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Regulating Socioeconomic Impacts: Comparing the Colorado and Wyoming Approaches

*Lawrence J. MacDonnell**

In 1975 Wyoming adopted the Industrial Development and Siting Act as a statewide mechanism to control the development of large industrial projects. Colorado, on the other hand, has continued to rely upon county control of large-scale industrial development.

In this article, the author compares the effectiveness of the two approaches in mitigating socioeconomic impacts associated with recently developed large-scale energy projects in the two states. He analyzes differences between the regulatory bodies, control of impact areas, and mitigation responsibilities in Colorado and Wyoming.

INTRODUCTION

Regulation of land use has long been a legitimate police power of government. While this power is inherent with state government, it exists only by delegation at the local level. Because land use decisions have primarily local effects, state governments have generally delegated decisionmaking authority over land use to local government. In turn, the courts have given broad latitude to the exercise of this authority subject only to broad standards of reasonableness.¹

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1. Barnhill & Sawaya-Barnes, *The Role of Local Government in Mineral Development*, 28 ROCKY MTN. MIN. L. INST. 221, 225 (1983).

During the 1970's, many states reasserted their land use authority in the siting of large energy projects.² Within the eleven western states, three general approaches were taken.³ California's approach established a separate agency, the California Energy Resources Conservation and Development Commission, with broad authority to plan for the development of energy for the state's present and future energy needs. Its comprehensive siting authority represents only part of its responsibilities.⁴ The second approach is the one taken by Arizona, Washington, Oregon, Montana, and Wyoming which also passed explicit siting statutes generally creating a separate agency empowered to control the siting of designated types of facilities. The scope of control given these agencies and the staff support vary considerably, but in all cases are considerably less than that in California.⁵ The third approach is the one taken by New Mexico and Nevada under which the existing public utility commissions were specifically authorized to consider the environmental impacts associated with the building of new electric power plants.⁶ Colorado and Utah have chosen not to establish state-level siting control.⁷

While most states have been primarily concerned with environmental effects of large projects, a few also have addressed the socioeconomic impacts.⁸ Wyoming and Colorado have taken very different approaches to control the socioeconomic impacts. In Wyoming, all project developers must obtain a permit from a state-level siting authority. Socioeconomic considerations are part of the permit review. In Colorado there is no state-level permitting. Instead, the counties have been delegated authority to control the socioeconomic impacts of new development. In this paper the experience of these two states with their different approaches is compared.

An Overview of the Wyoming Approach

The Wyoming Legislature initiated state-level control over large new projects in 1975 when it passed the Wyoming Industrial Development Information and Siting Act (Siting Act).⁹ Wyoming is a sparsely populated

2. For a comprehensive, state-by-state analysis of state siting practices, see SOUTHERN INTERSTATE NUCLEAR BOARD, *POWER PLANT SITING IN THE UNITED STATES* (1976).

3. See generally N. WENGERT & R. LAWRENCE, *REGIONAL FACTORS IN SITING AND PLANNING ENERGY FACILITIES IN THE ELEVEN WESTERN STATES—A REPORT TO THE WESTERN INTERSTATE NUCLEAR BOARD* (1976) (especially Ch. II).

4. *Id.* at II-3 to II-20.

5. *Id.* at II-21 to II-59.

6. *Id.* at II-60 to II-71. Idaho is included in this category although no new legislation has been passed specifically enlarging the traditional review for granting a certificate of public convenience and necessity.

7. *Id.* at II-72 to II-78.

8. Socioeconomic impacts are changes in the social and economic environment of a locality caused by rapid development. Typically, these impacts are greatest when the development occurs in rural areas because those areas are not prepared for rapid population growth. The negative effects of extremely rapid growth include inadequate housing, overburdened public facilities, public revenue shortfalls, and a variety of social ills such as increased crime. Positive economic effects include a larger tax base, more jobs, and greater economic activity.

9. WYO. STAT. §§ 35-12-101 to -121 (1977). See also, Van Baalen, *Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act—Advance or Retreat?* 11 LAND & WATER L. REV. 27 (1976) (containing a detailed analysis of the requirements of the Act).

state¹⁰ rich in mineral resources which, by 1975, had undergone substantial energy development. While development was generally welcomed in the state, passage of the Siting Act demonstrated that the state government intended to maintain control of that development.

Under the Siting Act, no large "energy generating and conversion plant" or "industrial facility" may be constructed without a permit from the Wyoming Industrial Siting Council.¹¹ Any project with a construction cost exceeding fifty million 1975 dollars is subject to permitting requirements.¹² The Siting Council reviews permit applications and grants permits when it finds that the impacts (both environmental and socioeconomic) associated with a proposed project are acceptable.¹³ The Council has broad authority to make permits conditional.¹⁴ The construction and operation of a facility must conform to the terms of the permit or the developer faces revocation or suspension of the permit¹⁵ or substantial fines.¹⁶

The Siting Act requires that developers supply detailed information in their permit applications.¹⁷ Of special relevance is the requirement that they submit proposals for "alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility. . . ."¹⁸

The Council and the developer must hold a public hearing within four months of a permit application in the community closest to the site of the proposed facility.¹⁹ The local governments "primarily affected by the proposed facility" are automatically a party to all proceedings.²⁰ Other state departments and agencies are to submit relevant information regarding the proposal to the Council.²¹ Within two months after the public hearing, the Council must make its "initial determination" either approving

10. In 1980 Wyoming had 469,557 inhabitants, making it more populous than only one state, Alaska. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF THE POPULATION (1981).

11. WYO. STAT. §§ 35-12-102, -106 (1977).

12. WYO. STAT. § 35-12-102(a)(iii)(B) (1977). Fifty million 1975 dollars equaled over ninety-two million dollars in mid-1983.

13. WYO. STAT. § 35-12-114 (1977).

14. WYO. STAT. § 35-12-114(a) (1977) authorizes the Council either to grant or deny the application as filed or to grant it "upon such terms, conditions or modifications of the construction, operation or maintenance of the facility as the council may deem appropriate." Such modifications may include the location of the facility. WYO. STAT. § 35-12-114(c) (1977).

15. WYO. STAT. § 35-12-117 (1977).

16. Failure to comply with the permit can result in civil penalties of ten thousand dollars for each violation, with each day of continuing non-compliance constituting a separate violation. The Attorney General is to bring a civil suit to recover such penalties and to seek injunctive or other appropriate relief. WYO. STAT. § 35-12-119(b)-(d) (1977).

17. WYO. STAT. § 35-12-108(a) (1977). This information is reviewed by the Administration staff, concerned local entities, and other interested parties, allowing a thorough evaluation of the project impacts. WYO. STAT. § 35-12-11-111(a), (b) (1977).

18. WYO. STAT. § 35-12-108(a)(xii) (1977).

19. WYO. STAT. § 35-12-109(b) (1977).

20. WYO. STAT. § 35-12-109(a)(i), -112 (1977).

21. WYO. STAT. § 35-12-111(b) (1977).

the permit with or without conditions or rejecting the application and requiring further study.²²

The Approach in Colorado

In Colorado there is no state-level siting authority. Instead, the counties are authorized to control project-related socioeconomic impacts. Authority for local control is derived from several sources. First, section 30-28-101 of the Colorado statutes authorizes counties to zone unincorporated areas and develop plans for them.²³ Project developers requiring a change in a county master plan, a change in zoning, or a special use authorization within a zoned area, must seek permission from the county.²⁴ While some counties have used this authority to require residential developers to set aside land for parks or schools, only recently have a few counties used it to regulate socioeconomic impacts associated with mining or industrial development.²⁵

Second, section 24-65.1-101 of the Colorado statutes—commonly known as HB 1041—creates areas and activities of state interest which are largely designated and administered by local governments.²⁶ Activities of state interest include site selection and construction of major public utility facilities, new communities, airports, arterial highways and interchanges, collector highways, water and sewage treatment systems, and solid waste disposal sites.²⁷ Areas of state interest include mineral resource areas²⁸ and “[a]reas around key facilities in which development may have a material effect upon the key facility or the surrounding community.”²⁹

HB 1041 requires potential developers in the areas or activities of state interest to obtain permits from the appropriate local governments.³⁰ It also sets forth the general criteria local governments must follow in administering those areas and activities.³¹ HB 1041 names a socioeconomic

22. WYO. STAT. § 35-12-114(a) (1977).

23. Specifically, the boards of county commissioners are empowered to zone unincorporated areas. COLO. REV. STAT. § 30-28-102 (1973). Planning commissions, if established, are to create master plans showing recommendations for development of the county. COLO. REV. STAT. § 30-28-106 (1973), and zoning plans, COLO. REV. STAT. § 30-28-112 (1973).

24. COLO. REV. STAT. § 30-28-108 (1973).

25. Barnhill, *supra* note 1, at 255.

26. COLO. REV. STAT. § 24-65.1-101(2)(a) (1973).

27. COLO. REV. STAT. § 24-65.1-203 (1973).

28. A mineral resource area is defined as an area containing economically recoverable concentrations of minerals of all types. The criteria for administering mineral resource areas relate to public health and safety and environmental concerns. COLO. REV. STAT. § 24-65.1-104(11) (1973).

29. COLO. REV. STAT. § 24-65.1-201(1)(d) (1973). Key facilities are defined to include airports, major facilities of a public utility, interchanges involving arterial highways, and rapid or mass transit terminals. COLO. REV. STAT. § 24-65.1-104(7) (1973). Other areas of state interest are natural hazard areas and areas containing historical, natural, or archaeological resources of statewide importance. COLO. REV. STAT. § 24-65.1-201 (1973).

30. COLO. REV. STAT. § 24-65.1-501(1)(a) (1973).

31. Criteria for administration of areas of state interest are set forth in COLO. REV. STAT. § 24-65.1-202 (1973). Criteria for administration of activities of state interest are presented at COLO. REV. STAT. § 24-65.1-204 (1973).

criteria, the preservation of “desirable existing community patterns,” in relation to only one area or activity, the area around “major facilities” of a public utility.³²

Few local governments have used their authority under HB 1041 to control socioeconomic impacts in Colorado. The requirements and procedures are somewhat complex and cumbersome. Moreover, the only large energy projects for which local governments can grant or deny permits based on socioeconomic considerations are public utility facilities.³³

The Local Government Land Use Control Enabling Act—commonly known as HB 1034—passed in 1974, is a third source of authority for local government regulation of large-scale industrial development in Colorado.³⁴ HB 1034 authorizes local governments to plan for and regulate several land uses, including:

- (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 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.³⁵

HB 1034 provides the strongest basis for local government control of socioeconomic impacts. Its provisions are broadly worded, however, and leave considerable room for interpretation.

Most Colorado counties have adopted some provisions governing the development of energy and mineral projects in unincorporated areas.³⁶ Typically this provision requires the project proponent to obtain a “conditional use” or “special use” permit. Ten of the counties make some reference in their permit review to socioeconomic concerns.³⁷ Only three of these counties—Garfield, Gunnison, and Rio Blanco—have issued permits that include stipulations regarding socioeconomic impact mitigation.

COMPARISON OF THE COLORADO AND WYOMING APPROACHES

The primary distinction between the Wyoming and Colorado approaches to regulation of socioeconomic impacts is in the level of government given regulatory authority in each state. A number of important differences flow from this basic distinction. First, different regulatory

32. COLO. REV. STAT. § 24-65.1-202(5)(b) (1973).

33. COLO. REV. STAT. § 24-65.1-202(5)(b)(II) (1973).

34. COLO. REV. STAT. §§ 29-20-101 to -107 (1977).

35. COLO. REV. STAT. § 29-20-104 (1977).

36. For a summary of the permit requirements for each Colorado county, see COLORADO JOINT REVIEW PROCESS PROGRAM, COLORADO PERMIT DIRECTORY FOR ENERGY AND MINERAL RESOURCE DEVELOPMENT.

37. The ten counties are Delta, Dolores, Garfield, Gunnison, Jefferson, Mineral, Ouray, Pitkin, Rio Blanco, and Saguache.

bodies—the Industrial Siting Council in Wyoming, county commissions in Colorado—regulate development. Second, jurisdictional control of project impacts in Wyoming is state-wide but in Colorado, only the county in which the project is located has direct control. Third, Wyoming uniformly requires developers to pay for socioeconomic impacts of their projects while Colorado counties vary considerably in their approach.

The Regulatory Body

In Wyoming, a single regulatory authority—the Wyoming Industrial Siting Council—controls the siting of large projects. This body is composed of seven members appointed by the governor to six-year terms.³⁸ Although Council members attend hearings and meetings for which they are compensated, their positions are not full-time.³⁹ The Industrial Siting Administration, which has a full-time director and staff, supports the work of the Council.⁴⁰

Under the Colorado approach, the board of county commissioners is the ultimate decision-maker.⁴¹ County commissioners are elected officials, with four-year terms of office. Staff assistance for reviewing permit applications generally is provided by personnel filling regular county positions.⁴²

The Wyoming Siting Act incorporates local involvement in the permitting process.⁴³ All local governments within an impact area are automatically parties to the proceedings. Although the project developer seeking a permit must submit his proposed mitigation plan to the Siting Council for approval, in practice much of the plan is first worked out with local governmental units. Indeed, commentators have pointed out that “[t]he various communities throughout the State of Wyoming have become very adept at making their needs known to prospective industries. . . . In exchange for a company donation to meet the needs of the affected community, the community agrees to not oppose the issuance of the Industrial Siting Permit.”⁴⁴ Thus, while local interests in Wyoming do not have ultimate authority in the siting decision, they do have considerable bargaining power regarding mitigation requirements.

38. WYO. STAT. § 35-12-104(a), (b) (1977).

39. WYO. STAT. § 35-12-104(e) (1977).

40. There are currently six full-time professionals on the staff with training in engineering, environmental science, economics, public administration, and sociology/demography. Two attorneys from the Wyoming Attorney General's office are assigned to work with the Siting office.

41. The permit application initially may be reviewed by a county planning commission, if one exists, or a county board of adjustment, but final authority resides with the board of county commissioners. Counties are authorized to create planning commissions under section 30-28-103 of the Colorado Statutes, COLO. REV. STAT. § 30-28-103 (1977). Planning commission members are appointed by the board of county commissioners.

42. Two of the counties in the center of the last oil shale boom—Garfield and Rio Blanco—each hired an “impact coordinator” to assist in project review and monitoring.

43. See *supra* text accompanying note 20.

44. Ebzery & Kunz, *Facility Siting*, 1981 INST. ON MIN. RESOURCES PERMITTING.

Although Colorado does not have a state-level siting authority, the Colorado Department of Natural Resources has developed a Joint Review Process (JRP) for coordinating the permitting process among local, state and federal agencies.⁴⁵ Many project proponents have chosen to submit to this voluntary process.⁴⁶ Under the JRP, counties still have authority under the Colorado statutes previously discussed⁴⁷ to condition development permits upon mitigation of socioeconomic impacts. The other agencies involved also retain their authority to grant or deny various permits. The JRP simply improves coordination between all the agencies involved.⁴⁸

Large-scale projects have significance well beyond their local impacts. It is inappropriate to submit their regulation to purely local control by elected officials. County commissioners must necessarily be locally oriented and politically sensitive. Under the Colorado approach there are few moderating influences on the regulatory power which may be exercised by the county commissioners. Although their authority appears weak, a project developer is unlikely to challenge their decisions so long as the project is allowed to proceed.

In Wyoming, the decision-making body is appointed by the governor for six-year terms and thus is relatively insulated from political pressure. Moreover, having a centralized, state-wide approach permits the maintenance of a full-time staff which, through time, develops considerable experience and expertise. Technical review of plans for proposed projects is substantially facilitated by this capability.

Control of the Impact Area

The geographic distribution of a project's work force largely determines the project's socioeconomic impact area. In addition, nonbasic workers⁴⁹ may expand the impact area when they immigrate to serve the basic work force. Siting Act impact areas are defined as areas "in which

45. For a good general discussion of the Joint Review Process, see Poe, *Coordinated Permitting Via the Joint Review Process*, PUBLIC/PRIVATE March 1983, at 81. Established within the Colorado Department of Natural Resources in 1978, the JRP was recognized legislatively in 1983. COLO. REV. STAT. §§ 34-10-101 to -104 (Supp. 1983) (commonly called H.B. 1099).

46. So far, nine projects have entered into the JRP. Poe, *supra* note 45, at 87. None of these projects have gone through the process completely because economic factors have affected their viability. Problems with the JRP itself did not prevent completion of these project reviews. Interview with Stephen C. Norris, Project Manager of the Joint Review Process Program (Sept. 27, 1984).

47. See *supra* text accompanying notes 23-35.

48. A publication explaining the JRP, states that "[t]he JRP is voluntary in that neither the proponent nor any government agency is legally bound to agree to participate. Further, the proponent or any participating agency is not legally bound by any agreements signed as a part of the process, and therefore, may withdraw at any time." COLORADO DEPARTMENT OF NATURAL RESOURCES, COLORADO'S JOINT REVIEW PROCESS FOR MAJOR ENERGY AND MINERAL RESOURCE DEVELOPMENT PROJECTS 1 (1980).

49. "Non-basic" jobs are those which produce goods and services consumed in the study area. Thus the money which supports non-basic wages and salaries also comes from within the study area. "Basic" jobs, on the other hand, are those which produce goods and services exported from the study area and thus bring income into the area from outside.

sudden or prolonged population growth may occur or may cause environmental, social or economic stresses of such a nature that the total local, state and federal resources available are not sufficient to resolve them properly and effectively. . . ."⁵⁰

The Act provides that the governmental entities whose jurisdictions will be "primarily affected by the proposed facility" are to be full parties to the permit proceedings.⁵¹ Supplemental regulations to the Siting Act define these jurisdictions as ones in which construction or operation of a facility "may significantly affect the environment, population, level of economic well-being, level of social services, or may threaten the health, safety, or welfare of present or expected inhabitants."⁵² The Siting Council may identify the "area of site influence" as any reasonable combination of counties, municipalities, school districts, and special districts.⁵³

In practice, the Wyoming approach has matched multi-county impacts with multi-county planning. In 1980 for example, when the Carter Mining Company proposed to expand its Rawhide Mine, the company defined its impact area as including only Campbell County. Representatives of the town of Moorcroft in adjacent Crook County argued that the town should be included in the impact area. The Siting Council required an industry-monitoring program in order to ascertain whether socioeconomic impacts were occurring outside of Campbell County. The Council further announced that it was prepared to require additional mitigation for impacted areas outside of Campbell County if necessary.⁵⁴

In Colorado, the counties regulate impact areas and their authority to define such areas extends only to their county lines.⁵⁵ Colorado counties are, in theory, vulnerable to jurisdictional mismatches which could occur when a project is located in one county while a significant portion of its work force resides in another. A project county could reap property tax revenues from a project while its neighboring county incurs the costs of accommodating the project work force. There is no statutory requirement that county commissioners in project counties seek impact assistance for their neighboring counties.

50. WYO. STAT. § 35-12-102(a)(vii) (1977).

51. WYO. STAT. § 35-12-109(a)(i), -112(a)(ii) (1977).

52. WYO. INDUS. SITING ADMIN., INDUSTRIAL DEVELOPMENT INFORMATION AND SITING RULES AND REGULATIONS § 2 (1977).

53. *Id.* Special districts are political subdivisions of state government, created under state law for the purpose of providing specified services not otherwise provided by existing local governments. Most commonly, special districts are created to provide such things as fire protection, water supply, and sewage treatment. R. HAWKINS, JR., SELF GOVERNMENT BY DISTRICT 7-27 (1976).

54. Carter Mining Co., No. 80-1, Slip op. at 11, 15 (Wyo. Indus. Siting Admin. Aug. 18, 1980) (Permit Application for the Expansion of the Rawhide Mining Company, Campbell County, Wyoming).

55. A county government is a creature of state law and has "only such powers as are expressly conferred upon it by the constitution and statutes and such incidental implied powers as are reasonably necessary to carry out such express powers." J. BANKS, COLORADO LAW OF CITIES AND COUNTIES 35 (3d ed. 1979). As discussed previously, in Colorado, control of socioeconomic impacts is incidental to the land use decision allowing the siting of a project within the county. See *supra* text accompanying notes 23-35.

Three mechanisms are available in Colorado to prevent jurisdictional mismatches—the Joint Review Process discussed above,⁵⁶ formal and informal inter-county agreements, and the Cumulative Impacts Task Force. To date, these mechanisms have protected non-project counties from uncompensated impacts.

The permitting process preceding development of the ARCO Mount Gunnison mine in Gunnison County demonstrated the ability of one Colorado County to protect the interests of another. The mine was to be located in western Gunnison County but planners expected a significant portion of the mine's work force to reside in neighboring Delta County. In their resolution approving ARCO's land-use-change application, the Gunnison County Commissioners stated:

The mine is very close to the common border between Gunnison and Delta Counties and much of the impact of the proposed mine will be felt by Delta County. The review process, therefore, has included numerous meetings and public hearings designed to receive input and comment from Delta County citizens as well as governmental entities within Delta County.⁵⁷

Gunnison County's permit required that ARCO contribute to housing as needed to assure that vacancy rates remain at "desirable" levels in both Gunnison and Delta Counties.⁵⁸ ARCO also agreed to prepay severance taxes to local units of government in both counties.⁵⁹

In one instance, two Colorado counties have established a formal agreement "to coordinate their respective planning, decision and permitting processes in order to achieve optimum benefits from development of the available natural resources, but minimize the socio-economic impacts and public infrastructure costs associated with those developments."⁶⁰ This Memorandum of Understanding between Mesa and Garfield Counties was reached in anticipation of the development of oil shale projects in Garfield County. If and when the projects proceed, many workers will commute from Mesa County communities, particularly the regional trade center of Grand Junction. Non-basic workers are expected to reside in Mesa County as well. The counties therefore agreed that they would:

Provide a joint review process whereby the Commissioners of the Counties will jointly review and discuss any given project or request that is a matter of mutual concern.

56. See *supra* text accompanying notes 45-48. Of special relevance here is the fact that the JRP provides a public forum for interested parties to express their concerns. A governmental entity without formal authority to control project impacts but adversely affected by that project may use this forum to make its case.

57. Board of County Commissioners of Gunnison County, A Resolution Approving Land Use Change Application No. 1979-34 Submitted by Atlantic Richfield Company 1 (Oct. 6, 1981) [hereinafter cited as Mt. Gunnison Resolution].

58. *Id.* at 20.

59. *Id.* at 21.

60. Memorandum of Understanding Between the Board of County Commissioners of Mesa and Garfield Counties, Colorado 1 (July 29, 1981).

Provide a basis whereby the Counties may jointly receive assistance from large development in either County, relative to the proportional impacts, to assist in the development of impacted Counties, communities or geographical areas.⁶¹

The Cumulative Impacts Task Force (CITF) is still another voluntary effort to address the impacts of energy development in Colorado.⁶² This joint undertaking of local government, state government, and the energy industry is intended to prepare cumulative impact assessments of energy development in northwest Colorado and to provide a planning tool for the individual participants and the region. In both these capacities, CITF provides a forum for considering impacts that cross jurisdictional boundaries.

These developments in Colorado provide encouraging evidence of voluntary efforts to equitably control project impacts. This voluntary cooperation could be severely tested if substantial development were to take place. State-level control, such as exists in Wyoming, allows the definition of the impact area to encompass all appropriate jurisdictions. It affords an effective means of providing protection for impacted areas. In the absence of such a state-level authority, Colorado should establish a formal mechanism allowing participation by affected adjacent counties in the permit proceedings by the county in which the project is to be located.

Mitigation Responsibility

Experience has now demonstrated that effective mitigation programs can alleviate much of the disruption associated with rapid growth in rural areas, at least with respect to local government fiscal requirements, needed capital facilities, and housing. The costs to developers for mitigation usually are not likely to exceed ten percent of the total capital costs for the project.⁶³ Moreover, it is evident that community vitality is important to employee satisfaction and that good living conditions are essential for maintaining a stable, high quality work force.⁶⁴

Under the Wyoming Siting Act, it is clear that developers of large-scale projects are responsible for mitigating the adverse socioeconomic impacts associated with their projects.⁶⁵ Projects proposed to be built anywhere in the state are technically reviewed and evaluated by the Siting Administration staff. Permits for all major projects throughout the state are issued by the Siting Council. In the years since the passage of the Siting Act in 1975, its meaning and application have become well estab-

61. *Id.* at 2. The agreement specifically applies to projects expected to employ more than 200 persons or residential developments of more than fifty units on specified parcels of land.

62. A good discussion of the CITF is provided in Pascoe & Cattany, *Assessing the Cumulative Impacts of Development*, PUBLIC/PRIVATE March 1983, at 67.

63. J. HARLAN, STARTING WITH SYNFUELS: BENEFITS, COSTS, AND PROGRAM DESIGN ASSESSMENTS 87-88 (1982).

64. See, e.g., J. GILMORE & M. DUFF, BOOM TOWN GROWTH MANAGEMENT: A CASE STUDY OF ROCK SPRINGS - GREEN RIVER, WYOMING (1975) (especially Ch. 2).

65. See Van Baalen, *supra* note 9, at 53-54.

lished. New permit applicants can readily review the experience of previous applicants as a guide for their own planning.

In Colorado, permit procedures and mitigation responsibility vary markedly from county to county. Although all Colorado counties exercise some form of land use control,⁶⁶ only ten counties have explicitly integrated socioeconomic considerations into their land-use review processes.⁶⁷ The approach adopted in each of these counties varies considerably. Moreover, to this point only four projects have gone through complete review for socioeconomic impacts under a county permit process—the Colony and Union oil shale projects in Garfield County, the ARCO coal mine project in Gunnison County, and the Western Fuels coal mine project in Rio Blanco County. Because of this limited experience, the procedures and requirements are not yet clearly defined.

Perhaps the most important difference among the Colorado counties that have chosen to regulate socioeconomic impacts is the limit of mitigation responsibility which they require. A new project causes direct impacts on adjacent communities because it introduces new project workers and their families into the area, necessitating the provision of such things as additional housing and municipal services. In addition, indirect impacts result from the attraction of other people to the area, the so-called “induced” or secondary population, to take the non-basic jobs created to serve new project workers. The counties differ over whether the project proponent must assume responsibility for mitigating indirect impacts. Rio Blanco County, Colorado entered into an agreement with the Western Fuels Company which established the “fundamental principle” that new project proponents should “pay the full costs associated with their projects and related activities, so that existing residents and the Government Entities will be in the same taxing and user fee position during project construction and operation that they would have been but for the projects and activities. . . .”⁶⁸

The “fundamental principle” was effectuated in the agreement by clearly assigning responsibility for mitigating impacts caused by the project work force and the project-induced population increase to Western Fuels. For example, the agreement states, “Western Fuels agrees and guarantees to undertake or arrange for the following to be undertaken: (a) Timely construction and availability of housing units for all project-

66. A preliminary survey by the Colorado Land Use Commission in 1980 produced the following information:

- 1) 63 out of 63 counties have adopted subdivision regulations;
- 2) 49 out of 63 counties have adopted zoning resolutions;
- 3) 26 of 63 counties have adopted a current master plan for all or a part of the unincorporated area of the county;
- 4) 9 of 63 counties have an operational land use management system in place, including adopted policies, plans, regulations and the administrative structure adequate to manage anticipated growth.

Colo. Land Use Comm'n, *The Status of Land Use Planning and Regulation in Colorado* 4 (Nov. 25, 1980) (typewritten manuscript).

67. See *supra* note 37.

68. Socioeconomic Impact Mitigation Agreement for the Deserado Mine, Bonanza Station and Associated Facilities 7 (June 22, 1981) [hereinafter cited as *Western Fuels Agreement*].

related employees. (b) Timely construction and availability of housing units for all induced workers."⁶⁹ Furthermore, the agreement includes as a statement of principle:

In some cases, new or improved capital facilities will need to be constructed, upgraded or expanded immediately or in the near future in order to accommodate the project-related and induced population. In such event, Western Fuels will provide the financial resources for such construction, upgrading or expansion under the terms and conditions of this Agreement.⁷⁰

Gunnison County, Colorado, has taken a more limited approach. In the October 1981 resolution by the Gunnison County Board of County Commissioners, approving the land use change requested by the ARCO Coal Company, the following statement was included:

The basic premise of [any] socioeconomic mitigation plan is that development should pay its own way, that present residents should not have to subsidize industrial development through higher taxes or degradation of their quality of life. The other side, however, is that new development should not have to subsidize present residents, that new development should not have to pay for higher levels of service for present residents or for solving historic problems not attributable to the new development.⁷¹

As a result, in its permit for the Mount Gunnison Mine, Gunnison County limited ARCO's housing liability to "housing units sufficient enough to cover 100% of its own project employment increases."⁷²

Garfield County, Colorado, initially took an even more limited position. For example, in its permits for the Colony and Union projects, the county established the project proponent's responsibility for housing by stating that the applicant "will demonstrate to the County the availability of housing for at least 80% of their work force at the time of demand."⁷³ A new "fiscal impact mitigation program," adopted in December 1982, established requirements by which sponsors of certain projects help "provide for the timely availability of adequate housing, community facilities and public services during the construction phase. . . ." ⁷⁴ The mitigation liability of project sponsors was explicitly limited to the impacts created

69. *Id.* at 31.

70. *Id.* at 7.

71. Mt. Gunnison Resolution, *supra* note 57, at 11.

72. *Id.* at 20.

73. Board of County Commissioners of Garfield County, A Resolution Concerned with the Conditional Approval of a Conditional Use Permit Application by the Colony Development Corporation for Industrial Operations Limited to Process Shale Oil 1 (April 13, 1981) (available at the County Attorney's Office—Garfield County, Colorado); A Resolution Concerned with the Conditional Approval of an Application for Special Use Permit by Union Company of California 3 (January 12, 1981) (available at the county attorney's office—Garfield County, Colorado).

74. Board of County Commissioners of Garfield County, Resolution Concerned with Amending the Garfield County Zoning Resolution of 1978 by the Inclusion of a New Section 5.08 Fiscal Impact Mitigation Programs, Resolution No. 82-318 (December 20, 1982).

by the direct, project-related population,⁷⁵ and responsibility for increased public-sector costs limited to the project's construction period.⁷⁶

Wyoming subjects each proposed project to a careful analysis. To determine socioeconomic impacts, a baseline profile for the "area of site influence" is first established in terms of the area's economy, population, capital facilities, housing, transportation, educational facilities, and public finances for local government. These effects are based on the expected population increase, both direct and induced, associated with the project.⁷⁷ The impact of this additional population on capital facilities, housing, transportation, educational facilities, and public finance is considered. Mitigation measures found are then included in the permit stipulations. An examination of permits issued by the Siting Council in Wyoming indicates that while the Council considers the indirect impacts associated with a project, it stops well short of requiring that the project proponent mitigate all of these impacts.

Depending on location, a developer of a major project in Colorado is treated very differently with respect to responsibility for mitigating socioeconomic impacts. The major argument in favor of allowing counties to set their own standards for regulating socioeconomic impacts is that such impacts are uniquely local in nature. Local community leaders are accustomed to dealing with issues such as housing, schools, and municipal budgets. Moreover, these individuals presumably are sensitive to local attitudes toward growth and quality of life and can best represent local interests in these areas.

The Wyoming approach, however, insures active local involvement in the decision-making. In practice, many of the mitigation requirements included in the permits have come out of direct negotiation between local government officials and project developers.⁷⁸ Moreover, the development of these mitigation measures is aided by the analysis of probable project impacts performed by the Industrial Siting Administration staff and supplied to interested local government officials.⁷⁹ In short, under the Wyoming Act, local concerns are accommodated while greater state-wide consistency is provided.

CONCLUSION

The Wyoming approach to socioeconomic impact regulation is clearly set out in the Industrial Development Information and Siting Act.⁸⁰ By placing permitting authority in a single, state-level agency, the

75. *Id.* at § 5.08.07.02.

76. *Id.* at § 5.08.07.10.

77. The analysis of each project is presented in a written report. See, e.g., Office of Industrial Siting Administration, Staff Review of the Permit Application for Antelope Coal Company to Construct the Antelope Mine, Converse County, Wyoming (May 1981) (note especially section 6, "Socioeconomic Impacts of Construction and Operation of the Facility.")

78. Ebzery & Kunz, *supra* note 44.

79. Letter from Steve Bartenhagen, Office of Industrial Siting Administration (June 30, 1983).

80. See *supra* note 9.

regulatory process is unified. The benefits of a full-time staff are available. Final decision-making is by the state-level Siting Council, but local involvement in the decision process is assured. Impacts which cross jurisdictional boundaries can easily be addressed. Procedures and requirements have become well established and can be readily referenced by prospective applicants.

By leaving socioeconomic impact regulation up to county discretion, Colorado has taken a decentralized approach. The response by Colorado counties has varied considerably. Presumably this variation reflects local attitudes toward growth and development. Yet there are important shortcomings to this approach. Decisions are made by politically sensitive county commissioners. Expertise to adequately analyze impacts associated with a proposed project may not be available at the county level. Cross-jurisdictional impacts are resolvable only on a voluntary basis. Finally, the wide variation in mitigation requirements among Colorado counties—illustrated, for example, by the fact that a project developer in Rio Blanco County must mitigate all impacts, both direct and indirect, associated with its project, while a developer in adjacent Moffat County is not required to mitigate any of its socioeconomic impacts—is both confusing and unfair. It is time for Colorado to reconsider its approach to addressing the socioeconomic impacts associated with large-scale project development.