

1041 REGULATIONS



HAZARDS ADDRESSED



HOW IT WORKS

In 1974, Colorado enacted House Bill 1041, which gives local governments additional authority for planning decisions related to areas or activities of statewide concern. This bill allows communities to identify, designate, and regulate those activities and areas through a local permitting process commonly known as “1041 regulations.” The law was enacted to help clarify the roles and responsibilities of state and local governments in reviewing development projects that may have impacts beyond the local jurisdiction, and generally, the law allows the local jurisdiction to retain and increase control over such projects. 1041 regulations are different than any other special development review process in that they give local governments authority to regulate projects that may otherwise be out of their jurisdiction or control (such as siting of highways or airports). The statute identifies four areas and ten activities of statewide interest:

Areas of Interest:

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

Activities of Interest:

- Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems

- Site selection and development of solid waste disposal sites except those sites specified in statutes
- Site selection of airports
- Site selection of rapid or mass transit terminals, stations, and fixed guideways
- Site selection of arterial highways and interchanges and collector highways
- Site selection and construction of major facilities of a public utility
- Site selection and development of new communities
- Efficient utilization of municipal and industrial water projects
- Conduct of nuclear detonations
- The use of geothermal resources for the commercial production of electricity

Communities may choose to adopt 1041 regulations for any or all of these areas or activities of state interest. Once adopted, development activities in these designated areas or activities are required to obtain a 1041 permit from the local jurisdiction, unless otherwise exempted by statute or local regulations.

IMPLEMENTATION

Communities considering adopting 1041 regulations should first consult their attorneys. The enabling statutes (C.R.S. Title 24, Article 65.1) define when and where 1041 regulations could apply to new development, which types of developments are exempt from 1041 regulations, guidelines for administration of the permitting process, and the respective roles of local governments and state agencies. C.R.S. § 24-65.1-202 includes criteria for administration of areas and activities of state interest. Those criteria prescribe how natural hazard areas shall be administered, including floodplains, wildfire areas, and geologic hazard areas.

1041 regulations can be integrated directly into existing land development regulations. For example, in addition to planned unit development (PUD) and/or annexation procedures, a community could describe the procedures for 1041 permitting in the same procedures chapter. When adopting 1041 regulations, communities must first identify areas and/or activities of state interest prior to enforcing the permitting process. Communities should also be sure to review other land use regulations and policy documents for consistency with any new ordinance in terms of definitions, procedures, exemptions, and enforcement authorities.

WHERE IT'S BEEN DONE

Chaffee County, Colorado, has adopted several types of 1041 regulations, including wildlife protection, geothermal energy, water and sewage treatment systems, and development of new communities. Each application of the 1041 regulations has been adopted through a separate chapter of the county code. The siting and development of new communities is addressed in Chapter 8 of the county's 1041 regulations and is intended to provide orderly development while reducing the impacts to the natural environment. As



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part of that 1041 permitting process, the county generally defines “new communities” as those needing to incorporate, or involving an extension of water and sewer services. New communities are required to identify potential natural hazards and also provide adequate mitigation to reduce the impacts of such hazards, among other approval criteria (*Chaffee County Land Use*, n.d.).

Many other Colorado municipalities and counties use 1041 regulations to review areas and activities of state interest, and it is common for the submittal requirements and approval criteria to include identifying and addressing natural hazards. For an inventory of Colorado counties and municipalities that have adopted 1041 regulations related to natural hazards, see the Colorado land use survey reports at: colorado.gov/pacific/dola/land-use-survey. The survey documents that 19% of the jurisdictions responding to the survey used 1041 regulations for natural hazard areas.

ADVANTAGES AND KEY TALKING POINTS

Adopting 1041 regulations may offer the following advantages:

- Provide an opportunity to consider potential impacts of natural hazard areas on the proposed infrastructure or development proposal.
- Allow local governments to review, comment, and impart change to proposed projects by statewide agencies that may impact the community.
- Provide a venue for public comment (during a public hearing) on activities and areas of state interest.
- Ensure that statewide interests are met without compromising the interests of local communities.
- Can be easily integrated directly into an existing land use code.

CHALLENGES

Administering 1041 regulations can also come with the following challenges:

- Requires designation of areas and activities of state interest prior to regulating them.
- Adds another procedure to land use and development codes, often with a unique set of definitions and approval criteria.
- Enabling statute is very prescriptive in terms of administration and criteria.

MODEL CODE LANGUAGE AND COMMENTARY

One key use of 1041 regulations is to address development activity in natural hazard areas. Three specific natural hazards can be addressed through 1041 regulations:

- Flood
- Geologic hazard areas
- Wildfire hazard areas

Below are samples of 1041 permit review language for each of these natural hazard designations. While 1041 regulations may be tailored to fit individual conditions, much of the language found in local 1041 regulations is directly from the state

Commentary

Authority for External Review:

1041 powers also allow local jurisdictions to review and regulate projects proposed by a state agency, other governmental authority, or special district that may otherwise be exempt from local land use review and permitting procedures.

statute. Model language is in blue shading. Commentary is located in *italics* in the column at the right. The model language is based on existing ordinances from communities around the state, including municipalities and counties. The language is illustrative only; consult local counsel to tailor language for your jurisdiction.

Flood

A. Definition and boundaries: The requirements and standards in this section apply to mapped floodplain hazard areas as depicted in the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), National Flood Insurance Program (NFIP), and to areas later mapped and found to be in flood hazard areas.

1. Floodplains shall not be designated by [City Council or Board of County Commissioners] unless the Colorado Water Conservation Board (CWCB), through the local conservation district, identifies such area for designation.
2. These regulations apply if development is not otherwise regulated under other provisions of this code regulating floodplains.

B. Standards for Review: The permit authority shall grant approval of a development proposed in a flood hazard area if the following standards, in addition to the general standards for 1041 natural hazard area review, are met:

1. Land use shall preserve the integrity of the flood hazard area by not altering or impacting it in any way which is likely to pose a significant threat to public health or safety or to property (including the subject property, other impacted properties, or the environment).
2. Development that, in time of flooding, will likely pose a significant threat to public health or safety or to property (including the subject property, other impacted properties, or the environment), shall be prohibited. In determining whether there will likely be a significant threat, the following factors shall be considered:
 - a. Creation of obstructions from the proposed development during times of flooding;
 - b. Vulnerability of the proposed development to flooding;
 - c. Use of flood protection devices or floodproofing methods;

Location of 1041 Regulations:

Most local governments adopt separate 1041 regulations that restate the procedures included in state statutes. However, some have merged their 1041 process with other land use approval processes to minimize repetition and consolidate review times.

Flood Hazard Mapping:

Some communities may use other sources for their flood hazard mapping. Sources normally used by local authorities to set floodplain boundaries and enforce regulations should be referenced here.

Permit Authority:

The permit authority is authorized by the local governing body and should be identified along with the process for designating a natural hazard area for 1041 regulations in the procedural section of the local land development code.

- d. Nature or intensity of the proposed development;
 - e. Increases in impervious surface area caused by the proposed development;
 - f. Increases in surface runoff flow rate and amount caused by the proposed development;
 - g. Increases in flood water flow rate and amount caused by the proposed development;
 - h. Proximity and nature of adjacent or nearby land uses;
 - i. Impacts to downstream properties or communities; and
 - j. Impacts on shallow wells, waste disposal sites, water supply systems, and sewage disposal or on-site wastewater systems.
3. Development shall comply with all other Floodplain regulations of this code.

Geologic Hazard Area

- A. Definition and boundary:** All geologic hazard areas delineated on the Geologic Hazard Map for [name of local government], available at the [Planning Department], are subject to review and permitting under this section. Geologic hazard areas included on the Geologic Hazard Map are defined as follows:
1. "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.
 2. "Expansive soils and rocks" means any mineral, clay, rock or other type of geologic deposit having the property of absorbing water with an accompanying swelling to several times their original volume.
 3. "Geologic hazard" means a geologic phenomenon that 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: avalanches, landslides, rock falls, mudflows, unstable or potentially unstable slopes, seismic effects, radioactivity, and ground subsidence.
 4. "Geologic hazard area" means an area which contains or is directly affected by a geologic hazard.
 5. "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

Geologic Hazards: Each local community should include only those geologic hazards mapped in their community and found within the area designated as a geologic natural hazard. The definitions shown here are from the state statute. Most communities incorporate the state definitions and procedures into their 1041 regulations.

dissolution of underground minerals, or man-made phenomena such as underground mining.

6. "Initial control area" means an area suspected, but not finally determined, to be a natural hazard area or a mineral resource area. "Landslide" means a mass movement where there is a distinct surface of rupture, or zone of weakness, which separates the slide material from more stable underlying material.
7. "Mudflow" means a flowing mass of predominately fine-grained earth material possessing a high degree of fluid during movement.
8. "Nonconforming use" means any structure, development, or land use in existence as of the date of the adoption of these regulations, and not permitted under the terms and provisions of these regulations.
9. "Radioactivity" means a condition related to various types of radiation emitted by natural radioactive minerals that occur in natural deposits or rocks, soils, and water.
10. "Rock fall" means the rapid free-falling, bounding, sliding, or rolling of large masses of rock or individual rocks.
11. "Seismic effects" means direct and indirect effects caused by a natural earthquake or a man-made phenomenon.
12. "Unstable or potentially unstable slope" means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.

- B. Standards for Review:** The permit authority shall approve an application for a permit for development in a geologic hazard area if all of the following criteria are met:
1. Provision shall be made for the long-term health, welfare, and safety of the public from geologic hazards to life, property, and associated investments.
 2. Permitted land uses, including public facilities, which serve such uses shall avoid or mitigate geologic hazards at the time of initial construction.
 3. Man-made changes shall not initiate or intensify adverse natural conditions within a geologic hazard area.
 4. Recommendations concerning the proposed development in the designated geologic hazard area by the Colorado Geological Survey shall be solicited and considered. The Colorado Geological Survey shall

Review by State Agencies:
Colorado statutes (§24.65.1-301 and 302) state that it is the function of local governments to receive recommendations from state agencies, and it is the function of state agencies to provide recommendations and technical assistance concerning the designation and guidelines for matters of state interest.

be allowed no less than twenty-four (24) days in which to respond to such referrals.

Wildfire Hazard Area

- A. Definition and boundary:** All wildfire hazard areas delineated on the Wildfire Hazard Map for *[name of local government]*, available at the *[Planning Department or equivalent]*, are subject to review and permitting under this section.
- B. Standards for Review:** The permit authority shall approve an application for a permit for development in a wildfire hazard area if all of the following criteria are met:
1. Any authorized development will have adequate roads for service by fire trucks, fire-fighting personnel, and other safety equipment, as well as fire breaks and other means of reducing conditions conducive to fire.
 2. All precautions required to reduce or eliminate wildfire hazards will be provided for at the time of initial development.
 3. A Wildfire Mitigation or Forest Management Plan will be prepared by a professional forester, reviewed and approved by *[name of local government]* *[Planning Department or equivalent]* and executed prior to issuance of building permits.
 4. The development will adhere to the guidelines and criteria for Wildfire Hazard Areas promulgated by the Colorado State Forest Service.

KEY FACTS

- Administrative capacity** Requires experienced planning staff to administer. 1041 permitting procedures are similar to other development review procedures in a typical land use code
- Mapping** Mapping of hazard areas (known or potential) are often required with a 1041 application submittal
- Regulatory requirements** Can work in tandem with other land use regulations; however, a land use code is not necessarily required to administer 1041 permitting procedures
- Maintenance** Typical maintenance of ordinance and procedures. Also requires monitoring statutory requirements for changes for designated areas and activities of state interest

Adoption required	Yes, 1041 regulations require adoption by ordinance
Statutory reference	C.R.S. Title 24, Article 65.1. The statutes identify the general provisions, permitting procedures, and criteria for areas and activities of state interest
Associated costs	Staff time and resources required to adopt and maintain a new ordinance

EXAMPLES

Boulder County 1041 Regulations	bouldercounty.org/doc/landuse/lucodearticle08.pdf
Chaffee County 1041 Regulations	chaffeecounty.org/Planning-and-Zoning-Land-Use-Code
DOLA Model Codes 1041 Regulations	colorado.gov/pacific/dola/1041-regulations
City of Golden Areas and Activities of State Interest	municode.com/library/co/golden/codes/municipal_code?nodeId=TIT18_PLZO_CH18.80ARACSTIN Chapter 18.80
Pueblo County Areas and Activities of State and Local Interest	codes.co.pueblo.co.us/maintoc.htm Title 17, Division II Areas and Activities of State and Local Interest, Chapter 17.148 et. seq.
San Miguel County Areas and Activities of Local and State Interest	sanmiguelcounty.org/243/Land-Use-Code Article 5 Standards, Section 5-4: Areas and Activities of Local and State Interest/”1040” Environmental Hazard Review

FOR MORE INFORMATION

Colorado Land Use Survey

colorado.gov/pacific/dola/land-use-survey