

Local Government Regulation Using 1041 Powers

by Joseph B. Dischinger

This column provides information to attorneys dealing with various state and federal administrative agencies, as well as attorneys representing public or private clients in the areas of municipal, county, and school or special district law.

A state trial court has invalidated Boulder County's 1041 regulations because, through no fault of the county, the state Land Use Commission ("LUC") failed to review the local regulations. The legislature responded by abolishing the LUC. This article provides a historical summary of Colorado planning and zoning laws, and discusses the legal and political implications of the LUC's dissolution.

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In 1974, the Colorado General Assembly passed the Areas and Activities of State Interest Act ("AASIA").¹ The AASIA "encourages" local governments to designate certain geographic areas and specified activities as matters of state interest.² For example, under the AASIA, a city or county could declare part of its jurisdiction as a wildfire hazard area, or it might declare the activity of selecting a site for mass transit a matter of state interest. If a local government has made such a designation under the AASIA, it must promulgate regulations, commonly called 1041 regulations after the bill number of the state statute. The regulations must control development of land resources within the designated area or that are affected by the designated activity. A permit from the local government is required for development in regulated areas or for regulated activities.³

Until recently, courts have been extremely deferential to local government powers under the AASIA. However, there is increasing activity at the local government level to use 1041 regulations to control development. Recent court decisions, and the legislative and executive branch responses to those decisions, demonstrate that local environmental regulations may be the next front for fights over development. If nothing else, they highlight that not all politics is local.

This article provides a concise history of planning and zoning in Colorado. It also explores the case law under the AASIA, which culminated in a recent district court decision that rejected Boulder County's 1041 regulations because the Colorado Land Use Commission ("LUC") had not reviewed the local regulations. The article concludes by describing the responses of the Governor and the legislature to the court decision from Boulder County, and discusses the legal and policy implications of the demise of the LUC.

Colorado Planning and Zoning History

Aside from the regulation of certain "nuisance" land uses such as slaughterhouses, governments in America did not use their police powers extensively to regulate land use before the early 1900s.⁴ Growing out of the "City Beautiful" movement at the turn of the last century, the federal government actively encouraged city planning. In 1922, the U.S. Department of Commerce published a Standard State Zoning Enabling Act. The City of Denver, as a home rule city, adopted a comprehensive zoning ordinance pursuant to a Charter amendment in 1923, based largely on the model act.⁵

Until the U.S. Supreme Court's 1926 decision in *Village of Euclid v. Ambler*

Realty Co.,⁶ there was great uncertainty about whether zoning laws were valid under the Fourteenth Amendment Due Process Clause.⁷ *Village of Euclid* upheld such zoning laws, and three years later, the Colorado General Assembly granted statutory cities and towns the authority to conduct land use planning.⁸ Furthermore, Title IV of that 1929 statute provided for the appointment of “regional” planning commissions, which were given authority beyond the boundaries of a single municipality.⁹ Title IV was repealed ten years later, with the passage of a state statute in 1939 authorizing planning and zoning by counties of unincorporated territory within their respective boundaries.¹⁰

In 1970, the legislature passed the Colorado Land Use Act,¹¹ which created the Colorado LUC, charged with developing a state land use plan. As originally enacted, the Land Use Act called for the adoption of a state land use map, which would classify all lands in the state and designate those uses that would be allowed for lands within each classification.¹² In the next two years, the Land Use Act was amended, and the LUC’s role was changed to one of coordinating and unifying policies in planning for growth and development.¹³ A few years later, the state passed the Local Government Land Use Control Enabling Act of 1974 (“1974 Enabling Act”).¹⁴ The purpose of the 1974 Enabling Act was “to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns.”¹⁵ During the same session, the state enacted the AASIA as Part 1 of the 1970 Land Use Act.

The AASIA is sometimes erroneously referred to as “Colorado’s first comprehen-

sive land use law.”¹⁶ However, there are at least four different state statutes currently authorizing local government land use planning and zoning (see the accompanying table, “Colorado Land Use Planning Statutes”). This may help to explain why it is sometimes difficult to tell whether a local regulation was adopted pursuant to the AASIA.¹⁷

Areas and Activities of State Interest

House Bill 74-1041 (“H.B. 1041”) was loosely based on Article 7 of a Model Land Development Code (“Model Code”) prepared by the American Law Institute.¹⁸ The Commentary on Article 7 is enlightening about the nearly revolutionary atmosphere that motivated such legislation in states across the country. Citing specific examples, it illustrates “the problems caused by this failure of the state government to retain any of its power to regulate the use of land within its boundaries.”¹⁹ For example, the Commentary notes the competition among communities around San Francisco Bay to encourage new development that caused local governments to allow the rapid filling in of estuarial and shoreline areas. It also cites to the fact that “[i]n Colorado the inability of rural counties to control second home subdivisions created great popular dissatisfaction.”²⁰ The Commentary continues:

Most of the states are now giving serious study to a variety of proposals to reform land use regulation, and almost all these proposals involve some new powers for state or regional agencies. The long period of unquestioned acceptance of the local prerogative to control land development is clearly over.²¹

However, Colorado’s AASIA, which arose from H.B. 1041, was a political compromise in this reallocation of power from local governments to the state. The Model Code suggests giving a state land planning agency the power to designate “areas [and activities] of critical state concern”; to approve or disapprove local government regulation in those areas; to promulgate state regulations for development in designated areas when the local government has not adopted any; and to decide appeals from local land use decisions. H.B. 1041, as originally introduced, included many of these ideas for a more active role by the state in land use decision-making.

Colorado’s statute as enacted, however, was considerably more restrained. The AASIA gave local governments the power to designate areas and activities of state concern; gave the LUC the authority to approve or suggest modifications to local rules, but not to disapprove them; and did not give the state commission appellate authority over local decisions, even though the decisions, by definition, related to matters of state interest. As discussed below, even the limited influence of the state through the AASIA has recently been eliminated by statutory amendment.

Under the AASIA, local governments may designate the following as areas of state interest:

- Mineral resource areas
- Natural hazard areas, including floodplains, wildfire hazard areas, and geologic hazard areas
- Areas containing, or having a significant impact upon, historical, natural or archaeological resources of statewide importance

Colorado Land Use Planning Statutes

Name	Bill No.	Colo. Sess. Laws	Original Codification	Current Codification
City and Regional Planning Act	S.B. 427	1929, Ch. 67, p. 219	unknown	Repealed in 1939
County Planning Act	S.B. 278	1939, Ch. 92, p. 294	unknown	CRS §§ 30-28-101 <i>et seq.</i>
Colorado Land Use Act	S.B. 11	1970, Ch. 75, p. 315	CRS § 106-4-1	Repealed in 2005
Local Government Land Use Control Enabling Act of 1974 (“1974 Enabling Act”)	H.B. 1034	1974, Ch. 81, p. 353	CRS § 106-8-101	CRS §§ 29-20-101 <i>et seq.</i>
Areas and Activities of State Interest Act (“AASIA”)	H.B. 1041	1974, Ch. 80, p. 335	CRS § 106-7-101	CRS §§ 24-65.1-101 <i>et seq.</i>
Municipal Planning and Zoning Act	H.B. 1089	1975, Ch. 275, p. 1143	CRS § 31-23-101	CRS §§ 31-23-101 <i>et seq.</i>

- Areas around airports, rapid or mass transit, highways, and major facilities of a public utility ("key facilities").²²

Local governments may designate the following as activities of state interest:

- Site selection and construction of major new, or extensions of existing, domestic water and sewage treatment systems
- Site selection and development of solid waste disposal sites (with some exceptions)
- Site selection of key facilities (*see above*)
- Site selection or development of new communities
- Efficient use of municipal and industrial water projects
- The conduct of nuclear detonations.²³

As examples of the types of requirements that local governments may impose pursuant to the AASIA, developments in areas designated as wildfire hazard areas may be required to have firebreaks and roads adequate for service by fire trucks and other safety equipment.²⁴ Areas containing historical, natural, or archaeological resources must be administered "in a manner that will allow

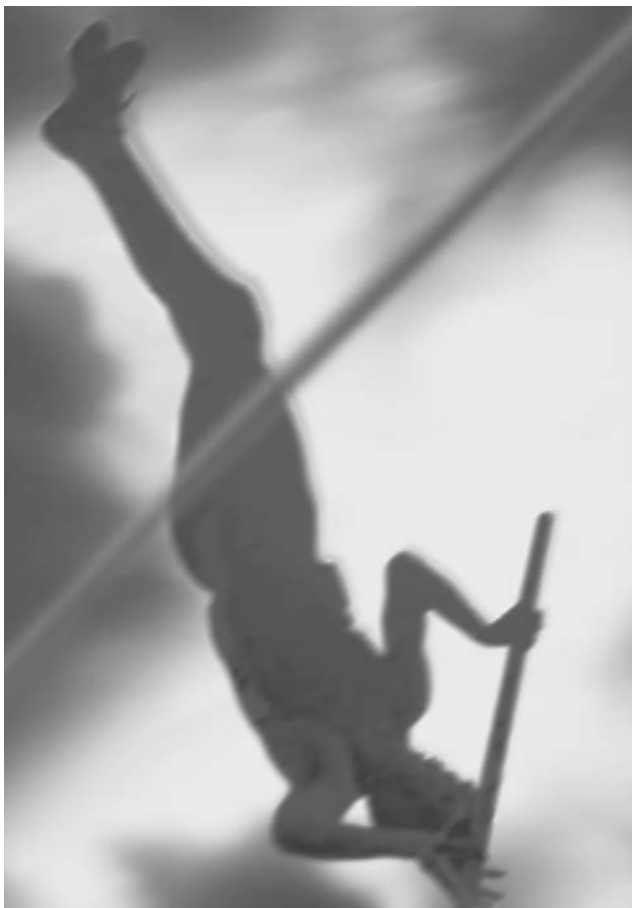
man to function in harmony with, rather than be destructive to, these resources," and "consideration is to be given" to the protection of "areas essential for wildlife habitat."²⁵ Municipal and industrial water projects shall "emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water."²⁶

According to a survey conducted in 2004 by the Division of Local Government in the Colorado Department of Local Affairs,²⁷ nearly all Colorado counties reported they have some form of 1041 regulations, although most do not regulate all of the areas and activities of state interest they could regulate. For example, according to the survey: (1) nearly one-half of all Colorado counties regulate mineral resource areas and flood hazard areas; (2) nearly 40 percent regulate wildfire hazard areas and wildlife habitat areas; (3) fewer than 15 percent regulate the efficient use of municipal and industrial water projects; (4) only 2 percent regulate the conduct of nuclear detonations; and (5) only four counties report that they have no 1041 regulations.²⁸ In addition to counties, a significant number of Colorado mu-

nicipalities have adopted 1041 regulations, although there is less information available about how many municipalities have them.²⁹

Despite this self-reporting by the counties, it appears the counties have widely varying standards about what it means to have 1041 regulations. In a survey of the counties by the author, many more than four have no 1041 permitting process, as such (*see Appendix*). Some incorporate one or more of the ideas for regulated areas and activities suggested by the AASIA into their comprehensive plans or zoning resolutions, but they do not specify a detailed regulatory scheme for such areas and activities. No separate 1041 permit is required; rather, enforcement (if any) is through existing permitting systems, such as building permits, plat or subdivision approval, and zoning enforcement.

A number of counties are currently looking at adopting 1041 regulations for the first time or making substantial revisions to existing regulations. Some of this activity seems to be responsive to proposed projects, such as water pipelines, other water projects, or private toll roads.



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The Brief Life of the Colorado LUC

In the early years of its existence, the LUC was quite active. It prepared a 350-page set of Model Land Use Regulations under H.B. 1041, "to provide technical assistance to local governments in devising their own designations and regulations."³⁰ It intervened in local land use decisions at the request of citizens and of county governments.³¹ As discussed below, the LUC also initiated litigation.

Among its most controversial actions, the LUC vacillated over getting involved in the designation of the Pawnee power plant, then under construction by the Public Service Company near Brush, Colorado. In January 1977, the LUC voted not to request Morgan County to designate the plant under the AASIA, but in February voted to reconsider.³² Under the AASIA as it existed until 2005, the mere request by the LUC would impose a moratorium on further construction until the county could hold a hearing on the request and issue its decision.³³ Finally, in April 1977, the LUC made a formal request to Morgan County to designate the siting of power plants as an activity of state interest, but excluded the Pawnee plant from the request.³⁴

Appropriations for the LUC were cut from \$202,000 in 1977³⁵ to \$58,000 in 1978.³⁶ Commentators at the time suggest that this decrease in legislative funding was directly attributable to the LUC's actions on certain controversial land use decisions around the state, especially the Pawnee power plant.³⁷ The LUC has received no funding since 1983.³⁸ Notwithstanding the complete lack of funding, the LUC continued to meet, albeit with a gradually diminishing role, into the 1990s. However, at least by January 1998, the LUC had ceased meeting altogether.³⁹ As a result, the LUC was not reviewing local government 1041 regulations that were being sent to the state, as required by the AASIA.

Judicial Support of Local Control

Until recently, courts have been supportive of local government decisions under the AASIA. In the first reported decision under the AASIA, the LUC sought to prohibit the City of Louisville from rezoning land that was proposed for annexation, and obtained an injunction to that effect in the trial court. In 1975, the Colorado Supreme Court held that the AASIA

deals with regulation of development, but that annexation is not development. Until the land was annexed, Louisville had no jurisdiction over the land; and until Louisville permits or attempts to develop the land in question, the AASIA gave no authority for injunctive relief.⁴⁰

In *Tri-State Generation and Transmission Assoc. v. Board of County Commissioners*,⁴¹ the Colorado Court of Appeals announced a more far-reaching decision. In 1973, Tri-State Generation and Transmission Assoc. ("Tri-State") began planning for construction of a power line in a corridor north of Interstate 70 ("I-70") in Lincoln County. It conducted engineering and ecological studies, purchased rights-of-way (in the court's words, at "nominal cost"), and informed the public of its plans by notice and public meetings. Construction started on March 1, 1976, in adjacent Kit Carson County. On March 8, 1976, Lincoln County designated site selection and construction of public utilities as an area or activity of state interest under the AASIA. Tri-State's application for a 1041 permit was denied.

The county commissioners reasoned that the area north of I-70 was primarily wheat fields, and that the area south of I-70 was grassland. Because of the adverse effects of the power line on farming, the county preferred the line to go south of the interstate highway. The trial court reversed, holding that Tri-State had a vested property right by virtue of its expenditures. In 1979, the Court of Appeals reversed the trial court's decision, finding that Tri-State's expenditures amounted to planning, rather than actual use. Only the latter vests a property right.⁴² Further, the Court of Appeals found the 1041 regulations to be a proper exercise of the police power, which would be thwarted if any expenditure for planning could block effective land use regulation.⁴³

During the same year, the Colorado Supreme Court upheld the AASIA against constitutional challenges in a case involving construction of the Rawhide Energy Project, a waste disposal facility and electrical generating plant in Larimer County.⁴⁴ When the county denied the LUC's request to designate the project as a matter of state interest, the LUC sought *de novo* review in the state district court, as provided in CRS § 24-65.1-407(3). The trial court dismissed the complaint, holding that the provision allowing *de novo* review of a county's designation decision was an unconstitutional violation of the doctrine of separation of powers.

The Colorado Supreme Court affirmed the dismissal, but held the AASIA to be constitutional. It ruled that the cited provision of the AASIA provides for limited review of a county's decision. The trial *de novo* is to evaluate the legality of the county's proceedings and to determine whether there has been an abuse of discretion, not to judge the merits of the county's decision.⁴⁵

Similarly, in the 1989 case of *City and County of Denver v. Board of County Commissioners*,⁴⁶ the Colorado Supreme Court rejected Denver's argument that the AASIA was an unconstitutional delegation of legislative power to local governments. Denver held certain water rights, the development of which would be subject to 1041 permitting requirements in Eagle and Grand Counties. The Court concluded there are sufficient standards and safeguards to guide and control the local governments in the exercise of their 1041 powers.

The AASIA: (1) establishes procedures the local governments must follow, including the consideration of guidelines issued by the LUC; (2) provides for state input, oversight, and judicial review; (3) provides criteria for the administration of areas and activities of state interest; and (4) provides for certain due process protections, including notice, hearing, preservation of a record, and written findings, conclusions, and reasons for decisions. The Court also rejected numerous other arguments that provisions in the Colorado Constitution, the AASIA, and other state statutes exempt Denver, as a home rule municipality and as a water provider, from operation of the AASIA.

Notwithstanding the defeat of this broad-based attack on local government regulation of extra-territorial water projects, municipal water providers mounted another effort in the 1994 case of *City of Colorado Springs v. Board of County Commissioners*.⁴⁷ The cities of Aurora and Colorado Springs own conditional water rights to divert water from what is now the Holy Cross Wilderness Area in Eagle County, sometimes called the Homestake II Project. In fact, the cities had managed to have their water rights expressly protected and excluded from the legislation that created the wilderness area. They had obtained decrees for their water rights, and had successfully and repeatedly met statutory requirements to demonstrate reasonable diligence to preserve the conditional rights. The cities had obtained all of the other necessary permits to con-

struct their water project, including a wetlands permit from the U.S. Army Corps of Engineers. Nevertheless, Eagle County denied the cities' application for a 1041 permit to construct the project.

The Colorado Court of Appeals ruled in favor of Eagle County. The court ruled that the AASIA is not unconstitutionally vague nor an abrogation of the cities' home rule powers. It also ruled that Eagle County's 1041 regulations were consistent with the requirements and authorizations of the AASIA.

Perhaps the most interesting aspect of *City of Colorado Springs* is the cities' attack of the AASIA on essentially policy grounds. In the determination of land use issues, the most important question is "who decides?" If the body deciding whether a project should proceed is elected by people who will bear all the burdens of the project but virtually none of the benefits, it is not difficult to predict what decision the body will reach. In *City of Colorado Springs*, the court rejected the argument that this practical reality should deprive Eagle County of the power to grant or decline 1041 permits. To rule otherwise, the court said, "would eviscerate a fundamental objective of the Land Use Act."⁴⁸

The county's board, acting in its quasi-judicial capacity, is able to balance the potential adverse environmental impact of the project against its potential benefits, and the regulations "do not lend themselves to arbitrary and discriminatory enforcement."⁴⁹ The court observed that the county's denial of the permit prevented the Homestake II Project, as presented to the board, from going forward; however, it did not preclude the cities from restructuring the project in some way so that it could proceed in compliance with the environmental requirements of the county's 1041 regulations.

The County of Boulder Decision

In the fall of 2004, the Boulder County District Court invalidated Boulder County's 1041 regulations. In *Regents of the University of Colorado v. County of Boulder*,⁵⁰ the trial court invalidated Boulder's regulations as an unconstitutional delegation of legislative authority, because there was no review and comment by the LUC.

In 1997, the University of Colorado-Boulder ("University") acquired a 308-acre parcel in unincorporated Boulder

County, referred to in the litigation as "CU Boulder-South," on which it intended to expand its campus south of Highway 36. In 1998, Boulder County designated the highway interchange of U.S. 36 and Colorado 157 as a "key facility," and the area around the interchange, including CU Boulder-South, as an area of state interest under the AASIA. In 2001, the county designated the CU Boulder-South property as a "flood hazard initial control area" and an area of state interest for that reason as well. These designations required the University to seek a permit from the county for development of the CU Boulder-South property. Without applying for a permit, the University brought a declaratory judgment action in 2001.

In ruling on cross-motions for summary judgment, the Boulder County District Court found that review of local government 1041 regulations by the LUC was an integral part of the regulatory scheme, even though the local government was free to disregard any suggestions the state may have. It found that the LUC did not, in fact, review Boulder's regulations, noting, "[A] framework [for a LUC] exists in the statutes, but there is, in effect, nobody home."⁵¹

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The test for an unconstitutional delegation of legislative power is “whether there are sufficient statutory standards and safeguards . . . to protect against unnecessary and uncontrolled exercise of discretionary power.”⁵² The court found that “the role of the LUC in the statutory scheme was a key feature of the standards and safeguards contained in the [Land Use Act and the AASIA].”⁵³ With the *de facto* nonexistence of the LUC, those standards and safeguards were no longer functional. The court held that Boulder’s designations of the CU Boulder–South property as an area of state interest in 1998 and 2001, and the regulations promulgated to regulate development in that area, were enacted pursuant to an unconstitutional delegation of authority. The case is currently on appeal before the Colorado Supreme Court.⁵⁴

The Executive and Legislative Response

To cure Boulder County’s problems, Governor Owens appointed a new Land Use Commission,⁵⁵ which met on January 11, 2005, and approved Boulder County’s

1041 regulations.⁵⁶ This was the only action the newly constituted LUC took.⁵⁷ The Colorado legislature then abolished the Colorado LUC and removed all reference in the statutes to LUC review of 1041 regulations.⁵⁸

The Boulder court’s decision has raised questions about the validity of 1041 regulations adopted by many other counties and municipalities after the LUC ceased to function.⁵⁹ After passage of the legislation that abolished the LUC, the Colorado Department of Local Affairs recommended that local governments seek legal advice about whether they need to re-enact their 1041 resolutions and regulations, or whether their previously adopted regulations “are not harmed by lack of commission review or by elimination of the commission.”⁶⁰

This may not be an easy decision to make. The burden of re-adopting resolutions and regulations is not great, but re-adoption may be taken as an admission that the enforceability of such regulations prior to re-adoption was questionable. More important, the elimination of the LUC again calls into question the constitutionality of the AASIA. As the court not-

ed in the *County of Boulder* case, the role of the LUC was a “key feature” that kept the AASIA from being an unconstitutional delegation of legislative authority to the local governments.⁶¹ Similarly, in upholding the constitutionality of the AASIA before the 2005 amendment, the Colorado Supreme Court pointed to several mechanisms in the statutory scheme through which the LUC could “check local government abuse of discretion” in designating, or failing to designate, matters of state interest.⁶²

The reality is that the LUC’s role in Colorado was always limited to being primarily a resource for local governments. Unlike the role envisioned for state planning agencies under the Model Code, the Colorado LUC had no designation, veto, or appellate powers and, at best, could serve as a gadfly to encourage local government action. If the AASIA were not an unconstitutional delegation of legislative authority, the elimination of the LUC’s limited role should not dramatically alter the constitutional analysis. The abolition of the state’s role in local government regulation of matters of state concern does, however, bring the policy question into

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sharp relief. It is not always a good idea to leave decisions affecting the entire state, such as the construction of water supply projects, up to local governments, whose interests may conflict with the interests of the state as a whole.

Conclusion

Many local governments have only recently come to recognize the power they have to regulate areas and activities of state interest under the AASIA. The limited role of the state in guiding such regulation has just been eliminated. Many local governments that passed 1041 regulations during the state's *de facto* dissolution of the LUC must now wonder if their regulations are valid. The recent legislative response, to eliminate the LUC officially, may provide slightly more comfort to local governments who adopt 1041 regulations going forward.

NOTES

1. 1974 Colo. Sess. Laws, Ch. 80 at 335, now codified at CRS §§ 24-65.1-101 to -502. The Areas and Activities of State Interest Act ("AASIA") was introduced in the General Assembly as H.B. 1041.

2. *Id.*

3. CRS § 24-65.1-501.

4. *See generally* Rathkopf and Rathkopf, *The Law of Zoning and Planning* (New York, NY: C. Boardman Co., 2005) at §§ 1:1-1:3.

5. Codified as amended at Denver Rev. Mun. Code, Subtitle B, § 3.2.9 (2005); *see also* <http://www.denvergov.org/ZoningSimplification/template318641.asp>.

6. *Village of Euclid*, 272 U.S. 365 (1926).

7. *Colby v. Board of Adjustment*, 81 Colo. 344, 349, 255 P. 443, 445 (1927). This issue was resolved in Colorado in favor of the constitutionality of zoning regulation in *Averch v. City and County of Denver*, 78 Colo. 246, 248-49, 242 P. 47, 48-49 (1925).

8. Act of May 20, 1929 ("City and Regional Planning Act"), 1929 Colo. Sess. Laws, Ch. 67 at 219. The statutes that now govern municipal planning and zoning are codified at CRS §§ 31-23-101 to -314.

9. *Id.*, Title IV was repealed at 1939 Colo. Sess. Laws, Ch. 92 at 310.

10. Act of March 30, 1939 ("County Planning Act"), 1939 Colo. Sess. Laws, Ch. 92 at 294, now codified as amended at CRS §§ 30-28-101 to -404.

11. 1970 Colo. Sess. Laws, Ch. 75 at 315, formerly codified as amended at CRS §§ 24-65-101 to -106. The Colorado Land Use Act was repealed in 2005.

12. *Id.* at 315, § 106-4-1(2).

13. CRS § 24-65-102(1).

14. 1974 Colo. Sess. Laws, Ch. 81 at 353, now codified as amended at CRS §§ 29-20-101 to -108. The Local Government Land Use Control Enabling Act of 1974 ("1974 Enabling Act") is sometimes referred to as H.B. 1034.

15. CRS § 29-20-102(1).

16. *See, e.g., Bd. of County Comm'rs v. Gartrell*, 33 P.3d 1244, 1247 (Colo.App. 2001); *Droste v. Bd. of County Comm'rs*, 85 P.3d 585, 588 (Colo.App. 2003). Both *Gartrell* and *Droste* cite to *City and County of Denver v. Bd. of County Comm'rs*, 782 P.2d 753, 755 (Colo. 1989) to support this statement. The *City and County of Denver* court, however, was referring to the Land Use Act, which it mistakenly said was adopted in 1974. Even the statement that the Land Use Act was Colorado's first comprehensive land use law is questionable, in light of the 1929 and 1939 statutes cited above.

17. *See also Droste, supra*, note 16 (protection of wildlife habitat authorized by 1974 Enabling Act and AASIA; zoned land exemption in AASIA does not exempt landowner from land use regulation under 1974 Enabling Act).

18. Model Land Dev. Code §§ 7-101 *et seq.* (Proposed Official Draft No. 1, April 15, 1974).

19. *Id.*, Commentary on Article 7 at 282.

20. *Id.*

21. *Id.* at 285.

22. CRS § 24-65.1-201.

23. CRS § 24-65.1-203.

24. CRS § 24-65.1-202(2)(a)(II).

25. CRS § 24-65.1-202(3).

26. CRS § 24-65.1-204(8).

27. Local Land Use and Planning Status survey report, prepared by the Office of Smart Growth and Colorado Counties, Inc. (2004); available from the Colorado Dept. of Local Affairs, Div. of Local Government. *See website*: <http://www.dola.state.co.us>. Click on "Division of Local Government." For specific questions, contact the help desk at dola.helpdesk@state.co.us.

28. *Id.*

29. *Id.*

30. "Introductory Comments and Instructions for Administrative Guidelines and Regulations," *H.B. 1041 Model Land Use Regulations* at 1-i, Colorado Land Use Commission ("LUC"); available from the Colorado Dept. of Local Affairs, Div. of Local Government. (*See website, supra*, note 27.)

31. *See generally* Panos, "A History of the Colorado Land Use Commission's Intervention," *24 The Colorado Lawyer* 303 (Feb. 1995).

32. Warner, "Of Growth Controls, Wilderness and the Urban Strip," *6 The Colorado Lawyer* 1730, 1736 (Oct. 1977).

33. CRS § 24-65.1-407(2).

34. Warner, *supra*, note 32 at 1736; White and Petros, "Land Use Legislation: H.B. 1034 and H.B. 1041," *6 The Colorado Lawyer* 1686, 1706 (Oct. 1977).

35. 1976 Colo. Sess. Laws, Ch. 1 at 13.

36. 1977 Colo. Sess. Laws, Ch. 1 at 12.

37. Warner, *supra*, note 32 at 1736; White and Petros, *supra*, note 34 at 1706-07.

38. Panos, *supra*, note 31 at 303.

39. Memorandum from Charlie Unseld, on Colorado LUC letterhead, to interested parties, dated Feb. 8, 2005, available from the Colorado Dept. of Local Affairs, Div. of Local Government (*see website, supra*, note 27); *see also* Panos, *supra*, note 31 at 303 (by early 1995, the LUC "has been reduced to a filing cabinet in the Department of Local Affairs and is now virtually nonexistent").

40. *City of Louisville v. District Court*, 543 P.2d 67 (Colo. 1975).

41. *Tri-State Generation and Transmission Assoc.*, 42 Colo.App. 479, 600 P.2d 103 (1979).

42. *Id.* at 105.

43. *Id.*

44. *Colorado LUC v. Bd. of County Comm'rs*, 199 Colo. 7, 604 P.2d 32 (1979).

45. *Id.* at 35-36.

46. *City and County of Denver, supra*, note 16 at 757-61.

47. *City of Colorado Springs*, 895 P.2d 1105 (Colo.App. 1994).

48. *Id.* at 1113.

49. *Id.* at 1115.

50. *County of Boulder*, No. 01-CV-1896, slip op. (Boulder County Dist. Ct., Oct. 5, 2004).

51. *Id.* at 13.

52. *Cottrell v. City and County of Denver*, 636 P.2d 703, 709-10 (Colo. 1981).

53. *County of Boulder, supra*, note 50, slip op. at 18-19.

54. Colo. Sup.Ct., No. 04-SA-377. At the time this article was published, opening briefs were due in January 2006.

55. *See* press release from the Governor's Office dated Jan. 5, 2005, available at www.colorado.gov/governor/press/january05/landuse.html.

56. Memorandum from Charlie Unseld, *supra*, note 39.

57. Telephone interview with Charlie Unseld, Director of Local Government Services, Div. of Local Government, Colo. Dept. of Local Affairs (Aug. 24, 2005).

58. H.B. 05-1063, 2005 Colo. Sess. Laws, Ch. 192 at 667 (signed by the Governor on June 1, 2005).

59. Memorandum from Charlie Unseld, *supra*, note 39. The memorandum notes that nearly twenty local governments had sent newly adopted or significantly revised 1041 regulations to the state for review since January 1998, when the LUC ceased review. There may be other jurisdictions that adopted 1041 regulations since 1998 and did not submit them to the state.

60. Memorandum from Colo. Dept. of Local Affairs to Colo. Municipal and County Governments, dated June 13, 2005. (*See website, supra*, note 27.)

61. *County of Boulder, supra*, note 50.

62. *City and County of Denver, supra*, note 16. n



APPENDIX
Colorado Counties with 1041 Regulations
(See author's note below)

KEY			
—	?	yes	N/A
County does not have 1041 regulations	It is unknown whether county has 1041 regulations	County has 1041 regulations, but resolution number is unknown	Does not apply
			* Link to a general zoning resolution that addresses issues authorized by H.B. 1041
County	1041 Resolution No.	Originally Passed or Effective	Available on the Web (links last checked Nov. 1, 2005)
Adams County	—	N/A	http://www.co.adams.co.us/services/department/planning_development/dev_standards_regs.html *
Alamosa County	—	N/A	N/A
Arapahoe County	040416	06/02/2004	http://www.co.arapahoe.co.us/Departments/PW/Forms/FINALArapahoeCounty1041Regs.pdf
Archuleta County	—	N/A	http://www.archuletacounty.org/Planning/land_use_regulations/land_use_regulations.htm *
Baca County	?	?	no
Bent County	2003-7	04/21/2003	no
Boulder County	94-23 and 94-55	1994	http://www.co.boulder.co.us/lu/lu/code/article8.htm
Broomfield (City and County)	—	N/A	http://www.ci.broomfield.co.us/code/index.htm *
Chaffee County	yes	12/10/1991	http://www.chaffeecounty.org/depts/planning/docs/ (see chapters 1-5, 8 and 9)
Cheyenne County	—	N/A	no
Clear Creek County	97-108	01/06/1998	http://www.co.clear-creek.co.us/Depts/Planning/zone_regs.htm#SECTION%2019.%20REGULATIONS (see § 19)
Conejos County	?	?	no
Costilla County	93-04 and 93-06	05/07/1993	no
Crowley County	—	N/A	no (but 1041 regs. currently under consideration)
Custer County	?	N/A	http://www.custercountygov.com/Zoning%20Res.pdf * (see §§ 6.7 and 8.7)
Delta County	yes	04/04/2005	http://www.deltacounty.com/documents/Planning%20and%20Community%20Development/Specific%20Development%20Regulations_1.pdf
Denver (City and County)	—	N/A	http://www.denvergov.org *
Dolores County	—	N/A	N/A
Douglas County	987-055 000-107	1987 06/22/2000	http://www.douglas.co.us/planning/documents/1041%20regs/default.htm (home page currently under repair); see http://www.douglas.co.us/Orgchart_top.htm (click on "Community Development," then "Plans, Regulations and Documents"). Proposed revisions at http://www.douglas.co.us/Planning/MattersReferralDraft.pdf
Eagle County	yes	1980	http://www.eaglecounty.us/uploadedFiles/commDev/Planning/ChapterVI-AmendedUNALTERED(1).pdf and http://www.eaglecounty.us/uploadedFiles/commDev/Planning/1041_READOPTION.pdf
El Paso County	—	N/A	http://adm.elpasoco.com/planning/lcd/default.asp *
Elbert County	yes	unknown	no
Fremont County	—	N/A	N/A
Garfield County	—	N/A	http://www.garfield-county.com/home/index.asp?page=788 *
Gilpin County	—	N/A	http://www.co.gilpin.co.us/CommunityDevelop/ZO%20REGS%202005%20FINAL.doc *
Grand County	1978-5-4	05/16/1978	http://co.grand.co.us/Planning/Reg.%20books/1041%20Regulations.htm
Gunnison County	yes	12/19/1990	no (regulations currently under review by county commissioners)
Hinsdale County	—	N/A	no
Huerfano County	yes	unknown	no
Jackson County	yes	unknown	no
Jefferson County	CC74-95	unknown	http://www.co.jefferson.co.us/ext/policy/chap0501.htm and http://co.jefferson.co.us/ext/dpt/public_works/planning/zoning/zoning.htm
Kiowa County	—	N/A	N/A
Kit Carson County	?	?	no
La Plata County	—	N/A	<i>But see</i> http://co.laplata.co.us/plan/code_revision/draft091704/toc.pdf (Sept. 2004 draft—1041 regs. at Chap. 74)
Lake County	yes	unknown	no
Larimer County	—	N/A	http://www.co.larimer.co.us/planning/planning/land_use_code/land_use_code.htm *
Las Animas County	yes	06/30/1976	no
Lincoln County	yes	03/08/1976	no
Logan County	?	?	no
Mesa County	—	N/A	http://www.mesacounty.us/planning/land_dev_code_chapters.aspx *

County	1041 Resolution No.	Originally Passed or Effective	Available on the Web (links last checked Nov. 1, 2005)
Mineral County	—	N/A	N/A
Moffat County	—	N/A	N/A
Montezuma County	—	N/A	ftp://206.168.68.47/Out/planning/LUC%20web%209-13-05.pdf *
Montrose County	—	N/A	http://www.co.montrose.co.us/LUD_ZoningResolution.pdf *
Morgan County	yes	06/28/1977	http://www.co.morgan.co.us/Documents/Morgan%20County%20Zoning%20Regs-2004.pdf * (see § 2-220)
Otero County	04-15	09/27/2005	no
Ouray County	—	N/A	http://www.co.ouray.co.us/landusecode/index.html *
Park County	97-104 and 00-74	12/1997 09/09/1999	http://www.parkco.us/Documents/Planning%20Apps/1041%20Water.pdf http://www.parkco.us/Documents/Planning%20Apps/1041%20Wildlife.pdf
Phillips County	?	?	no
Pitkin County	75-68	1975	http://www.aspenpitkin.com/pdfs/depts/71/LUC-A03.pdf *
Prowers County	yes	2004	no
Pueblo County	yes	05/20/1974 and 05/08/1974	http://www.codes.co.pueblo.co.us/DATA/TITLE17/index.html#div2
Rio Blanco County	yes	unknown	http://www.co.rio-blanco.co.us/development/pdf/Section%20227%20Matters%20of%20State%20Interest.pdf
Rio Grande County	?	?	no
Routt County	—	N/A	N/A
Saguache County	90 LU-15	09/28/1990	no
San Juan County	—	N/A	N/A
San Miguel County	1980-23 and 1990-93	06/24/1980 12/13/1990	http://www.sanmiguelcounty.org/LUC/LUC5_1202.pdf (§§ 5.4, 5.22)
Sedgwick County	—	N/A	N/A
Summit County	yes	unknown	http://www.co.summit.co.us/divisions/commdev/planning/DEVCODE/Dev%20Code%20Chapter%2010.pdf
Teller County	?	?	http://www.co.teller.co.us/CDS/Planning/LandUseRegs/REG06-03-04text.pdf *
Washington County	?	?	no
Weld County	2001-6	11/12/2001	http://colocode.com/weld/weld_21.pdf
Yuma County	?	?	no

NOTE: Any errors in the table are the responsibility of the author. No information was available about several counties, and the author often reached a different conclusion about whether a county has 1041 regulations than did the county's staff, based on the information available on the Internet. Many county attorneys and planners also were helpful in providing additional information. County attorneys and planners who wish to correct or provide missing information about their counties are invited to contact the author—(303) 894-4404, jdischinger@fwlaw.com. The author thanks Lisa Goheen and Melanie Cassidy, paralegals at Fairfield and Woods, P.C., for their help in compiling this table.

Christmas in January

January 28, 2006 NOON 2:00 P.M.

Northside Aztlan Community Center 1112 E. Willow St., Fort Collins, CO

Each January, the Colorado Bar Association Young Lawyers Division (CBA YLD) sponsors the Christmas in January event to benefit underprivileged children who may have missed out on earlier holiday festivities. This year, the event

will benefit Realities for Children of Fort Collins, an organization that focuses on abused and neglected children.

CBA YLD is seeking donations, including toys, books, games, stuffed animals, sports equipment, and more.

Drop-off locations for donations are:

• CBA, 1900 Grant St., Ste. 900, Denver, CO 80203

• Bell, Boge & Associates, P.C., 322 E. Oak St., Ft. Collins, CO 80524