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# 1974 LAND USE LEGISLATION IN COLORADO

BY JOHN R. BERMINGHAM*

## INTRODUCTION

The 1974 session of the Colorado General Assembly passed a wide variety of bills affecting the environment and the use of land.[1] Although some consideration will be given to House Bill 1034, "The Local Government Land Use Control Enabling Act of 1974," this article will focus on House Bill 1041, the bill which received so much attention while the session was in progress.[2]

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[1] *E.g.*, Colo. S.B. 7 (1974) (water rights—augmentation plans); Colo. S.B. 59 (1974) (Barr Lake acquisition); Colo. S.B. 60 (1974) (county powers—floods—removal of obstructions); Colo. S.B. 86 (1974) (water pollution—hearing officers); Colo. S.B. 87 (1974) (planning districts); Colo. S.B. 91 (1974) (water pollution control facilities—funding formula); Colo. S.B. 95 (1974) (definition of subdivision—condominiums); Colo. H.B. 1034 (1974) (Local Government Land Use Control Enabling Act); Colo. H.B. 1041 (1974) (the "Land Use Bill"); Colo. H.B. 1084 (1974) (Conservation Trust Fund); Colo. H.B. 1140 (1974) (air pollution—fees for permits); Colo. H.B. 1165 (1974) (geothermal resources); Colo. H.B. 1178 (1974) (abandonment of towns); Colo. H.B. 1179 (1974) (counties given control over new municipal incorporations); Colo. H.B. 1200 (1974) (State Mapping Program—$500,000 appropriation—U.S. Geol. Survey and aerial); Colo. S.J. Res. 28 (1974) (authorizing a study of energy resources); Colo. H.J. Res. 1008 (1974) (authorizing a study of oil shale development); Colo. H.J. Res. 1041 (1974) (authorizing a study of new communities); Colo. H.J. Res. 1042 (1974) (authorizing a study of metropolitan Denver water problems).

[2] The complete text of Colo. H.B. 1041 (1974) is presented as Appendix A to this article.

NOTE TO READER: At about the time this article appears in print, the 1973 version of the COLORADO REVISED STATUTES will become available. Many of the chapters, articles, and sections in this 1973 compilation will have been renumbered in the process of reorganizing the statutes by subject area. In order to make the statutory citations herein to pre-1974 legislation useful to readers using the 1973 version of the COLORADO REVISED STATUTES, the editors have departed from our usual footnote format in some respects and have attempted to provide additional information so that the reader may locate pre-1974 statutory citations either in the 1963 COLORADO REVISED STATUTES and subsequent supplements, or in the 1973 COLORADO REVISED STATUTES. Where this format is employed the statutory cita-

H.B. 1041 is Colorado's first comprehensive land use law. Past efforts have involved local planning acts, air and water pollution control laws, and numerous pieces of land use legislation dealing with particular problems, such as the 1972 subdivision act.[3] Following abortive attempts in both 1972 and 1973 to com-

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tion initially given in the footnote refers to the 1963 COLORADO REVISED STATUTES and the applicable supplements. In brackets following the citation to the 1963 COLORADO REVISED STATUTES the editors have provided, in bold faced type, a citation to the statutory material as it will be cited from the reorganized and/or renumbered 1973 COLORADO REVISED STATUTES.

The reader should also note that all 1974 legislation, including the subject of this article, House Bill 1041, will not be included in the 1973 COLORADO REVISED STATUTES but will first appear in the 1974 Colorado Session Laws and then, after being renumbered, in the 1975 Pocket Part Supplements to the 1973 COLORADO REVISED STATUTES. The editors have cited all 1974 legislation only as it will appear in the 1974 Colorado Session Laws.

[3] Ch. 81, §§ 1 to 10, [1972] Colo. Sess. Laws 498, *amending* COLO. REV. STAT. ANN. §§ 106-2-9(3), (4), 106-2-33(3), (6) to (11) (1963), §§ 106-2-34(1), (3) to (5) (Supp. 1971) and creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 106-2-4(9), (10), 106-2-9(3)(a), (4), 106-2-33(6) to (11), 106-2-34(1), (3) to (8), 106-2-37, -38, 139-59-25 **[Colo. Rev. Stat. Ann. §§ 30-28-101(1), (2), (5), (6), (8), (10), (11), 30-28-105(9), (10), 30-28-110(3), (4), 30-28-133(1), (3) to (5), 30-28-136, -137, 31-23-125 (1973)]**.

Other such specific legislation dealing with particular problems include: COLO. REV. STAT. ANN. §§ 66-31-1 to -26 (Supp. 1971), *as amended* (Air Pollution Control Act of 1971) **[Colo. Rev. Stat. Ann. §§ 25-7-101 to -126 (1973)]**; ch. 210, § 1, [1973] Colo. Sess. Laws 709, repealing COLO. REV. STAT. ANN. §§ 66-28-1 to -27 (Supp. 1967), *as amended*, and amending and reenacting it with the intended designation under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 66-28-101 to -704 (Colorado Water Quality Control Act) **[Colo. Rev. Stat. Ann. §§ 25-8-101 to -704 (1973)]**; ch. 220 § 1 [1973] Colo. Sess. Laws 772, creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 66-44-1 to -12; and ch. 220 § 2 [1973] Colo. Sess. Laws 772, 781, *amending* ch. 81, § 8 [1972] Colo. Sess. Laws 498, 504 with the intended designation under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. § 106-2-37(1)(h) (Individual Sewage Disposal Systems Act) **[Colo. Rev. Stat. Ann. §§ 25-10-101 to -112, 30-28-136(1)(g) (1973)]**; COLO. REV. STAT. ANN. §§ 66-26-1 to -8 (Supp. 1965), *as amended* (radiation control) **[Colo. Rev. Stat. Ann. §§ 25-11-101 to -108 (1973)]**; COLO. REV. STAT. ANN. §§ 139-59-1 to -24 (1963), *as amended* (municipal land use planning) **[Colo. Rev. Stat. Ann. §§ 31-23-101 to -124 (1973)]**; COLO. REV. STAT. ANN. §§ 106-2-1 to -34 (1963), *as amended* (county and regional land use planning) **[Colo. Rev. Stat. Ann. §§ 30-28-101 to -135 (1973)]**; COLO. REV. STAT. ANN. §§ 106-3-1 to -13 (Supp. 1967), *as amended* (State Planning Act) **[Colo. Rev. Stat. Ann. §§ 24-32-201 to -207 (1973)]**; COLO. REV. STAT. ANN. §§ 106-4-1 to -4 (Supp 1971) (establishment of Colorado Land Use Commission **[Colo. Rev. Stat. Ann. §§ 24-65-101 to -105 (1973)]**; COLO. REV. STAT. ANN. §§ 139-60-1 to -10 (1963), *as amended* (zoning by municipalities) **[Colo. Rev. Stat. Ann. §§ 31-23-201 to -210 (1973)]**; COLO. REV. STAT. ANN. §§ 118-16-1 to -7 (1963), *as amended* (registration of subdivision developers) **[Colo. Rev. Stat. Ann. §§ 12-61-401 to -407 (1973)]**; ch. 82, §§ 1, 2, [1972] Colo. Sess. Laws 508, creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 106-6-1 to -8, 139-60-13 (Planned Unit Development Act) **[Colo. Rev. Stat. Ann. §§ 24-67-101 to -108, 31-23-213 (1973)]**; COLO. REV. STAT. ANN. §§ 120-5-1 to -28 (1963), *as amended* (roadside advertising) **[Colo. Rev. Stat. Ann. §§ 43-1-401 to -423 (1973)]**; ch. 298, §§ 2 to 15, [1973] Colo. Sess. Laws 1049, *amending* COLO. REV. STAT. ANN. §§ 92-13-1 to -18 (Supp. 1969) (Colorado Open Mining Land Reclamation Act)

pile statutory lists of activities of state concern,[4] the 1974 General Assembly designated 13 types of areas and activities "matters of state interest." Procedures for identifying and regulating specific instances of these "matters" within each county are detailed, and may be initiated either by any local government having jurisdiction, or by the Colorado Land Use Commission. Having adopted the subdivision act in 1972 and the land use act in 1974, Colorado is now a national leader in land use legislation. Few other states have moved so far.[5]

Environmentalists tend to belittle H.B. 1041 and lawyers may view it as a badly battered piece of legislation. But environmentalists do not yet represent the majority of Americans and legislation is not written to please the critical eyes of legal craftsmen. When a legislature stormily forges ahead into a new field with hundreds of special interests pulling, tugging, and carping in a myriad of different directions, the final product emerges as a crude but significant expression of public feeling. This, in essence, is what has been produced by the 1974 session of the Colorado General Assembly in its enactment of H.B. 1041.

Three features of the new law make it an eminently worthwhile piece of legislation. First, local governments—both counties and municipalities—are given money, encouragement, and direction to plan for, designate, and regulate certain specified land use

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**[Colo. Rev. Stat. Ann. §§ 34-32-101 to -115 (1973)]**; ch. 298, §§ 1 to 20, [1973] Colo. Sess. Laws 1046, *amending* COLO. REV. STAT. ANN. § 139-59-25 (1963), §§ 106-2-5(3), 106-12(1), 139-60-1 (1) (Supp. 1967), §§ 92-13-1 to -5(1), 92-13-5(2)(e), (f), 92-13-5 (3)(j), (k), 92-13-5(5), (6), 92-13-13(2), 92-13-15(1)(c), (e), 92-13-16, 92-13-18 (Supp. 1969), and creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 92-36-1 to -5, 92-13-5(1), (2)(e), (f), (h) to (j), 92-13-5(3)(j) to (1), 64-1-3(3), (4) (commercial mineral deposits) **[Colo. Rev. Stat. Ann. §§ 30-28-106(3), 30-28-113(1); 31-23-125, -201; 34-1-103(3), (4); 34-1-301 to -305; 34-32-101 to -103; 34-32-106 (1)(c), (e); 34-32-107; 34-32-109; 34-32-110(1), (2)(d), (e), (g) to (i), (3)(i) to (k), (5), (6); 34-32-111(1); 34-32-113(2); 34-32-115 (1973)]**.

[4] When Colo. S.B. 43 (1972), the proposed "Environmental Policy Act," was killed it specified 12 "major actions." The much debated land use bill that died on the last day of the 1973 session, Colo. S.B. 377 (1973), specified 16 "activities of state concern."

[5] The only other states that have adopted noteworthy land use control legislation are the following, and not all of these states have exerted their authority on a statewide basis: California: CAL. PUB. RES. CODE § 27200 (West 1972) (Coastal Zone Act); Delaware: DEL. CODE ANN. tit. 7, § 7001 to 7013 (Supp. 1972) (Coastal Zone Act); Florida: FLA. STAT. § 380 (Supp. 1972) (Environmental Land and Water Management Act); Hawaii: HAWAII REV. STAT. § 205-1 to -15 (1961) (Land Use Commission Act); Maine: ME. REV. STAT. ANN. tit. 12, § 683 to 688 (1971) (Land Use Commission Law); *id.* tit. 38, § 481 to 488 (Supp. 1973) (Industrial Site Selection); (*id.* tit. 12, § 4811 to 4814 (1971) (Zoning and Subdivision Control); Oregon: ch. 80, [1973] Ore. Sess. Laws 27 (Land Conservation and Development Act); Vermont: VT. STAT. ANN. tit. 10, § 6001 to 6091 (1970) (Land Use Law).

matters that the legislature considers to be of critical importance in Colorado. The State has never before given such significant amounts of State funds to local governments for planning purposes. Second, State power to intervene is no longer limited to narrowly defined emergency situation; rather, the executive branch is given authority to force local governments to deal with these matters. Third, State agencies with experience in identifying and managing mineral, natural resource, and hazardous areas are brought into a coordinated program to make their information and expertise available to local governments.

Quite a number of people will object that the first two of these features represent an objectionable intrusion of government into what should be an exclusively private domain. Many congressmen, legislators, and local officials, representing a broad spectrum of Americans, are philosophically opposed to land use legislation and frequently cite the "taking clause" of the Federal Constitution.[6] However, as a recent treatise on the taking clause indicates, the barriers to land use legislation are far more political than legal.[7] Public demand for land use legislation is on the ascendency, and if local governments fail to develop the potential of H.B. 1041—promptly, effectively, and conspicuously—public opinion may well react with a takeover at the state level.

## HOUSE BILL 1041

### A. *The Structure of House Bill 1041*

Prior to a discussion of details, it is appropriate to describe the structure of the bill. Section 1 creates Article 7 of Chapter 106, a new article in Colorado's planning statutes entitled "Areas and Activities of State Interest." This 20-page section is divided into five parts, containing the customary section designations of the Colorado Revised Statutes.

Part 1 (sections 106-7-101 to -108) contains general provisions, definitions, some exemptions, and a section dealing with permits issued by state agencies.

Part 2 (sections 106-7-201 to -204) lists certain items that may be designated matters of state concern by counties or municipalities, and the criteria by which any matters so designated must be administered. The following is a shorthand list of the

[6] "[N]or shall private property be taken for public use without just compensation." U.S. CONST. amend. V.

[7] J. BANTA, F. BOSSELMAN, & D. CALLIES, THE TAKING ISSUE (1973).

matters that H.B. 1041 focuses upon:

Mineral Resource Areas
Natural Hazard Areas (flood, geologic, forest fire)
Historic and Archaeological Sites
Wildlife Habitats
Airports
Public Utilities
Highways and Interchanges
Mass Transit Facilities
Water and Sewage Facilities
Solid Waste Sites
New Communities
Water Projects
Nuclear Detonations

Part 3 (sections 106-7-301 and -302) contains some general statements concerning the duty of local governments to identify and designate such matters, and the duty of various state agencies to provide technical assistance. State agencies are now coordinating their efforts. Providing local governments with information on floodplains, geology, fire hazard areas, historical and archaeological sites, wildlife habitats, etc., will prove one of the most significant features of H.B. 1041.

Part 4 (sections 106-7-401 to -407) specifies the procedures to be followed in designating matters of state interest. Designation involves a specific description of a particular area or activity, a public hearing, and adoption of regulations consistent with the applicable "criteria for administration." After designation a permit must be issued by the local government before any development can occur with respect to the matter of state interest. Only a local government may actually designate, although the designation process may be initiated by either the Land Use Commission or the local government itself.

Part 5 (sections 106-7-501 and -502) sets out the procedure for the development permits that are required after an area or activity has been designated as a "matter of state interest."

Section 2 of the bill is simply a single new statutory section, section 106-3-9, which outlines the role of the Department of Local Affairs in administering and distributing funds for the program.

Section 3 enlarges the emergency power of the Land Use

Commission, [8] by making it unnecessary to show "irreparable" injury before the commission can act. Under its broadened emergency power the commission can commence a procedure which can lead to review by the Governor and ultimately, the issuance of a cease and desist order, when "there is in progress or proposed a land development activity which constitutes a danger of injury, loss, or damage of serious and major proportions to the public health, welfare or safety." This emergency power may be exercised without regard to H.B. 1041.

Section 4 of the bill is a single new statutory section, section 106-4-5, which delineates the Land Use Commission's role in the administration of "Areas and Activities of State Interest."

Section 5 of the bill contains the $2,375,000 appropriation. The money comes in three parts—$300,000 for the Land Use Commission, $1,575,000 for division among the participating counties, and $500,000 for distribution on a need basis to municipalities and participating counties. While distribution of the $300,000 and the $500,000 is quite straightforward, the distribution scheme for the $1,575,000 is somewhat complex. The money for the designation program is appropriated to the Department of Local Affairs for distribution on an equal basis to all counties participating in the identification and designation program; nothing is appropriated directly to municipalities, although indirect substantial assistance may be available. To be eligible to share in the $1,575,000, a county must meet four basic requirements:[9]

(1) Section 106-3-9 requires that the county be committed to a designation program which will be part of a long range comprehensive master plan.[10]

(2) To assure "scope, detail and accuracy" of the designations and that "all information is comparable between counties," section 106-3-9 also requires that the county designation program meet standards set by the Department of Local Affairs in cooperation with applicable state agencies.

(3) Section 106-7-403(2)(b)(I) requires the Department of Local Affairs to make a determination that

[8] By amendment of COLO. REV. STAT. ANN. § 106-4-3(2)(a) (Supp. 1971). [Colo. [Colo. Rev. Stat. Ann. § 30-28-106(3) (1973)].

[9] *See* Op. Colo. Att'y Gen. (May 31, 1974). As of Oct. 1, 1974, at the encouragement of the Department of Local Affairs, all 63 counties had requested and received $25,000 and are in the process of developing "work plans."

[10] Such plans are authorized by COLO. REV. STAT. ANN. § 106-2-5(3) (Supp. 1967) [Colo. Rev. Stat. Ann. §§ 31-23-101 to -112, §§ 31-23-201 to -210 (1973)].

there are "development pressures" within the county. The term "development pressures" has an extremely broad meaning and it is believed that all counties can make the necessary showing.

(4) Section 106-7-403(2)(b)(II) makes participation in the $1,575,000 dependent upon the existence of a county work program "describing the proposed use of technical assistance and expenditure of financial assistance." It is through this provision that the administration is encouraging good comprehensive planning on a statewide coordinated basis.

H.B. 1041 means money, encouragement and direction for counties and municipalities to deal with "matters of state interest" and H.B. 1041 means a "state presence" hovering in the background to assist and cajole local governments in their efforts to deal with these matters. These are the very strong "plus" features of the bill.

On the "minus side" of H.B. 1041, defects do exist and must be reckoned with:

(1) There is an exemption clause (section 106-7-107). The clause is so broad that one county commissioner has recommended that a special session of the legislature be called for its repeal.

(2) The "designation" and "permit" procedures (sections 106-7-402 to -502) may prove unduly cumbersome.

(3) Although the definitions of the "matters of state interest" and the criteria for their administration (sections 106-7-201 to -204) give clear direction for planning and regulation by local government, from a legal point of view, they are limited and very wobbly bases for the adoption of regulations with bite that will hold up in court.

Before discussing each of these problems in detail, it is necessary to review another important bill, H.B. 1034.

B. *H.B. 1034 as a Means of Curing the Defects of H.B. 1041*

It is appropriate at this point to refer briefly to the piece of land use legislation that has been termed the real "sleeper" of the 1974 session, H.B. 1034.[11] Roughly speaking, it was the intent of

[11] The most important section of Colo. H.B. 1034 (1974), section 106-8-104, states: *Powers of local governments.* (1) Without limiting or superseding any power of authority presently granted, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

this bill to tell local governments: "If there has been any doubt in the past that the Legislature has given you adequate authority to deal with modern day land use problems, we are now telling you loud and clear that you do have ample authority." H.B. 1034, entitled "The Local Government Land Use Control Enabling Act of 1974," is worded very broadly—perhaps too broadly—but the language is now law.

Local governments are authorized to adopt regulations to protect wildlife habitats, historic and archaeological locations, and to limit development of areas that would be hazardous for man. Local governments which wish to develop systems to deal with population changes are free to innovate, whether using those techniques approved for use in the town of Ramapo[12] or those designed to avoid the pitfalls encountered by the city of Petaluma.[13] Perhaps most importantly, H.B. 1034 authorizes local gov-

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(a) Regulating development and activities in hazardous areas
(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and where an activity would endanger a wildlife specie;
(c) Preserving areas of historical and archaeological importance;
(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;
(e) Regulating the location of activities and developments which may result in significant changes in population density;
(f) Providing for phased development of services and facilities;
(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and
(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

In addition, section 106-8-105 of H.B. 1034 encourages intergovernmental cooperation and section 106-2-20 authorizes counties to adopt temporary regulations without hearings to deal with residential construction.

The complete text of Colo. H.B. 1034 (1974) is presented as Appendix B to this article.

[12] Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972). In this case, the Town of Ramapo had undertaken comprehensive planning for the location and sequence of additional capital improvements over an 18-year period, and based on that criteria, had adopted amendments to its zoning ordinance which conditioned subdivision during that 18-year period on the availability of specified municipal services to the proposed subdivision plat. The court of appeals held that such phased growth was well within the ambit of statutory authorization, and being only a temporary restriction on development, was not an unconstitutional confiscation.

[13] Construction Indus. Ass'n. v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974).

ernments to regulate the use of land on the basis of the impact on the county or surrounding areas. Furthermore, there is an "elastic clause" which invites local governments to experiment.[14] It would appear that this clause gives counties the option to extend the provisions of the 1972 subdivision act[15] to the subdivision of large tracts into "ranchettes" or other parcels that are in excess of 35 acres. This clause may even authorize local governments to adopt development right transfer systems.

Much research and aggressive experimentation is needed before the full import of this bill will be known. The new powers in H.B. 1034, together with existing zoning powers,[16] become particularly important when searching for ways to overcome the three defects in H.B. 1041 that have been noted. Subject always to constitutional limitations of due process, H.B. 1034 and the zoning statutes provide a means to overcome the defects in H.B. 1041 because:

(1) H.B. 1034 and the zoning statutes have no exemptions—they apply to all lands at all stages of development.

(2) H.B. 1034 and the zoning statutes leave to local governments the authority to devise simplified procedures.

(3) H.B. 1034 and the zoning statutes provide much more latitude to aggressive local governments than is given in H.B. 1041 to deal effectively with "matters of state interest."

C. *The Exemptions in H.B. 1041*

Section 106-7-107 contains several broad exemptions;[17] it

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The Petaluma plan involved a limitation of housing units to a fraction of the demographic demand, creation of an "urban extension line" to confine the growth within certain boundaries, use of density limitation to set a maximum population, and limitation of its water contract to conform only to the growth which had been deemed desirable. The court did not sustain this plan because it infringed a constitutionally protected right to travel and there was no state interest sufficiently compelling to justify the infringement.

[14] Colo. H.B. 1041, § 106-8-104(h) (1974).

[15] Ch. 81, §§ 1 to 10, [1972] Colo. Sess. Laws 498, *amending* COLO. REV. STAT. ANN. §§ 106-2-9(3), (4), 106-2-33 (3), (6) to (11) (1963), §§ 106-2-34(1), (3) to (5) (Supp. 1971) and creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 106-2-4(9), (10), 106-2-9(3)(a), (4), 106-2-33(6) to (11), 106-2-34(1), (3) to (8), 106-2-37, -38, 139-59-25 **[Colo. Rev. Stat. Ann. §§ 30-28-101(1), (2), (5), (6), (8), (10), (11), 30-28-105(9), (10), 30-28-110(3), (4), 30-28-133(1), (3) to (5), 30-28-136, -137, 31-23-125 (1973)]**.

[16] COLO. REV. STAT. ANN. §§ 106-2-1 to -34 (1963), *as amended* (county planning and zoning) **[Colo. Rev. Stat. Ann. §§ 30-28-101 to -136 (1973)]**; *id.* §§ 139-59-1 to -12 (1963) *as amended* and §§ 139-60-1 to -10 (1963), *as amended* (municipal planning and zoning) **[Colo. Rev. Stat. Ann. §§ 31-23-101 to -112, §§ 31-23-201 to -210 (1973)]**.

[17] Section 106-7-107 of Colo. H.B. 1041 (1974) states:

excludes from the coverage of H.B. 1041 developments in areas of state interest and activities of state interest which meet certain conditions. There is no objection to the exemptions for developments or activities that on the effective date of the act were covered by current building permits or that had received approval of the voters in the area of the proposed development.[18] Nor can there be any significant objection to the exemption of developments and activities which had received conditional or final approval from the appropriate local government on the effective date of the act.[19] But the exemption of every development or activity in land "which has been zoned . . . for the use contemplated by such development or activity"[20] creates a very severe limitations on the use of H.B. 1041 as a land use control measure. In all areas of the state that were zoned on May 17, 1974, the effective date of the act, H.B. 1041 appears completely inoperative as to activities and developments permitted by the zoning. The bill can be operative in those areas only when rezoning occurs.

For example, consider an area that has been zoned for residences but which lies in a flood plain or slide area. Many such areas exist in Colorado, in both urban and mountain settings. For

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*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 the effective date of this article:*

(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 and: (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.

[18] Query: Is section 106-7-107(1)(b) a blanket exemption for any and all developments covered by voter approved bond issues of the Denver Water Board and the Regional Transportation District?

[19] Query: In relation to the 1972 subdivision act (ch.81 § 5, [1972] Colo. Sess. Laws 498, 500, intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 106-2-33(7), (8) **[Colo. Rev. Stat. Ann. §§ 30-28-101 (6), (8) (1973)]**) does "conditionally approved" in section 106-7-105(1)(c)(I) of H.B. 1041 (1974) refer to approved "sketch plans" or approved "preliminary plans" under the earlier legislation?

[20] Colo. H.B. 1041, § 106-7-107(1)(c)(II) (1974).

a city or county to designate any such area as a natural hazard area and to adopt the protective type of regulation contemplated by section 106-7-202(2) for such hazard areas, would be a total waste of time. Section 106-7-107 makes residential construction permitted by the zoning totally exempt from the protective regulations developed under H.B. 1041.

However, even though regulatory powers under the bill are inoperative in this type of situation, it is certainly proper and desirable for a local government to use its H.B. 1041 funds to hold hearings, identify the hazard areas, and formulate appropriate protective regulations. The regulations may then be held in abeyance pending rezoning or, better yet, may be adopted under H.B. 1034. In this fashion, local governments may develop and adopt protective requirements appropriate for hazard areas which have already been zoned, despite the exemption clause.

There is an alternative and much narrower interpretation of section 106-7-107(1)(c)(II) that deserves consideration. The exemption may have been intended to apply only to uses which were specifically contemplated and presented to the zoning authorities at the time the zoning was obtained. This interpretation would be consistent with other parts of the exemption section. If it prevails, the worries over the scope of the exemption will have been needlessly exaggerated.

D. *H.B. 1041 Procedural Requirements*

County commissioners and city councilmen, already burdened with many responsibilities, will necessarily pause before committing themselves to a new set of time-consuming hearings with mountains of attendant paperwork. Nevertheless, full implementation of H.B. 1041 may require just that.[21] For example,

[21] Sections 106-7-401 through -404 specify the procedure to be followed in making designations. Briefly, the local government must go through the following steps in each designation:

1. The boundaries of the area must be specified.
2. The reasons for the state interest, the dangers from uncontrolled growth and the advantages of coordination must be specified.
3. Guidelines for administration must be developed that are consistent with the appropriate criteria set forth in 106-7-202 and 204.
4. Newspaper notices of a hearing on a proposed designation must be published, including publication of the proposed guidelines
5. Notice must be sent to the Land Use Commission and to others who have requested and paid a fee to receive the notice.
6. A public hearing must be held to consider the proposed designation.
7. After the hearing, the guidelines and regulations must be adopted (a difference between guidelines and regulations is never made clear in the bill).

assume that a county designates a flood plain. Thereafter, a permit will be required under H.B. 1041 for each development within the flood plain. Development is defined in section 106-7-102(1) as "any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs." The fact that a permit is required for each development in each separate part of the flood plain appears to be quite proper, since this assures that the development will proceed in compliance with the applicable regulations. What appears unnecessary, however, is the requirement of H.B. 1041 that each application for a permit be accompanied by newspaper publication, notice to the Land Use Commission in Denver, and a public hearing on the record. Local governments have no options about these procedures under H.B. 1041.

However, H.B. 1034 and the ordinary zoning statutes provide a means for local governments to adopt the appropriate protective regulation while avoiding the excessive procedural requirements of H.B. 1041.

E. *Definitions and Criteria for Matters of State Interest*

H.B. 1041 delegates to local governments the authority to deal with each of the listed matters of state concern in accordance

8. All relevant materials pertaining to the designation must be sent to the Land Use Commission for review.

9. The local government must then receive any proposals for modifications in the guidelines and regulations from the Land Use Commission.

10. The local government must then either modify the proposed guidelines and regulations consistent with the Land Use Commission recommendations and resubmit these to the Land Use Commission or else must notify the Land Use Commission that its recommendations have been rejected.

Once the designation has occurred the following procedures must be followed for every development in the designated area and for every instance of a designated activity:

1. An application for a permit must be filed with the local government.

2. The local government must determine a reasonable fee sufficient to cover the cost of processing the application.

3. The local government must publish notices of a hearing on the application.

4. The local government must send a copy of the notice to the Land Use Commission.

5. The local government must hold a hearing on the application and either grant or deny the permit.

6. A record of the hearing must be made and preserved.

7. The local government must state in writing the reasons for its decision and its findings and conclusions.

8. If the permit is denied, the applying party may appeal the decision.

Under section 106-7-501(2)(b) the hearings for both designation and permit application may be combined. This certainly will prove a timesaver in certain instances.

with the statutory criteria. Before reviewing the separate definitions and criteria, however, it is appropriate to caution that there are instances in which some of the criteria appear inadequate to permit local governments to deal comprehensively with the matter to which the criteria are related. Such deficiencies will have to be cured by use of other statutory authority, such as H.B. 1034. It has been suggested that cures are also to be found in section 106-7-402(3) of H.B. 1041 which states:

> 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 106-7-202 and 106-7-204.

As long as the local government's guidelines and regulations bear some logical connection with the criteria in the bill, they may be as stringent as the local government wishes, consistent with the limitations of due process.[22] However, it is difficult to see how this language can be interpreted to authorize local governments to adopt guidelines and regulations containing requirements that are not based in some way on the criteria listed in sections 106-7-202 and 106-7-204. It is not enough for a control regulation to be relevant—it must be tied to the statutory criteria.

1. Nuclear Detonation

As a practical matter, no municipalities and only one or two counties are likely to use their new authority under section 106-7-203(1)(i) to regulate nuclear detonations. Nuclear shots have required careful analysis and state permits from the Water Quality Control Commission since 1970.[23] Now, after adoption of H.B. 1041, counties in which detonations are planned may either rely on the state analysis and permit system or they may adopt regulatory schemes and conduct their own independent review in accordance with section 106-7-204(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.

This language does not appear to give local governments any arbitrary authority to veto proposed shots; local control must be justified on the basis of the statutory criteria.

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[22] *See* Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967).

[23] Ch. 210 § 1 [1973] Colo. Sess. Laws 709, 725, repealing and reenacting COLO. REV. STAT. ANN. § 66-28-9 (Supp. 1971), intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. § 66-28-505 **[Colo. Rev. Stat. Ann. § 25-8-505 (1973)]**.

2. Efficient Utilization of Municipal and Industrial Water Projects

It is difficult to determine what is meant by "[e]fficient utilization of municipal and industrial water projects."[24] The concept is not defined in the bill. The accompanying criteria for administration consist of two sentences:

> 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.[25]

The legislator at whose instance this activity was included as a matter of state concern was particularly concerned about the efficient use of return flows of irrigation water. As H.B. 1041 progressed through the legislative processes, he unsuccessfully recommended deletion of this particular activity, and he does not now expect this portion of H.B. 1041 to be used. A legislative committee is now reviewing agricultural water management practices and laws.[26]

It is hard to believe that counties will tell municipalities how they must develop their water supplies or that any local government will inject itself into the operation of water and sanitation districts that have already been approved. Proposed new districts may readily be controlled under the Special District Control Act.[27] Whether local governments may constitutionally regulate private water projects raises severe constitutional questions. Also, Denver Water Board projects authorized in the 1973 bond election may be exempt under section 106-7-107(1)(b).[28]

3. Site Selection and Development of New Communities

"New communities" is a term defined by section 106-7-104 (13) to mean "the major revitalization of existing municipalities or the establishment of urbanized growth centers in unincorporated areas." Site selection and development of new communites are made activities of state interest by section 106-7-203(1)(g). No

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[24] Colo. H.B. 1041, § 106-7-203(1)(h) (1974).

[25] *Id.* § 106-7-204(8).

[26] Assigned to the Committee on Water, chaired by Senator Fred Anderson, the committee's study is scheduled to be completed before the 1975 session of the legislature.

[27] COLO. REV. STAT. ANN. §§ 89-18-1 to -10 (Supp.1965) **[Colo. Rev. Stat. Ann. §§ 32-1-201 to -209 (1973)]**.

[28] *See* note 18 and accompanying text *supra*.

criteria are included with respect to "site selection," but "development" is governed by the following:

> 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.[29]

Since the establishment of new communities is probably the most pressing growth problem in Colorado, both in the mountain areas and in the sprawl of the Front Range, the usefulness of this portion of H.B. 1041 deserves far more analysis than can be given in this one article. The questions are many:

(1) May a county adopt guidelines and regulations for new community sites which in effect "downzone" an area or prevent new communities?
(2) At what point does a rural subdivision constitute an urban growth center? If new community requirements are not imposed on a subdivision before it becomes a new community, how can such requirements be imposed afterwards?
(3) If two or three new subdivisions are proposed that will abut one another, will each separately be subject to the statutory "new community" requirements or will the combination be the "new community"? If the latter, how are the separate subdividers to be brought into agreement upon the total community requirement?
(4) With no criteria included in the bill with respect to "site selection," how should a county decide where new communities are or are not to be located and how many new communities should be authorized—or should a county even attempt to make such decisions?

These are extremely difficult questions and H.B. 1041 should not be belittled for its failure to include the answers. The general assembly recognized the shortcomings in this area and directed its interim committee on local government to study the problems of new communities.[30] Furthermore, the failure of H.B. 1041 to answer these questions does not mean that local governments

[29] Colo. H.B. 1041, § 106-7-204(7) (1974).
[30] Colo. H.J. Res. 1041 (1974).

must neglect the problems of new communities. Quite the contrary—the bill clearly recognizes the importance of siting and development of new communities as problems of state importance. Local governments which have the confidence and inclination to control new communities are certainly free to receive money under H.B. 1041, to develop their comprehensive plans, and to formulate appropriate regulations. They may then adopt those regulations under either H.B. 1034 or the zoning statutes. Municipal incorporation, a device sometimes used by developers to avoid regulation, is now subject to county control by virtue of another recent legislative enactment.[31]

4. Site Selection and Construction of Major Facilities of a Public Utility

Major facilities of a public utility are defined by section 106-7-104(8) to include central office buildings of telephone utilities; transmission lines, power plants and substations of electrical utilities; and pipelines and storage areas of utilities providing natural gas or other petroleum derivatives. Section 106-7-203(1)(f) lists "site selection and construction of major facilities of a public utility" as an activity of state concern but no criteria are included in the bill with respect to "construction." The criteria for site selection are:

> 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.[32]

Our statutes do not provide for any state master plan. Regional planning commissions exist, but only one of Colorado's 13 planning regions has adopted a regional master plan. A few counties have adopted master plans but most have not. It would appear, therefore, that this particular feature of H.B. 1041 will receive very little use. Some attorneys, in fact, believe that the exemption for public utilities contained in section 106-7-105 is so broad as to completely remove public utilities from any effective coverage by the act.

5. Site Selection of Arterial Highways and Interchanges and Collector Highways

Arterial and collector highways are defined in sections 106-7-104(3) and (4). The definitions include the interstate system,

[31] Colo. H.B. 1179 (1974).

[32] Colo. H.B. 1041, § 106-7-204(6) (1974) (emphasis added).

and highways and thoroughfares constructed under the supervision of the State Department of Highways. Selection of sites and interchanges for these highways are made activities of state interest under section 106-7-203(1)(e). Section 106-7-204(5) requires these highways and interchanges to be located so that:

> Community traffic needs are met; . . . [d]esirable community patterns are not disrupted; and . . . [d]irect conflicts with adopted local government, regional, and state master plans are avoided.

Hopefully, a new spirit of cooperation concerning transportation planning is evolving between local governments and the state and federal governments. The "Action Plan"[33] developed by the highway department and approved earlier this year by both Governor Vanderhoof and the federal government *requires* regional transportation planning that blends with land use planning, and public hearings are now routine matters in the planning of highways and interchanges. It remains to be seen whether the new spirit of openness in highway planning will prove effective. If not, H.B. 1041 gives local governments a means to put a roadblock in front of the bulldozers.

6. Site Selection of Rapid or Mass Transit Terminals, Stations, and Fixed Guideways

While rapid transit and mass transit systems are separately defined in sections 106-7-104(9) and (14), both are treated identically in H.B. 1041. The only system contemplated in Colorado that fits either definition is the Personal Rapid Transit proposal of the Regional Transportation District in the Denver metropolitan area. Section 106-7-203(1)(d) makes the selection of sites for "rapid or mass transit terminals, stations, and fixed guideways" activities of state interest. The criteria for selection of these sites appear in section 106-7-204(4). Since the federal involvement in the RTD requires the holding of extensive public hearings for selection of sites for corridors and facilities related to the PRT, local governments may choose not to avail themselves of the authority given them under this portion of the new law. Also, this particular transit system may be exempt from coverage under H.B. 1041 because of interaction between section 106-7-107(1)(b) and the RTD bond issue approved by voters in 1973.[34]

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[33] Prepared by the Colorado Division of Highways pursuant to Federal Highway Act of 1970, 23 U.S.C. §§ 109(h), 136(b) (1970) and FEDERAL HIGHWAY ADMINISTRATION, *Process Guidelines* in ADMINISTRATIVE POLICY AND PROCEDURE MEMORANDUM 90-4 (1974).

[34] *See* note 18 and accompanying text *supra*.

7. Site Selection of Airports

"Airport" is defined in section 106-7-104(1) to mean "any municipal or county airport or airport under the jurisdiction of an airport authority." Airport site selection is an activity of state interest under section 106-7-203(1) and the applicable criteria are:

> Airports shall be located or expanded in a manner which will minimize disruption to the environment of existing communities, will minimize the impact on existing community services, and will complement the economic and transportation needs of the state and the area.[35]

Obviously, much sophisticated planning must go into the location and expansion of airports and it is quite appropriate for the legislature to draw attention to the fact that airport locations and expansions are matters of great importance. Whether a local government will want to take the final step of designation is another matter, however. What county will want to require a permit of itself before it extends its own county airport runway? On the other hand, does H.B. 1041 give Adams County any control over expansion of Denver's airport?

8. Site Selection and Development of Solid Waste Disposal Sites

"Site selection and development of solid waste disposal sites" are made activities of state interest by section 106-7-203(1)(b). The criteria are:

> 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.[36]

Since the current solid waste disposal act[37] goes into considerably greater detail on the siting, development, and operation of disposal sites than is required by the H.B. 1041 criteria, only time will tell whether this section of the law will receive much use.

9. Water and Sewage Treatment Systems

Listed among the activities of state interest is "[s]ite selec-

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[35] Colo. H.B. 1041, § 106-7-204(3) (1974).

[36] *Id.* § 106-7-204(2).

[37] COLO. REV. STAT. ANN. §§ 36-23-1 to -17 (Supp. 1967), *as amended* **[Colo. Rev. Stat. Ann. §§ 30-20-101 to -115 (1973)]**.

tion and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems."[38] "Domestic water and sewage treatment systems" are defined in section 106-7-104(5) by a cross reference to definitions contained in 1973 legislation which provides for the certification of water and wastewater treatment plant operators.[39] The net effect of combining the definition in H.B. 1041 with the definition in the 1973 certification law results in the following:

> [Domestic water system] means the system of pipes, structures, and facilities through which a water supply is obtained, treated, and sold or distributed for human consumption or household use . . . [and also] . . . the facility or facilities within the water supply system which can alter the physical, chemical, or bacteriological quality of the water[40] [and]
>
> [Domestic sewage treatment system] means the facility or group of units used for the treatment of wastewater from sewer systems and for the reduction and handling of solids and gasses removed from such wastes[41] [and] any system of pipes, structures, and facilities through which wastewater is collected for treatment.[42]

It should be noted that the criteria for site selection and construction of water and sewage treatment systems are considerably more specific than any of the criteria that have previously been reviewed, particularly regarding the financial and environmental capacity of an area to sustain growth:

> 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.[43]

Because water and sewage systems are so essential in every growth situation, this portion of H.B. 1041 may prove as important as any. Local governments are given authority to control extensions into a new area on the basis of the financial and environmental capacity of the area to sustain growth. The limited

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[38] Colo. H.B. 1041, § 106-7-203(1)(a) (1974).

[39] Ch. 214, § 1, [1973] Colo. Sess. Laws 747, creating new sections intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 66-38-1 to -10 **[Colo. Rev. Stat. Ann. § 25-9-101 to -110 (1973)]**.

[40] *Id.* at 748, designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. § 66-38-2(7), (8) **[Colo. Rev. Stat. Ann. §§ 25-9-102(6), (7) (1973)]**.

[41] *Id.*, designated under the 1963 statutory compilation as COLO. REV. STAT. ANN. § 66-38-2-(6) **[Colo. Rev. Stat. Ann. § 25-9-102(5) (1973).]**.

[42] Colo. H.B. 1041, § 106-7-104(5) (1974).

[43] *Id.* § 106-7-204(1)(b).

ability of air and water to absorb wastes may thus limit the growth of popular Colorado mountain resort areas.

Since 1965 the Special District Control Law has given local governments authority to control new water and sanitation districts on the basis of certain statutory criteria which do not include environmental considerations.[44] H.B. 1041 supplies an additional factor which may be considered in deciding whether or not a new or expanded district should be permitted. However, much of the area in which growth is likely to occur is already included in water and sanitation districts. Legal questions will certainly arise if governmental agencies now attempt to block these districts from extending services within district boundaries already approved, particularly if bonded indebtedness is involved.

In 1973, the Water Quality Control Commission was charged with supervision of site location, construction, and expansion of sewage treatment systems.[45] What is new in 1974 is the possibility that this commission will exercise that authority in conformity with the criteria of H.B. 1041 and consequently that much greater attention will be given to limiting factors of the environment than in the past.

10. Areas Around Key Facilities

While the term "key facilities" has little meaning to the ordinary reader, its use in H.B. 1041 was prompted by legislation pending in Congress.[46] The term is defined in section 106-7-104(7) to mean four types of facilities: airports, major facilities of a public utility, interchanges involving arterial highways, and rapid or mass transit terminals, stations, and fixed guideways.[47] The "area around a key facility" is defined in section 106-7-104(2) to mean "an area immediately and directly affected by a key facility." Section 106-7-202(4) contains criteria applicable to key facility areas of all types. Briefly, these criteria state that such areas shall be administered in a manner which will minimize danger from the facility and discourage traffic congestion, incompatible uses, and unreasonable expansion of the demand for gov-

[44] [Colo. Rev. Stat. Ann. § 89-18-7 (Supp. 1965) **[Colo. Rev. Stat. Ann. § 32-1-205 (1973)]**.

[45] Ch. 210, § 1, [1973] Colo. Sess. Laws 709, repealing COLO. REV. STAT. ANN. § 66-28-1 to -27 (Supp. 1965) *as amended* and amending and reenacting it with the intended designation under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. § 66-28-101 to -704 **[Colo. Rev. Stat. Ann. §§ 25-8-101 to -704 (1973)]**.

[46] S. 268, 93d Cong., lst Sess. (1973).

[47] See definitions of these terms in Colo. H.B. 1041, § 106-7-104(1), (3), (8) (1974).

ernment services. Section 106-7-202(5) lists additional criteria designed for each different type of facility.

It will suffice to say about these additional criteria for each distinct type of key facility that they focus on the routine features of good planning, considerations of safety, minimization of congestion, and preservation of desirable existing community patterns. It does not appear that H.B. 1041 confers any authority to deal with the problems of these areas which does not already exist in Colorado's planning and zoning statutes. What is new, however, is the expression of state concern. Hopefully, this will prompt local governments to pay closer attention to the problems of these areas.

11. Areas Containing, or Having Significant Impact Upon, Historical, Natural, or Archaeological Resources of Statewide Importance

Among the areas that may be designated as areas of state interest are "[a]reas containing, or having significant impact upon, historical, natural, or archaeological resources of statewide importance."[48] The language "having significant impact upon" is important, since it means that these resources may be protected by appropriately outlining and regulating buffer zones. The outlines of these buffer areas are to be determined by the "state historical society, the department of natural resources, and the appropriate local government."[49] The act is silent on resolution of disagreements that may occur between the state agencies and local governments over the proper outlines of these areas.

"Natural resources of statewide importance" is a term limited by definition 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.[50]

Historical and archaeological resources are those which have been "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."[51] The criteria for these resource areas require that they be administered

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[48] Colo. H.B. 1041, § 106-7-201(1)(c) (1974).
[49] *Id.* § 106-7-202(3).
[50] *Id.* § 106-7-104(12).
[51] *Id.* § 106-7-104(6).

> 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. Developments in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.[52]

By far the most important element in this portion of H.B. 1041 is the authority to deal with areas having significant impact upon wildlife. The big game herds currently under the greatest adverse pressure from man's activities are located in La Plata, Eagle and Routt counties, and, conceivably, protection of their habitats will close large portions of those counties to rampant mountain development. In this connection, it should be noted that H.B. 1034 also authorizes local governments to protect lands "from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and where an activity would endanger a wildlife specie."[53]

Historical and archaeological sites already receive substantial protection under state and federal statutes.[54] While many of these have already been located, significant further work is needed, particularly in the archaeological area.

12. Natural Hazard Areas

One of the strongest motivating forces behind the enactment of H.B. 1041 was the need to identify and regulate geologic hazards, such as unstable slopes and avalanches, and areas susceptible to floods and wildfires. It is not surprising, then, that the bill takes on an entirely new complexion in the portions that deal with these natural hazards. Technical terms and concepts are elaborately defined in section 106-7-103, and the criteria for administration are spelled out in great detail in section 106-7-202(2). Furthermore, the Colorado Water Conservation Board, the Colorado State Forest Service, and the Colorado Geological Survey are directed to promulgate model control regulations for these types of hazard areas no later than September 30, 1974. These same agencies, with assistance from the Colorado Soil Conservation Board, will also be engaged in the massive chore of locating these hazard areas.

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[52] *Id.* § 106-7-202(3).

[53] Colo. H.B. 1034, § 106-8-104(1)(b) (1974).

[54] COLO. REV. STAT. ANN. §§ 131-12-1 to -6 (Supp. 1967) **[Colo. Rev. Stat. Ann. §§ 24-80-401 to -406 (1973)]**; 42 U.S.C.A. § 470a (West Supp. 1974).

Since the natural hazard definitions and criteria are so well developed, these portions of the bill will probably not be a source of legal problems. Nevertheless, the use of these portions of H.B. 1041 will command the attention of lawyers on many occasions:

(1) A new federal law providing for a national program of flood insurance[55] puts local governments under pressure to identify floodplains and adopt protective codes and regulations before the end of 1974. If appropriate building restrictions are not adopted, then federal flood insurance is not available. As a consequence, many Colorado communities are identifying floodplains and adopting protective regulations without reference to H.B. 1041. Having once done so, what is to be gained by repeating the process? Will any of the procedures used in connection with the federal law satisfy the requirements of H.B. 1041?

(2) Permits are a desirable regulatory device for hazard areas, but the H.B. 1041 procedures involved during and after the designation of a hazard area may appear overly complex. Can a local government require a permit but avoid the separate newspaper publication, public hearing with record, and notice to the Land Use Commission that is required in connection with every permit issued under H.B. 1041 procedures? If a local government does not resort to H.B. 1034, as suggested earlier,[56] the local government may wish to formulate hazard area regulations which divide construction activities into three classes: first, "development" for which a permit is required under H.B. 1041, which includes a public hearing for which notice must be given to the Land Use Commission and published in a newspaper, and also means that a record of the hearing must be preserved;[57] second, construction for which a permit is required from the local government but which is not a "development" within the meaning of H.B. 1041;[58] and third, minor construction for which no permit is required.

(3) The best solution to development problems in a

[55] 42 U.S.C.A. § 4001 to 4128 (West Supp. 1974).

[56] *See* Part B *supra*.

[57] Colo. H.B. 1041, § 106-7-501 (1974).

[58] As defined by Colo. H.B. 1041, § 106-7-102(1) (1974).

hazard area is often found through the flexibility of a "planned unit development." (PUD). But Colorado's statute which authorizes PUD's flatly prohibits local governments from limiting developments to this device.[59] Under the broad authority of H.B. 1041, however, it may be that hazard area regulations can be drawn that will require the developers to incorporate in their projects the desired features of a PUD.

13. Mineral Resource Areas

Next to natural hazard areas, mineral resource areas received the greatest attention in the drafting process. "Mineral" and "mineral resource area" are defined in sections 106-7-104(10) and (11) and criteria for administration are set forth in section 106-7-202(1). The definitions' effect is to make vast portions of Colorado subject to being "designated," not only in the mountain areas but in certain front range counties as well. The criteria for administration clearly encourage development. Section 106-7-202(1)(a) provides, in pertinent part:

> 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.

At the same time, the need for environmental control is recognized:

> 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. . . .[60]

H.B. 1041 does not appear to contain any authority for the adoption of regulations on the basis of aesthetics which would block mining operations entirely.

Many options are open to local governments which wish to control mining activities, ranging from zoning, which may prove clumsy and ineffective,[61] to the adoption of a master plan for extraction, as authorized in 1973.[62] In addition, state regulations

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[59] Ch. 82, § 1 [1972] Colo. Sess. Laws 508, 513, in a new section intended to be designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. § 106-6-7(5) **[Colo. Rev. Stat. Ann. § 24-67-107(5) (1973)]**.

[60] Colo. H.B. 1041, § 106-7-202(1)(c) (1974).

[61] *See* Sherwood, *Zoning Against Mining*, 2 COLO. LAW. 27 (July 1973).

[62] Ch. 298, § 1, [1973] Colo. Sess. Laws 1049, creating new sections intended to be

may be applicable under the Colorado Open Mining Land Reclamation Act of 1973,[63] which was also adopted as part of the same bill.[64] How or whether a local government will choose to use H.B. 1041 will vary according to the nature of the mineral, the degree of development that is imminent or that already has occurred, the existence of regulations authorized under other statutes, and the type of control desired. An in-depth analysis of the options now available in Colorado for control of mining operations would be extremely helpful to local governments.

F. *Use of H.B. 1041 by Local Governments and the Land Use Commission*

Nothing in H.B. 1041 directly requires local governments to identify or designate anything, and when the practical problems of participating in the program are examined, many may balk. This would be unfortunate, both for themselves and for the people of Colorado. As was noted by the Executive Director of the Department of Local Affairs:

> Certain counties will want to proceed as rapidly as possible to complete the designation of the most critical matters of state interest. Many other counties, however, will want to place their initial emphasis on comprehensive planning, identification and formulation of guidelines. The act contemplates completion of the program by June 30, 1976. The work plan for the current year need not include a commitment to complete the designations during the first year.[65]

In short, local governments can accomplish much with H.B. 1041 by requesting state funds and putting them to work in a thoughtful, orderly fashion: first, identifying the most critical matters; next, planning for each of them as part of their comprehensive plans; and finally, formulating the appropriate regulations. Whether regulations are finally adopted under the designation procedure of H.B. 1041 or, for convenience, under H.B. 1034 or other authority may be of importance to lawyers, but it is of no consequence to the public. What the people of Colorado have asked for, through the votes of their elected representatives, is that local governments proceed rapidly with land use planning

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designated under the 1963 statutory compilation scheme as COLO. REV. STAT. ANN. §§ 92-36-1 to -5 **[Colo. Rev. Stat. Ann. §§ 34-1-301 to -305 (1973)]**.

[63] Ch. 298, §§ 2 to 15, [1973] Colo. Sess. Laws 1049, *amending* COLO. REV. STAT. ANN. §§ 92-13-1 to -18 (Supp. 1969) **[Colo. Rev. Stat. Ann. §§ 34-32-101 to -118 (1973)]**.

[64] Colo. H.B. 1529 (1973).

[65] Letter from J.D. Archart to Colorado County Commissioners, June 19, 1974.

and adopt effective controls for the matters of state interest designated by H.B. 1041.

Knowing that certain matters of state interest deserve immediate attention and fearing that some local governments would fail to use their H.B. 1041 powers appropriately, the legislature gave the Colorado Land Use Commission authority to force local governments to make designations.[66] Many persons wonder how this power will be used and with what effectiveness. The answer is a political one, not a legal one.

By far the most important aspect of both the commission's power to initiate the designation process, and its emergency power under the Land Use Act,[67] is the psychological consequence of the State government's becoming involved in a handful of local problems. The experiences of the Land Use Commission since its creation in 1970 indicate that local governments will welcome this "state presence" as often as they resent it. In either event, the "state presence" carries with it a glare of publicity that generally assures effective protection of the public interest—usually on a voluntary, practical basis. Therefore, the effectiveness of the Land Use Commission will not be limited by technical problems that might arise in carrying H.B. 1041 to its statutory conclusion of designation and adoption of permit procedures.

## CONCLUSION

H.B. 1041 moves Colorado into an arena of land use control legislation that has been entered by only two or three other states—the giving to a state agency statewide power to influence land use decisions of local governments. It is hardly surprising that this bitterly-fought bill contains many technical problems from a lawyer's point of view; these, however, can be corrected. The importance of the bill lies in its moving Colorado forward in land use controls on three fronts: significant encouragement and direct financial assistance to local governments to deal with matters of state interest; substantially increased authority for the Land Use Commission to make its presence and state attitudes a factor in the handling of land use problems by local governments; and the mustering of state agencies to make their technical information and expertise readily available to local governments. These are three very sound, very worthwhile, and very forward moving steps.

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[66] Colo. H.B. 1041, § 106-7-407 (1974).

[67] COLO. REV. STAT. ANN. § 106-4-3 (Supp. 1971) **[Colo. Rev. Stat. Ann. § 24-65-104 (1973)]**.

APPENDIX A

HOUSE BILL No. 1041

SECTION 1. Chapter 106, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 7

Areas and Activities of State Interest

PART 1

GENERAL PROVISIONS

106-7-101. *Legislative declaration.* (1) In addition to the legislative declaration contained in section 106-4-1 (1), the general assembly further 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 the 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;

(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.

106-7-102. *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 the 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, 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.

106-7-103. *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 that 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.

106-7-104. *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 state department of highways.

(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 state department of highways. 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 or local government.

(5) "Domestic water and sewage treatment system" means a wastewater treatment plant, water treatment plant, or water supply system, as defined in section 66-38-2 (6), (7), and (8), C.R.S. 1963, 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 either 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 construction material. This definition does not include surface or ground water subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include goethermal 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. The term 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 claims 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.

106-7-105. *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.

106-7-106. *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.

106-7-107. *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 the effective date of this article:

(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.

106-7-108. *Effect of article - state agency or commission responses.* (1) Whenever any person desiring to carry out development as defined in section 106-7-102 (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 shall establish a reasonable time period, which shall not exceed sixty days following receipt of such permit application, within which such agency 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, zoning approval, or where 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 or 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 agency or commission 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.

## PART 2

## AREAS AND ACTIVITIES DESCRIBED - CRITERIA FOR ADMINISTRATION

106-7-201. *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 facility or the surrounding community.

106-7-202. *Criteria for administration of areas of state interest.* (1) (a) Mineral resource area 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 article 36 of chapter 92, C.R.S. 1963.

(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 13 or article 32 of chapter 92, C.R.S. 1963, whichever is applicable.

(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:

(I) 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, 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 which, 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 soil conservation board, through the local soil conservation district, identifies such area for designation.

(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 soil conservation board through the soil conservation districts, the Colorado state forest service, and the Colorado geological survey, natural hazard areas shall be administered by local government in a manner which 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 139-59-6, C.R.S. 1963, or any applicable master plan adopted pursuant to section 106-2-7. 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, flood waters, 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; 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.

106-7-203. *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;

(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.

106-7-204. *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, will minimize the impact on existing community services, and will 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 139-59-6, C.R.S. 1963, or any applicable master plan adopted pursuant to section 106-2-7. 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, flood waters, 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; 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.

## PART 3

## LEVELS OF GOVERNMENT INVOLVED AND THEIR FUNCTIONS

106-7-301. *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 and the Colorado land use commission relating to matters of state interest; and

(f) Act, upon request of the Colorado land use commission, with regard to specific matters of state interest.

106-7-302. *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 and the Colorado land use commission 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 soil 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 Colorado division of mines, with regard to mineral extraction and the reclamation of land disturbed thereby;

(e) The Colorado soil conservation board and soil 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 106-7-202 (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 as area of state interest.

## PART 4

## DESIGNATION OF MATTERS

## OF STATE INTEREST - GUIDELINES FOR ADMINISTRATION

106-7-401. *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; and

(b) Applicable guidelines for designation issued by the Colorado land use commission after recommendation from other state agencies, if appropriate. In adopting such guidelines, the Colorado land use commission shall be guided by the standards set forth in this article applicable to local governments.

(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.

106-7-402. *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 106-7-202 and 106-7-204.

(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 106-7-202 and 106-7-204.

106-7-403. *Technical and financial assistance.* (1) Appropriate state agencies shall provide techanical 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.

106-7-404. *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 and not more than sixty days before the public hearing in a newspaper of general circulation in the county. The local government shall send written notice to the Colorado land use commission of a public hearing to be held for the purpose of designation and adoption of guidelines at least thirty days and not more than sixty days before such hearing.

(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 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) Upon adoption by order, all relevant materials relating to the designation and guidelines shall be forwarded to the Colorado land use commission for review.

106-7-405. *Report of local government's progress.* (1) Not later than one hundred eighty days after the effective date of this article, each local government shall report to the Colorado land use commission, on a form to be furnished by the Colorado land use commission, the progress made toward designation and adoption of guidelines for administration of matters of state interest.

(2) Upon the basis of the information contained in such reports and any information received pursuant to any other relevant provision of this article, the Colorado land use commission may take appropriate action pursuant to section 106-4-3(2) (a).

106-7-406. *Colorado land use commission review of local government order containing*

*designation and guidelines.* (1) Not later than thirty days after receipt of a local government order designating a matter of state interest and adopting guidelines for the administration thereof, the Colorado land use commission shall review the contents of such order on the basis of the relevant provisions of part 2 of this article and shall accept the designation and guidelines or recommend modification thereof.

(2) If the Colorado land use commission decides that modification of the designation or guidelines is required, the Colorado land use commission shall, within said thirty-day period, submit to the local government written notification of its recommendations and shall specify in writing the modifications which the Colorado land use commission deems necessary for compliance with the relevant provisions of part 2 of this article.

(3) Not later than thirty days after receipt of the modifications recommended by the Colorado land use commission, a local government shall:

(a) Modify the original order in a manner consistent with the recommendations of the Colorado land use commission and resubmit the order to the Colorado land use commission; or

(b) Notify the Colorado land use commission that the Colorado land use commission's recommendations are rejected.

106-7-407. *Colorado land use commission may initiate identification, designation, and promulgation of guidelines for matters of state interest.* (1) (a) The Colorado land use commission may submit a formal request to a local government to take action with regard to a specific matter which said commission considers to be of state interest within the local government's jurisdiction. Such request shall identify the specific matter and shall set forth the information required in section 106-7-401 (2) (a) and (2) (b). Not later than thirty days after receipt of such request, the local government shall publish notice and hold a hearing within sixty days pursuant to the provisions of section 106-7-404, and issue its order thereunder.

(b) After receipt by a local government of a request from the Colorado land use commission pursuant to paragraph (a) of this subsection (1), no person shall engage in development in the area or conduct the activity specifically described in said request until the local government has held its hearing and issued its order relating thereto.

(c) If the local government's order fails to designate such matter and adopt guidelines therefor, or, after designation, fails to adopt guidelines therefor pursuant to standards set forth in this article applicable to local governments, the Colorado land use commission may seek judicial review of such order or guidelines by a trial de novo in the district court for the judicial district in which the local government is located. During the pendency of such court proceedings, no person shall engage in development in the area or conduct the activity specifically described in said request except on such terms and conditions as authorized by the court.

## PART 5

## PERMITS FOR DEVELOPMENT IN AREAS OF STATE INTEREST AND FOR CONDUCT OF ACTIVITIES OF STATE INTEREST

106-7-501. *Permit for development in area of state interest or for conduct of 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. The application shall be filed on a form prescribed by the Colorado land use commission. 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 chapter 115, C.R.S. 1963, 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 nor more than sixty days before the date set for hearing, and shall be given to the Colorado land use commission. The Colorado land use commission may give notice to such other persons as it determines not later than fourteen days before such hearing.

(b) If a person proposes to engage in development in an area of state interest or for conduct of 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 106-7-404 (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 for conduct of 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 the effective date of this article, 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 Colorado land use commission or the appropriate local government from engaging in such development or conducting such activity.

106-7-502. *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.

SECTION 2. Article 3 of chapter 106, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

106-3-9. *Statewide program for identification of matters of state interest as part of local land use planning.* (1) The department of local affairs shall conduct a statewide program encouraging counties and municipalities to prepare, as a part of the comprehensive plan provided for in section 106-2-5 and article 59 of chapter 139, C.R.S. 1963, a complete and detailed identification and designation of all matters of state interest within each county by June 30, 1976. The general assembly shall appropriate funds for this purpose to the department of local affairs for distribution to participating counties. Each county desiring to participate in the identification and designation of matters of state interest program established by this section shall be allocated an equal amount by the department of local affairs from the funds so appropriated, to be expended by each county separately or through an organized group of counties or counties and municipalities. The department of local affairs, in cooperation with applicable state agencies, shall establish reasonable standards relative to the scope, detail, and accuracy of the program and shall insure that all information is comparable for each county. Each county shall, after consultation with the municipality, prepare such identification and designation for territory located within these municipalities which request such preparation and in any municipality which fails to undertake an identification and designation program. Each county shall, upon request of the municipality, assist the municipality in its identification and designation program.

(2) The general assembly shall appropriate to the department of local affairs funds to assist counties and municipalities participating in the identification and designation of matters of state interest program, where additional assistance is deemed by the depart-

ment of local affairs to be necessary. The department of local affairs shall also allocate such funds upon request of any county participating in the identification and designation of matters of state interest program under subsection (1) of this section for implementation of supplemental planning in that county, or to any municipality, based upon priorities established by the department of local affairs and on the need and capabilities of each county and municipality.

SECTION 3. 106-4-3 (2) (a), Colorado Revised Statutes 1963 (1971 Supp.), is amended to read:

106-4-3. *Duties of the commission - temporary emergency power.* (2) (a) Whenever in the normal course of its duties as set forth in this article the commission determines that there is in progress or proposed a land development activity which constitutes a danger of ~~irreparable~~ injury, loss, or damage of serious and major proportions to the public health, welfare, or safety, the commission shall immediately give written notice to the board of county commissioners of each county involved of the pertinent facts and dangers with respect to such activity. If the said board of county commissioners does not remedy the situation within a reasonable time, the commission may request the governor to review such facts and dangers with respect to such activity. If the governor grants such request, such review shall be conducted by the governor at a meeting with the commission and the boards of county commissioners of the counties involved. If, after such review, the governor shall determine that such activity does constitute such a danger, the governor may direct the commission to issue its written cease and desist order to the person in control of such activity. Such order shall require that such person immediately discontinue such activity. If such activity, notwithstanding such order, is continued, the commission may apply to any district court of this state in which such activity is located for a temporary restraining order, preliminary injunction, or permanent injunction, as provided for in the Colorado rules of civil procedure. Any such action shall be given precedence over all other matters pending in such district court. The institution of such action shall confer upon said district court exclusive jurisdiction to determine finally the subject matter thereof.

SECTION 4. Article 4 of chapter 106, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

106-4-5. *Commission staff to assist counties and municipalities.* The commission, within available appropriations, shall assign full-time professional staff members to assist counties and municipalities in the program established under article 7 of this chapter and to monitor progress in the same. No later than February 1, 1975, the commission shall issue its report to the general assembly as to progress being made in such program and shall include in its report those items required by section 106-4-4 (4) (b) and (4) (c).

SECTION 5. *Appropriation.* (1) There is hereby appropriated to the department of local affairs, out of any moneys in the state treasury not otherwise appropriated, the sum of two million seventy-five thousand dollars ($2,075,000), or so much thereof as may be necessary, to implement the provisions of section 106-3-9, C.R.S. 1963, which moneys shall become available upon passage of this act and remain available until June 30, 1975, to be allocated as follows: Identification and designation of matters of state interest program - one million five hundred seventy-five thousand dollars ($1,575,000); supplemental planning - five hundred thousand dollars ($500,000).

(2) There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to the Colorado land use commission, for the fiscal year beginning July 1, 1974, the sum of three hundred thousand dollars ($300,000), or so much thereof as may be necessary, to provide assistance to counties and municipalities pursuant to section 106-4-5, C.R.S. 1963 (10.0 FTE, five of which shall be full-time professional staff pursuant to said section 106-4-5).

SECTION 6. *Safety clause.* The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

APPENDIX B

# HOUSE BILL NO. 1034

SECTION 1. Chapter 106, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 8

## Local Government Land Use Control Enabling Act

106-8-101. *Short title.* This article shall be known and may be cited as the "Local Government Land Use Control Enabling Act of 1974".

106-8-102. *Legislative declaration.* The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

106-8-103. *Definitions.* As used in this article, unless the context otherwise requires:

(1) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

106-8-104. *Powers of local governments.* (1) Without limiting or superseding any power or authority presently exercised or previously granted, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and where an activity would endanger a wildlife specie;

(c) Preserving areas of historical and archaeological importance;

(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

106-8-105. *Intergovernmental cooperation.* Without limiting or superseding any power or authority presently exercised or previously granted, local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to article 2 of chapter 88, C.R.S. 1963, for the purposes of planning or regulating the development of land, including but not limited to the joint exercise of planning, zoning, subdivision, building, and related regulations.

106-8-106. *Receipt of funds.* Without limiting or superseding any authority presently exercised or previously granted, local governments are hereby authorized to receive and expend funds from other governmental and private sources for the purpose of planning for or regulating the use of land within their respective jurisdictions.

106-8-107. *Compliance with other requirements.* Where other procedural or substan-

tive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control.

SECTION 2. 106-2-20, Colorado Revised Statutes 1963, is amended to read:

106-2-20. *Temporary regulations.* The board of county commissioners of any county, after appointment of a county or district planning commission and pending the ADOPTION by such commission of a zoning plan, where in the opinion of the board conditions require such action, may promulgate, by resolution without a public hearing, regulations of a temporary nature, to be effective for a limited period only and in any event not to exceed six months, prohibiting or regulating in any part or all of the unincorporated territory of the county or district the erection, construction, reconstruction, or alteration of any building or structure used or to be used for any business, RESIDENTIAL, industrial, or commercial purpose.

SECTION 3. *Safety clause.* The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.