

CHAPTER 303

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**GOVERNMENT - COUNTY**

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**HOUSE BILL 96-1364**

BY REPRESENTATIVES Jerke and Salaz;  
also SENATORS Rizzuto, Johnson, Matsunaka, L. Powers, Tebedo, Wattenberg, Weddig, and Wham.

**AN ACT**

**CONCERNING WATER WELL PERMITS IN COUNTIES WITH A RURAL LAND USE PROCESS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 30-28-101 (10) (c), Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**30-28-101. Definitions.** As used in this part 1, unless the context otherwise requires:

(10) (c) Unless the method of disposition is adopted for the purpose of evading this part 1, the terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land:

(X) WHICH CREATES A CLUSTER DEVELOPMENT PURSUANT TO PART 4 OF THIS ARTICLE.

**SECTION 2.** Article 28 of title 30, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 4  
CLUSTER DEVELOPMENT**

**30-28-401. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IT IS IN THE PUBLIC INTEREST TO ENCOURAGE CLUSTERING OF RESIDENTIAL DWELLINGS ON TRACTS OF LAND THAT ARE EXEMPT FROM SUBDIVISION REGULATION

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

BY COUNTY GOVERNMENT PURSUANT TO SECTION 30-28-101 (10) (c) (X), THEREBY PROVIDING A MEANS OF PRESERVING COMMON OPEN SPACE, OF REDUCING THE EXTENSION OF ROADS AND UTILITIES TO SERVE THE RESIDENTIAL DEVELOPMENT, AND OF ALLOWING LANDOWNERS TO IMPLEMENT SMART GROWTH ON LAND THAT IS EXEMPT FROM SUBDIVISION REGULATIONS.

(b) LANDOWNERS SHOULD HAVE THE OPTION TO CONSIDER CLUSTER DEVELOPMENT WHEN SUBDIVIDING LAND INTO PARCELS IN A MANNER THAT CONSTITUTES AN ALTERNATIVE TO THE TRADITIONAL THIRTY-FIVE ACRE INTERESTS DESCRIBED IN SECTION 30-28-101 (10) (c) (I).

(c) A PROCESS SHOULD BE AVAILABLE FOR THE DEVELOPMENT OF PARCELS OF LAND FOR RESIDENTIAL PURPOSES THAT WILL AUTHORIZE THE USE OF CLUSTERING, WATER AUGMENTATION, DENSITY BONUSES, NOT TO EXCEED TWO UNITS FOR EACH THIRTY-FIVE ACRE INCREMENT, OR OTHER INCENTIVES, AND THE TRANSFER OF DEVELOPMENT RIGHTS AND FULFILL THE GOALS OF THE COUNTY TO PRESERVE OPEN SPACE, PROTECT WILDLIFE HABITAT AND CRITICAL AREAS, AND ENHANCE AND MAINTAIN THE RURAL CHARACTER OF LANDS WITH CONTIGUITY TO AGRICULTURAL LANDS SUITABLE FOR LONG-RANGE FARMING AND RANCHING OPERATIONS.

**30-28-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "RURAL LAND USE PROCESS" MEANS A PLANNING PROCESS DULY ENACTED AND ADOPTED BY A COUNTY WHICH IS DESIGNED TO OFFER A LAND USE OPTION FOR SINGLE FAMILY RESIDENTIAL PURPOSES THAT DIFFERS FROM TRADITIONAL THIRTY-FIVE ACRE DIVISIONS OF LAND, AS DESCRIBED IN SECTION 30-28-101 (10) (c) (I).

**30-28-403. Cluster development.** (1) A CLUSTER DEVELOPMENT IS ANY DIVISION OF LAND THAT CREATES PARCELS CONTAINING LESS THAN THIRTY-FIVE ACRES EACH, FOR SINGLE-FAMILY RESIDENTIAL PURPOSES ONLY, WHERE THE TRACT IS BEING DIVIDED PURSUANT TO A RURAL LAND USE PROCESS AND RESERVES AT LEAST TWO-THIRDS OF THE TOTAL AREA OF THE TRACT FOR THE PRESERVATION OF CONTIGUOUS OPEN SPACE. NO RURAL LAND USE PROCESS AS AUTHORIZED BY THIS SECTION SHALL APPROVE A CLUSTER DEVELOPMENT THAT WOULD EXCEED TWO RESIDENTIAL UNITS FOR EACH THIRTY-FIVE ACRE INCREMENT.

(2) AS A CONDITION OF APPROVING A CLUSTER DEVELOPMENT, A RURAL LAND USE PROCESS SHALL REQUIRE THAT THE CLUSTER DEVELOPMENT PLAN TO SET ASIDE LAND TO PRESERVE OPEN SPACE OR TO PROTECT WILDLIFE HABITAT OR CRITICAL AREAS NOT PERMIT DEVELOPMENT OF SUCH LAND FOR AT LEAST FORTY YEARS FROM THE DATE THE PLAN IS APPROVED.

**30-28-404. Water - sewage - roadways - notification to state engineer.** (1) IN AN EFFORT TO PRESERVE OPEN SPACE AND WATER RESOURCES, A CLUSTER DEVELOPMENT MAY OBTAIN ONLY ONE WELL PERMIT FOR EACH SINGLE-FAMILY RESIDENTIAL LOT PURSUANT TO SECTIONS 37-90-105 AND 37-92-602, C.R.S., SUBJECT TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION.

(2) EXCEPT IN AREAS OF THE STATE WHERE UNAPPROPRIATED WATER IS AVAILABLE FOR WITHDRAWAL AND THE VESTED WATER RIGHTS OF OTHERS WILL NOT BE

MATERIALLY INJURED AND EXCEPT INSIDE DESIGNATED GROUND WATER BASINS, A WATER COURT-APPROVED PLAN FOR AUGMENTATION SHALL BE REQUIRED AND SHALL ACCOMPANY ANY COUNTY-APPROVED RURAL LAND USE PLAN WHEN THE WATER USAGE IN THE CLUSTER DEVELOPMENT WOULD EXCEED AN ANNUAL WITHDRAWAL RATE OF ONE ACRE-FOOT FOR EACH THIRTY-FIVE ACRES WITHIN THE CLUSTER DEVELOPMENT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE THE USE OF TREATED DOMESTIC WATER PROVIDED BY ANY PUBLIC OR PRIVATE ENTITY.

(3) NO LATER THAN TEN DAYS AFTER APPROVAL OF A CLUSTER DEVELOPMENT PURSUANT TO A COUNTY'S RURAL LAND USE PROCESS, THE BOARD OF COUNTY COMMISSIONERS SHALL NOTIFY THE STATE ENGINEER OF SUCH APPROVAL AND SHALL PROVIDE THE STATE ENGINEER A COPY OF THE APPROVED RURAL LAND USE PLAN THAT INCLUDES THE CLUSTER DEVELOPMENT.

**SECTION 3.** 37-92-602 (3) (b) (II) (A), Colorado Revised Statutes, 1990 Repl. Vol., as amended, is amended, and the said 37-92-602 (3) (b) (II) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

**37-92-602. Exemptions - presumptions - legislative declaration.**

(3) (b) (II) (A) If a permit is sought by a user for a well exempted under paragraph (b) of subsection (1) of this section which will be the only well on a residential site, which well will be used solely for ordinary household purposes inside a single-family dwelling and will not be used for irrigation or will be the only well on a tract of land of thirty-five acres or more OR WILL BE THE ONLY WELL ON A CLUSTER DEVELOPMENT LOT, SERVING ONE SINGLE-FAMILY RESIDENCE, WHERE THE RATIO OF WATER USAGE IN THE CLUSTER DEVELOPMENT DOES NOT EXCEED ONE ACRE-FOOT OF ANNUAL WITHDRAWALS FOR EACH THIRTY-FIVE ACRES WITHIN THE CLUSTER DEVELOPMENT and will be used solely for the purposes specified in paragraph (b) of subsection (1) of this section, and the return flow from such uses shall be returned to the same stream system in which the well is located, there shall be a presumption that there will not be material injury to the vested water rights of others or to any other existing well resulting from such well, which presumption may be rebutted by evidence sufficient to show such material injury.

(D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE THE STATE ENGINEER FROM REQUIRING METERING OF WITHDRAWALS, PERIODIC REPORTING OF SUCH WITHDRAWALS, AND CESSATION OF WITHDRAWALS THAT EXCEED ONE ACRE-FOOT OF WATER FOR EACH THIRTY-FIVE ACRES WITHIN A CLUSTER DEVELOPMENT.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1996