

State of the Dominant Estate
City and County Land Use Issues

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1. Local regulatory authority

A. Wyoming cities

(1) Zoning authority

- ◆ WYO. STAT. ANN. §§ 15-1-601 to -611

(2) Home rule authority

- ◆ “All cities and towns are hereby empowered to determine their local affairs and government as established by ordinance passed by the governing body, subject to referendum when prescribed by the legislature, and further subject only to statutes uniformly applicable to all cities and towns, and to statutes prescribing limits of indebtedness.” WYO. CONST. art. 13, § 1(b).

B. Wyoming counties

(1) Authority to regulate land use

- ◆ “[E]ach board of county commissioners may regulate and restrict the location and use of buildings and structures, and the use, condition of use, or occupancy of lands for residence, recreation, agriculture, industry, commerce, public use, and other purposes in the unincorporated area of the county.” WYO. STAT. ANN. § 18-5-201
- ◆ *Snake River Venture v. Board of County Comm’rs*, 616 P.2d 744 (Wyo. 1980) (stating that predecessor statute delegated to counties “whatever police power is necessary to promulgate a subdivision, zoning, or planning ordinance”).
- ◆ 1980 Wyo. Op. Atty. Gen. 433 (concluding that § 201 grants authority to require and issue zoning permits for mines).

(a) Subdivision authority

- ◆ WYO. STAT. ANN. §§ 18-5-301 to -315

2. Preemption of local authority

A. State law may expressly limit, prohibit, or preempt local regulation

(1) County zoning may not prevent mineral extraction or production

- ◆ “[N]o zoning resolution or plan shall prevent any use or occupancy reasonably necessary to the extraction or production of the mineral resources in or under any lands subject thereto.” WYO. STAT. ANN. § 18-5-201.
- ◆ *River Springs LLC v. Board of County Comm’rs*, 899 P.2d 1329 (Wyo. 1995) (holding that limitation does not apply to regulation of sand, gravel, rock, and limestone extraction).
- ◆ 1980 Wyo. Op. Atty. Gen. 433 (reasoning that any type of structure that is necessary for extraction or production may not be regulated, but incidental structures may be regulated).

B. State law may implicitly limit, prohibit, or preempt local regulation

(1) Wyoming Environmental Quality Act may preempt local environmental regulation

- ◆ “[I]t is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air, land and water and to secure cooperation between agencies of the state, agencies of other states, interstate agencies, and the federal government in carrying out these objectives.” WYO. STAT. ANN. § 35-11-102.
- ◆ *River Springs LLC v. Board of County Comm’rs*, 899 P.2d 1329 (Wyo. 1995) (stating that counties may regulate mineral extraction “so long as they are not regulated under the Wyoming Environmental Quality Act”).
- ◆ 1980 Wyo. Op. Atty. Gen. 433 (reasoning that section 102 of WEQA implies intent that state environmental regulation be exclusive).

(2) Mining statutes and regulations are “minimum standards.”

- ◆ “This act and the rules and regulations adopted under it constitute the body of standards for mining operations in this state. The laws, rules and regulations are intended to constitute minimum standards recognized as necessary for the protection of the public interest and the safety of employees and the general public.” WYO. STAT. ANN. § 30-2-102.

(3) Oil and gas regulations are not intended to be exclusive.

- ◆ “Compliance with these rules does not relieve the owner or operator of the obligation to comply with applicable federal, local or other state permits or regulatory requirements.” WOGCC Rules and Regulations ch. 2, § 1(b).
- ◆ “Approval by the Commission of applications for permits for reserve or produced water pits does not relieve the owner or operator of the obligation to comply with the applicable federal, local, or other state permits or regulatory requirements.” WOGCC Rules and Regulations ch. 4, § 1(a).
- ◆ “Closure [of oilfield pits] must be conducted in accordance with lease and landowner obligations and with local, state, and federal regulations” WOGCC Rules and Regulations ch. 4, § 1(ii)

C. State law preempts local regulation that would impede state objectives

- ◆ *Ahearn v. Town of Wheatland*, 39 P.3d 409, 415 (Wyo. 2002).

(1) Environmental regulation

- ◆ County regulation prohibiting what state permits would conflict with state objectives. 1980 Wyo. Op. Atty. Gen. 433.

D. State law preempts local regulation if the subject matter requires uniformity

E. State law preempts local regulation if state regulation is so comprehensive that it precludes the coexistence of local regulation

(1) WEQA preempts local environmental regulation

- ◆ 1980 Wyo. Op. Atty. Gen. 433.

(2) WEQA preempts local regulation of solid minerals regulated by DEQ

- ◆ “The statutory scheme [of the WEQA] is exhaustive in its requirements relating to the extraction and production of ‘minerals.’” *River Springs LLC v. Board of County Comm’rs*, 899 P.2d 1329 (Wyo. 1995) (holding that if counties permit extraction of sand, gravel, rock, and limestone, DEQ has exclusive authority to regulate extraction).

(3) State regulation may not address some traditional land use concerns, and therefore not preempt local regulation unless there are direct conflicts

- ◆ *San Pedro Mining Corp. v. Board of County Comm’rs*, 909 P.2d 754 (N.M. Ct. App. 1995).
- ◆ *Board of County Comm’rs v. Bowen/Edwards Assocs.*, 830 P.2d 1045 (Colo. 1992) (holding that state did not occupy entire field of oil and gas regulation).

F. Federal preemption

(1) Property Clause does not universally preempt state and local land use regulation

- ◆ *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987).

(2) Federal statutes may preempt local regulation on federal lands on similar reasoning as state statutes may preempt

- ◆ *South Dakota Min. Ass'n v. Lawrence County*, 155 F.3d 1005 (8th Cir. 1998) (holding that Federal Mining Act preempted county ordinance prohibiting new or amended permits for surface metal mining, as applied to federal mining claims).
- ◆ *Crystal Bay Marina v. Sweeden*, 939 F. Supp. 839 (N.D. Okla. 1996) (holding that county zoning regulations did not apply to marina on federal lands).

3. Local regulations

A. Prohibiting exploration and production in certain areas

(1) County zoning ordinances may not prohibit extraction and production of mineral resources.

- ◆ *River Springs LLC v. Board of County Comm'rs*, 899 P.2d 1329 (Wyo. 1995).

B. Restricting extraction and production within certain distances from other uses

C. Well permits

D. Regulating external impacts

(1) Setbacks, fencing

(2) Noise and dust

(3) Visual mitigation: screening, lighting, landscaping, colors, size of structures

(4) Waste management

E. Roads

F. Reclamation

G. Air and water quality