 782 P.2d 753 (Colo. 1989).

**If a proposed project fails to satisfy even one criterion contained in the applicable regulations, the permit must be denied.** *Colorado Springs v. Eagle County Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

**Denial of permit applications did not constitute abrogation of cities' home rule powers** to operate extraterritorial water works under art. XX, § 1, of the state constitution. *Colorado Springs v. Eagle County Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

**General assembly intended the permitting process under this section** to apply to utility projects that involve designated activities of state interest and § 30-28-110 to apply to any other utility project. *Colorado Springs v. Eagle County Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

**Applied** in *C & M Sand & Gravel v. Bd. of County Comm'rs*, 673 P.2d 1013 (Colo. App. 1983).

#### **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.

**Source: L. 74:** Entire article added, p. 351, § 1, effective May 17.

#### ANNOTATION

**Applied** in *Bd. of County Comm'rs v. District Court*, 632 P.2d 1017 (Colo. 1981).

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*Current through the First Regular Session of the Sixty-Fifth General Assembly (2005)*

*downloaded May 11, 2006*