



## MEMORANDUM

DATE: February 15, 2019  
TO: Board of County Commissioners  
FROM: County Attorney's Office and Planning Department

**Re: Areas and Activities of State Interest**

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### I. INTRODUCTION AND RECOMMENDATION

On January 15, 2019 a work session was held with the Board of County Commissioners to discuss what is known as "Areas and Activities of State Interest". The Board requested additional information from staff and a subsequent work session to receive updated staff recommendations. A work session will be held on February 26 to discuss the updated recommendations and contemplates Board direction at the conclusion of the work session.

On January 15, 2019, the County Attorney's Office gave a presentation on ["Areas and Activities of State Interest," which is available here](#). At that presentation, staff recommended the adoption of regulations pertaining to:

- A. Natural Hazard Areas based upon updated data set forth in the County's December 2018 Hazard Mitigation Plan;
- B. Domestic Water and Sewage Treatment Systems;
- C. Key facilities such as the Durango La Plata Airport;
- D. New communities (defined as the establishment of urbanized growth centers in unincorporated areas of La Plata County); and
- E. Mineral resource areas (defined as "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". Oil and gas production does **not** fall within this definition.<sup>1</sup> Moreover, Colorado's definition of "mineral resource areas" is not the same as the list of Federal Critical Minerals published in the Federal Register)

Since the January 15, 2019 work session staff was approached by a developer of utility scale solar. Noting that the foregoing recommendations would not address such activities and that prior staff recommendations dating back to 2001 included areas and activities not set forth in the January 15 list of recommendations, staff now wishes to revise the list to include all statutory areas and activities **except** (1) use of geothermal resources for commercial production of electricity; (2) site

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<sup>1</sup> Moreover, "mineral resource areas" defined under the Areas and Activities of State Interest statute is not the same as those minerals identified as critical by the Secretary of Interior in response to Executive Order 13817.



selection of rapid or mass transit terminals, stations and fixed guideways; and (3) nuclear detonations. The rationale for exclusion of these activities is the remoteness of these described activities occurring in La Plata County. The rationale for inclusion of all other areas and activities is the need to be responsive and nimble to all prospective projects encompassed within the remaining Areas and Activities of State Interest described by statute. The usefulness of such regulations has been broadly recognized by the vast majority of Colorado counties. The County also received public comment in the Landowners of La Plata Stillwater paper encouraging the use of Areas and Activities of State Interest statutes in relation to mineral resources.

## II. BACKGROUND

Colorado law affords local governments the option of assuming authority to designate and administer one or more enumerated Areas and/or Activities of State Interest (referred to herein as “A&A Regulations”) and, by so doing, assess and mitigate the *regional impacts* of certain land uses and development, beyond the immediate scope of any individual project.

The Colorado General Assembly declared, in 1974, that “[t]he protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest.”<sup>2</sup> In furtherance of that declaration, it enacted H.B. 74-1041, which delegates to local governments the authority to identify, designate, and regulate the following areas and/or activities, of state interest<sup>3</sup>:

### Activities of State Interest

site selection and development of:

### Areas of State Interest

mineral resource areas,<sup>4</sup> (except that areas containing minerals that fall within the statutory definition of “commercial mineral deposits,” i.e., sand, gravel, coal, quarry aggregate, or limestone used for construction purposes, shall be administered pursuant to C.R.S. § 34-1-301 *et seq.*)<sup>5</sup>

<sup>2</sup> C.R.S. § 24-65.1-101(1)(a).

<sup>3</sup> C.R.S. §§ 24-65.1-201 and -203. *Also see City and County of Denver by and through Bd. of Water Comm’rs v. Board of County Comm’rs of Grand County*, 760 P.2d 656, 658-59 (Colo. App. 1988) (“[T]he Act is intended to encourage local governments to designate areas and activities of state interest, and to administer and promulgate guidelines for the administration of these areas and activities.”).

<sup>4</sup> Minerals are “inanimate constituent[s] of the earth, in solid, liquid, or gaseous state which, when extracted from the earth, [are] usable in [their] natural form or [are] capable of conversion into usable form,” and mineral resource areas are “area[s] in which minerals are located in sufficient concentration . . . to be capable of economic recovery.” C.R.S. §§ 24-65.1-104(10) & (11).

<sup>5</sup> C.R.S. § 24-65.1-202(1)(b).



<ul style="list-style-type: none"> <li>• domestic water and sewage treatment systems</li> <li>• solid waste disposal sites</li> <li>• airports</li> <li>• rapid/mass transit facilities</li> <li>• highways and interchanges</li> <li>• public utility facilities</li> <li>• new communities</li> </ul>	<p>natural hazard areas (e.g., floodplains, rock falls, expansive soils, debris fans, and wildfire hazards)</p>
<p>municipal and industrial water projects</p>	<p>historical, natural, or archaeological resource areas (e.g., sites included in the national register of historic places)</p>
<p>production of energy using geothermal resources</p>	<p>areas around key facilities (e.g. airports, public utility facilities, highway interchanges, or mass transit facilities)</p>
<p>nuclear detonations</p>	

Clearly, some the areas and activities of state interest listed above are more relevant to La Plata County than others. Many pertain to ensuring public safety, which is a critical function of local government and of paramount importance. To better understand the risks posed to life and assets, the Board and the public are encouraged to review the County’s Hazard Mitigation Plan found at X.

### III. ADOPTION AND EXERCISE

#### A. Designation of Areas and Activities of State Interest

The Board may designate, by resolution, those areas and activities which it elects to regulate. Thereafter, regulations (land use or otherwise) are adopted requiring a permit for the subject activity.<sup>6</sup> The consideration and approval or denial of those permits must be pursuant to criteria the local government has developed for the administration of those areas/activities it has designated.<sup>7</sup>

The General Assembly has established guidelines for the development of those criteria. Generally, areas and activities of state interest are to be administered in a manner that minimizes hazards to public health and safety, and to property, and damage to protected resources. Examples of guidelines specific to the recommended areas/activities are summarized in the following table:

<sup>6</sup> C.R.S. § 24-65.1-301 (providing that local governments shall hold hearings on applications for permits for development in areas/activities of state interest and grant or deny such permits); C.R.S. § 24-65.1-501(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.”).

<sup>7</sup> C.R.S. § 24-65.1-501(3).



Domestic Water and Sewage Treatment Systems <sup>8</sup>	<ul style="list-style-type: none"> <li>• new systems shall use existing treatment plants and further the orderly development of systems in adjacent communities;</li> <li>• major system extensions shall be permitted where the area’s financial and environmental capacity can sustain the anticipated resulting growth and development</li> </ul>
Solid Waste Disposal Sites <sup>9</sup>	<ul style="list-style-type: none"> <li>• development shall follow sound conservation practices, including recycling where feasible;</li> <li>• development shall consider longevity and subsequent use of the site, potential pollution, and impact on neighboring properties</li> <li>• development shall consider alternative locations</li> </ul>
Airports <sup>10</sup>	<ul style="list-style-type: none"> <li>• development shall minimize disruption to existing communities and impacts on existing community services, while complementing the area’s economic and transportation needs</li> </ul>
Highways and Interchanges <sup>11</sup>	<ul style="list-style-type: none"> <li>• location shall meet community traffic needs, and not disrupt community patterns;</li> <li>• development shall avoid a direct conflict with the Comprehensive Plan</li> </ul>
Public Utility Major Facilities <sup>12</sup>	<ul style="list-style-type: none"> <li>• development shall avoid a direct conflict with the Comprehensive Plan</li> </ul>
New Community Development <sup>13</sup>	<ul style="list-style-type: none"> <li>• new community plans should provide for transportation, waste disposal, schools, and other governmental</li> </ul>

<sup>8</sup> C.R.S. § 26-65.1-204(1)

<sup>9</sup> C.R.S. § 24-65.1-204(2)

<sup>10</sup> C.R.S. § 24-65.1-204(3)

<sup>11</sup> C.R.S. § 24-65.1-204(5)

<sup>12</sup> C.R.S. § 24-65.1-204(6)

<sup>13</sup> C.R.S. § 24-65.1-204(7)



	<p>services without overloading existing community facilities;</p> <ul style="list-style-type: none"> <li>• priority shall be given to communities providing for commercial and industrial uses as well as residential uses, and for internal transportation and circulation patterns</li> </ul>
Municipal and Industrial Water Projects <sup>14</sup>	<ul style="list-style-type: none"> <li>• projects shall emphasize the most efficient use of water, including recycling and reuse when allowed by law;</li> <li>• urban development, population densities, site layout, and design of storm water and sanitation systems shall prevent pollution of aquifer recharge areas</li> </ul>
Mineral Resource Areas <sup>15</sup>	<ul style="list-style-type: none"> <li>• extraction to be permitted unless it would cause significant danger to public health and safety;</li> <li>• sand and gravel deposits to be administered pursuant to C.R.S. § 34-1-301 et seq.;</li> <li>• extraction methods must minimize environmental disturbance;</li> <li>• surface areas must be reclaimed pursuant to the Colorado Mined Land Reclamation Act, C.R.S. § 34-32-101 et seq.;</li> <li>• oil and gas development cannot be designated an area of state interest unless so identified by the COGCC</li> </ul>
Natural Hazard Areas <sup>16</sup>	<ul style="list-style-type: none"> <li>• open space activities, e.g., agriculture, shall be encouraged in the floodplains;</li> <li>• areas of corrosive soil, expansive soil and rock, or siltation shall not be designated an area of state interest unless identified by the Colorado</li> </ul>

<sup>14</sup> C.R.S. § 24-65.1-204(8)

<sup>15</sup> C.R.S. § 24-65.1-202(1)

<sup>16</sup> C.R.S. § 24-65.1-202(2)



	<p>conservation board, or unless an activity of state interest is to be conducted therein;</p> <ul style="list-style-type: none"> <li>roads in wildfire hazard areas shall be adequate to accommodate fire trucks and other safety equipment;</li> <li>firebreaks and other mitigation measures shall be required for development in wildfire hazard areas;</li> </ul>
<p>Historic, Natural, or Archaeological Resources<sup>17</sup></p>	<ul style="list-style-type: none"> <li>administration shall consider wildlife habitat protection</li> </ul>
<p>Areas Around Key Facilities<sup>18</sup></p>	<ul style="list-style-type: none"> <li>all development shall discourage traffic congestion and incompatible uses, and compatibility with nonmotorized traffic is encouraged;</li> <li>development in areas around airports shall encourage the separation of uncontrollable noise sources from noise-sensitive areas;</li> <li>development in areas around arterial highway interchanges shall encourage smooth traffic flow (motorized and nonmotorized), while preserving desirable existing community patterns;</li> </ul>

In addition to regulations implementing the guidelines summarized above, the County may promulgate more stringent regulations.<sup>19</sup>

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<sup>17</sup> C.R.S. § 24-65.1-202(3)

<sup>18</sup> C.R.S. § 24-65.1-202(4)

<sup>19</sup> C.R.S. § 24-65.4-404(3).