

**LAND USE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to land use provisions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ imposes requirements on proposed conditions for a proposed conditional use;
- ▶ states that a conditional use is an administrative land use decision;
- ▶ amends provisions related to an applicant's rights vesting in a land use application;
- ▶ removes land use authority discretion in allowing an applicant to post an improvement completion assurance;
- ▶ prohibits municipalities and counties from denying a building permit application where the land use authority has accepted an improvement completion assurance;
- ▶ modifies the arbitrary and capricious standard for judicial review of a land use decision; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **10-9a-103**, as last amended by Laws of Utah 2017, Chapters 17 and 84

30 **10-9a-507**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and  
31 amended by Laws of Utah 2005, Chapter 254

32 **10-9a-509**, as last amended by Laws of Utah 2017, Chapters 84, 410, and 428

33 **10-9a-604.5**, as last amended by Laws of Utah 2015, Chapter 327

34 **10-9a-801**, as last amended by Laws of Utah 2017, Chapter 84

35 **10-9a-802**, as last amended by Laws of Utah 2016, Chapter 303

36 **17-27a-103**, as last amended by Laws of Utah 2017, Chapter 84

37 **17-27a-506**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and  
38 amended by Laws of Utah 2005, Chapter 254

39 **17-27a-508**, as last amended by Laws of Utah 2017, Chapters 84, 410, and 428

40 **17-27a-604.5**, as last amended by Laws of Utah 2015, Chapter 327

41 **17-27a-801**, as last amended by Laws of Utah 2017, Chapter 84

42 **17-27a-802**, as last amended by Laws of Utah 2015, Chapter 327

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44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **10-9a-103** is amended to read:

46 **10-9a-103. Definitions.**

47 As used in this chapter:

48 (1) "Affected entity" means a county, municipality, local district, special service  
49 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal  
50 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified  
51 public utility, property owner, property owners association, or the Utah Department of  
52 Transportation, if:

53 (a) the entity's services or facilities are likely to require expansion or significant  
54 modification because of an intended use of land;

55 (b) the entity has filed with the municipality a copy of the entity's general or long-range  
56 plan; or

57 (c) the entity has filed with the municipality a request for notice during the same  
58 calendar year and before the municipality provides notice to an affected entity in compliance

59 with a requirement imposed under this chapter.

60 (2) "Appeal authority" means the person, board, commission, agency, or other body  
61 designated by ordinance to decide an appeal of a decision of a land use application or a  
62 variance.

63 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
64 residential property if the sign is designed or intended to direct attention to a business, product,  
65 or service that is not sold, offered, or existing on the property where the sign is located.

66 (4) (a) "Charter school" means:

67 (i) an operating charter school;

68 (ii) a charter school applicant that has its application approved by a charter school  
69 authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

70 (iii) an entity that is working on behalf of a charter school or approved charter  
71 applicant to develop or construct a charter school building.

72 (b) "Charter school" does not include a therapeutic school.

73 (5) "Conditional use" means a land use that, because of its unique characteristics or  
74 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be  
75 compatible in some areas or may be compatible only if certain conditions are required that  
76 mitigate or eliminate the detrimental impacts.

77 (6) "Constitutional taking" means a governmental action that results in a taking of  
78 private property so that compensation to the owner of the property is required by the:

79 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

80 (b) Utah Constitution Article I, Section 22.

81 (7) "Culinary water authority" means the department, agency, or public entity with  
82 responsibility to review and approve the feasibility of the culinary water system and sources for  
83 the subject property.

84 (8) "Development activity" means:

85 (a) any construction or expansion of a building, structure, or use that creates additional  
86 demand and need for public facilities;

87 (b) any change in use of a building or structure that creates additional demand and need  
88 for public facilities; or

89 (c) any change in the use of land that creates additional demand and need for public

90 facilities.

91 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
92 or more of a person's major life activities, including a person having a record of such an  
93 impairment or being regarded as having such an impairment.

94 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
95 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
96 802.

97 (10) "Educational facility":

98 (a) means:

99 (i) a school district's building at which pupils assemble to receive instruction in a  
100 program for any combination of grades from preschool through grade 12, including  
101 kindergarten and a program for children with disabilities;

102 (ii) a structure or facility:

103 (A) located on the same property as a building described in Subsection (10)(a)(i); and

104 (B) used in support of the use of that building; and

105 (iii) a building to provide office and related space to a school district's administrative  
106 personnel; and

107 (b) does not include:

108 (i) land or a structure, including land or a structure for inventory storage, equipment  
109 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

110 (A) not located on the same property as a building described in Subsection (10)(a)(i);

111 and

112 (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

113 (ii) a therapeutic school.

114 (11) "Fire authority" means the department, agency, or public entity with responsibility  
115 to review and approve the feasibility of fire protection and suppression services for the subject  
116 property.

117 (12) "Flood plain" means land that:

118 (a) is within the 100-year flood plain designated by the Federal Emergency  
119 Management Agency; or

120 (b) has not been studied or designated by the Federal Emergency Management Agency

121 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because  
122 the land has characteristics that are similar to those of a 100-year flood plain designated by the  
123 Federal Emergency Management Agency.

124 (13) "General plan" means a document that a municipality adopts that sets forth general  
125 guidelines for proposed future development of the land within the municipality.

126 (14) "Geologic hazard" means:

127 (a) a surface fault rupture;

128 (b) shallow groundwater;

129 (c) liquefaction;

130 (d) a landslide;

131 (e) a debris flow;

132 (f) unstable soil;

133 (g) a rock fall; or

134 (h) any other geologic condition that presents a risk:

135 (i) to life;

136 (ii) of substantial loss of real property; or

137 (iii) of substantial damage to real property.

138 (15) "Historic preservation authority" means a person, board, commission, or other  
139 body designated by a legislative body to:

140 (a) recommend land use regulations to preserve local historic districts or areas; and

141 (b) administer local historic preservation land use regulations within a local historic  
142 district or area.

143 (16) "Hookup fee" means a fee for the installation and inspection of any pipe, line,  
144 meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other  
145 utility system.

146 (17) "Identical plans" means building plans submitted to a municipality that:

147 (a) are clearly marked as "identical plans";

148 (b) are substantially identical to building plans that were previously submitted to and  
149 reviewed and approved by the municipality; and

150 (c) describe a building that:

151 (i) is located on land zoned the same as the land on which the building described in the

152 previously approved plans is located;

153 (ii) is subject to the same geological and meteorological conditions and the same law  
154 as the building described in the previously approved plans;

155 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
156 and approved by the municipality; and

157 (iv) does not require any additional engineering or analysis.

158 (18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a,  
159 Impact Fees Act.

160 (19) "Improvement completion assurance" means a surety bond, letter of credit,  
161 financial institution bond, cash, assignment of rights, lien, or other equivalent security required  
162 by a municipality to guaranty the proper completion of landscaping or an infrastructure  
163 improvement required as a condition precedent to:

164 (a) recording a subdivision plat; or

165 (b) development of a commercial, industrial, mixed use, or multifamily project.

166 (20) "Improvement warranty" means an applicant's unconditional warranty that the  
167 applicant's installed and accepted landscaping or infrastructure improvement:

168 (a) complies with the municipality's written standards for design, materials, and  
169 workmanship; and

170 (b) will not fail in any material respect, as a result of poor workmanship or materials,  
171 within the improvement warranty period.

172 (21) "Improvement warranty period" means a period:

173 (a) no later than one year after a municipality's acceptance of required landscaping; or

174 (b) no later than one year after a municipality's acceptance of required infrastructure,  
175 unless the municipality:

176 (i) determines for good cause that a one-year period would be inadequate to protect the  
177 public health, safety, and welfare; and

178 (ii) has substantial evidence, on record:

179 (A) of prior poor performance by the applicant; or

180 (B) that the area upon which the infrastructure will be constructed contains suspect soil  
181 and the municipality has not otherwise required the applicant to mitigate the suspect soil.

182 (22) "Infrastructure improvement" means permanent infrastructure that an applicant

183 must install:

184 (a) pursuant to published installation and inspection specifications for public  
185 improvements; and

186 (b) as a condition of:

187 (i) recording a subdivision plat; or

188 (ii) development of a commercial, industrial, mixed use, condominium, or multifamily  
189 project.

190 (23) "Internal lot restriction" means a platted note, platted demarcation, or platted  
191 designation that:

192 (a) runs with the land; and

193 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
194 the plat; or

195 (ii) designates a development condition that is enclosed within the perimeter of a lot  
196 described on the plat.

197 (24) "Land use applicant" means a property owner, or the property owner's designee,  
198 who submits a land use application regarding the property owner's land.

199 (25) "Land use application":

200 (a) means an application that is:

201 (i) required by a municipality; and

202 (ii) submitted by a land use applicant to obtain a land use decision; and

203 (b) does not mean an application to enact, amend, or repeal a land use regulation.

204 (26) "Land use authority" means:

205 (a) a person, board, commission, agency, or body, including the local legislative body,  
206 designated by the local legislative body to act upon a land use application; or

207 (b) if the local legislative body has not designated a person, board, commission,  
208 agency, or body, the local legislative body.

209 (27) "Land use decision" means ~~[a final action]~~ an administrative decision of a land use  
210 authority or appeal authority regarding:

211 (a) a land use permit;

212 (b) a land use application; or

213 (c) the enforcement of a land use regulation, land use permit, or development

214 agreement.

215 (28) "Land use permit" means a permit issued by a land use authority.

216 (29) "Land use regulation":

217 (a) means ~~an~~ a legislative decision enacted by ordinance, law, code, map, resolution,  
218 specification, fee, or rule that governs the use or development of land; ~~and~~

219 (b) includes the adoption or amendment of a zoning map or the text of the zoning code;

220 and

221 ~~[(b)] (c)~~ does not include:

222 ~~[(i)] a general plan;~~

223 ~~[(ii)] (i)~~ a land use decision of the legislative body acting as the land use authority,

224 even if the decision is expressed in a resolution or ordinance; or

225 ~~[(iii)] (ii)~~ a temporary revision to an engineering specification that does not materially:

226 (A) increase a land use applicant's cost of development compared to the existing  
227 specification; or

228 (B) impact a land use applicant's use of land.

229 (30) "Legislative body" means the municipal council.

230 (31) "Local district" means an entity under Title 17B, Limited Purpose Local  
231 Government Entities - Local Districts, and any other governmental or quasi-governmental  
232 entity that is not a county, municipality, school district, or the state.

233 (32) "Local historic district or area" means a geographically definable area that:

234 (a) contains any combination of buildings, structures, sites, objects, landscape features,  
235 archeological sites, or works of art that contribute to the historic preservation goals of a  
236 legislative body; and

237 (b) is subject to land use regulations to preserve the historic significance of the local  
238 historic district or area.

239 (33) "Lot line adjustment" means the relocation of the property boundary line in a  
240 subdivision between two adjoining lots with the consent of the owners of record.

241 (34) "Moderate income housing" means housing occupied or reserved for occupancy  
242 by households with a gross household income equal to or less than 80% of the median gross  
243 income for households of the same size in the county in which the city is located.

244 (35) "Nominal fee" means a fee that reasonably reimburses a municipality only for time



245 spent and expenses incurred in:

246 (a) verifying that building plans are identical plans; and

247 (b) reviewing and approving those minor aspects of identical plans that differ from the  
248 previously reviewed and approved building plans.

249 (36) "Noncomplying structure" means a structure that:

250 (a) legally existed before its current land use designation; and

251 (b) because of one or more subsequent land use ordinance changes, does not conform  
252 to the setback, height restrictions, or other regulations, excluding those regulations, which  
253 govern the use of land.

254 (37) "Nonconforming use" means a use of land that:

255 (a) legally existed before its current land use designation;

256 (b) has been maintained continuously since the time the land use ordinance governing  
257 the land changed; and

258 (c) because of one or more subsequent land use ordinance changes, does not conform  
259 to the regulations that now govern the use of the land.

260 (38) "Official map" means a map drawn by municipal authorities and recorded in a  
261 county recorder's office that:

262 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for  
263 highways and other transportation facilities;

264 (b) provides a basis for restricting development in designated rights-of-way or between  
265 designated setbacks to allow the government authorities time to purchase or otherwise reserve  
266 the land; and

267 (c) has been adopted as an element of the municipality's general plan.

268 (39) "Parcel boundary adjustment" means a recorded agreement between owners of  
269 adjoining properties adjusting their mutual boundary if:

270 (a) no additional parcel is created; and

271 (b) each property identified in the agreement is unsubdivided land, including a  
272 remainder of subdivided land.

273 (40) "Person" means an individual, corporation, partnership, organization, association,  
274 trust, governmental agency, or any other legal entity.

275 (41) "Plan for moderate income housing" means a written document adopted by a city

276 legislative body that includes:

277 (a) an estimate of the existing supply of moderate income housing located within the  
278 city;

279 (b) an estimate of the need for moderate income housing in the city for the next five  
280 years as revised biennially;

281 (c) a survey of total residential land use;

282 (d) an evaluation of how existing land uses and zones affect opportunities for moderate  
283 income housing; and

284 (e) a description of the city's program to encourage an adequate supply of moderate  
285 income housing.

286 (42) "Plat" means a map or other graphical representation of lands being laid out and  
287 prepared in accordance with Section [10-9a-603](#), [17-23-17](#), or [57-8-13](#).

288 (43) "Potential geologic hazard area" means an area that:

289 (a) is designated by a Utah Geological Survey map, county geologist map, or other  
290 relevant map or report as needing further study to determine the area's potential for geologic  
291 hazard; or

292 (b) has not been studied by the Utah Geological Survey or a county geologist but  
293 presents the potential of geologic hazard because the area has characteristics similar to those of  
294 a designated geologic hazard area.

295 (44) "Public agency" means:

296 (a) the federal government;

297 (b) the state;

298 (c) a county, municipality, school district, local district, special service district, or other  
299 political subdivision of the state; or

300 (d) a charter school.

301 (45) "Public hearing" means a hearing at which members of the public are provided a  
302 reasonable opportunity to comment on the subject of the hearing.

303 (46) "Public meeting" means a meeting that is required to be open to the public under  
304 Title 52, Chapter 4, Open and Public Meetings Act.

305 (47) "Receiving zone" means an area of a municipality that the municipality  
306 designates, by ordinance, as an area in which an owner of land may receive a transferable

307 development right.

308 (48) "Record of survey map" means a map of a survey of land prepared in accordance  
309 with Section 17-23-17.

310 (49) "Residential facility for persons with a disability" means a residence:

311 (a) in which more than one person with a disability resides; and

312 (b) (i) which is licensed or certified by the Department of Human Services under Title  
313 62A, Chapter 2, Licensure of Programs and Facilities; or

314 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter  
315 21, Health Care Facility Licensing and Inspection Act.

316 (50) "Rules of order and procedure" means a set of rules that govern and prescribe in a  
317 public meeting:

318 (a) parliamentary order and procedure;

319 (b) ethical behavior; and

320 (c) civil discourse.

321 (51) "Sanitary sewer authority" means the department, agency, or public entity with  
322 responsibility to review and approve the feasibility of sanitary sewer services or onsite  
323 wastewater systems.

324 (52) "Sending zone" means an area of a municipality that the municipality designates,  
325 by ordinance, as an area from which an owner of land may transfer a transferable development  
326 right.

327 (53) "Specified public agency" means:

328 (a) the state;

329 (b) a school district; or

330 (c) a charter school.

331 (54) "Specified public utility" means an electrical corporation, gas corporation, or  
332 telephone corporation, as those terms are defined in Section 54-2-1.

333 (55) "State" includes any department, division, or agency of the state.

334 (56) "Street" means a public right-of-way, including a highway, avenue, boulevard,  
335 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other  
336 way.

337 (57) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be

338 divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
339 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
340 installment plan or upon any and all other plans, terms, and conditions.

341 (b) "Subdivision" includes:

342 (i) the division or development of land whether by deed, metes and bounds description,  
343 devise and testacy, map, plat, or other recorded instrument; and

344 (ii) except as provided in Subsection (57)(c), divisions of land for residential and  
345 nonresidential uses, including land used or to be used for commercial, agricultural, and  
346 industrial purposes.

347 (c) "Subdivision" does not include:

348 (i) a bona fide division or partition of agricultural land for the purpose of joining one of  
349 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if  
350 neither the resulting combined parcel nor the parcel remaining from the division or partition  
351 violates an applicable land use ordinance;

352 (ii) a recorded agreement between owners of adjoining unsubdivided properties  
353 adjusting their mutual boundary if:

354 (A) no new lot is created; and

355 (B) the adjustment does not violate applicable land use ordinances;

356 (iii) a recorded document, executed by the owner of record:

357 (A) revising the legal description of more than one contiguous unsubdivided parcel of  
358 property into one legal description encompassing all such parcels of property; or

359 (B) joining a subdivided parcel of property to another parcel of property that has not  
360 been subdivided, if the joinder does not violate applicable land use ordinances;

361 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting  
362 their mutual boundary if:

363 (A) no new dwelling lot or housing unit will result from the adjustment; and

364 (B) the adjustment will not violate any applicable land use ordinance;

365 (v) a bona fide division or partition of land by deed or other instrument where the land  
366 use authority expressly approves in writing the division in anticipation of further land use  
367 approvals on the parcel or parcels; or

368 (vi) a parcel boundary adjustment.

369 (d) The joining of a subdivided parcel of property to another parcel of property that has  
370 not been subdivided does not constitute a subdivision under this Subsection (57) as to the  
371 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
372 subdivision ordinance.

373 (58) "Suspect soil" means soil that has:

374 (a) a high susceptibility for volumetric change, typically clay rich, having more than a  
375 3% swell potential;

376 (b) bedrock units with high shrink or swell susceptibility; or

377 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum  
378 commonly associated with dissolution and collapse features.

379 (59) "Therapeutic school" means a residential group living facility:

380 (a) for four or more individuals who are not related to:

381 (i) the owner of the facility; or

382 (ii) the primary service provider of the facility;

383 (b) that serves students who have a history of failing to function:

384 (i) at home;

385 (ii) in a public school; or

386 (iii) in a nonresidential private school; and

387 (c) that offers:

388 (i) room and board; and

389 (ii) an academic education integrated with:

390 (A) specialized structure and supervision; or

391 (B) services or treatment related to a disability, an emotional development, a  
392 behavioral development, a familial development, or a social development.

393 (60) "Transferable development right" means a right to develop and use land that  
394 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer  
395 land use rights from a designated sending zone to a designated receiving zone.

396 (61) "Unincorporated" means the area outside of the incorporated area of a city or  
397 town.

398 (62) "Water interest" means any right to the beneficial use of water, including:

399 (a) each of the rights listed in Section 73-1-11; and

400 (b) an ownership interest in the right to the beneficial use of water represented by:

401 (i) a contract; or

402 (ii) a share in a water company, as defined in Section 73-3-3.5.

403 (63) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts  
404 land use zones, overlays, or districts.

405 Section 2. Section 10-9a-507 is amended to read:

406 **10-9a-507. Conditional uses.**

407 (1) (a) A municipality may adopt a land use ordinance [may include] that includes  
408 conditional uses and provisions for conditional uses that require compliance with standards set  
409 forth in an applicable ordinance.

410 (b) A municipality may not impose a requirement or standard on a conditional use that  
411 conflicts with a provision of this chapter or other state or federal law.

412 (2) (a) (i) A land use authority shall approve a conditional use [shall be approved] if  
413 reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated  
414 detrimental effects of the proposed use in accordance with applicable standards.

415 (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate  
416 anticipated detrimental effects of the proposed conditional use does not require elimination of  
417 the detrimental effects.

418 (b) If a land use authority proposes reasonable conditions on a proposed conditional  
419 use, the land use authority shall ensure that the conditions are stated on the record and  
420 reasonably relate to mitigating the anticipated detrimental effects of the proposed use.

421 ~~(b)~~ (c) If the reasonably anticipated detrimental effects of a proposed conditional use  
422 cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to  
423 achieve compliance with applicable standards, the land use authority may deny the conditional  
424 use [may be denied].

425 (3) A land use authority's decision to approve or deny conditional use is an  
426 administrative land use decision.

427 Section 3. Section 10-9a-509 is amended to read:

428 **10-9a-509. Applicant's entitlement to land use application approval --**  
429 **Municipality's requirements and limitations -- Vesting upon submission of development**  
430 **plan and schedule.**

431 (1) (a) (i) An applicant who has ~~[filed]~~ submitted a complete land use application as  
432 described in Subsection (1)(c), including the payment of all application fees, is entitled to  
433 substantive ~~[land use]~~ review of the ~~[land use]~~ application under the land use regulations;

434 (A) in effect on the date that the application is complete; and [as further provided in  
435 this section.]

436 (B) applicable to the application or to the information shown on the application.

437 (ii) An applicant is entitled to approval of a land use application if the application  
438 conforms to the requirements of the ~~[municipality's]~~ applicable land use regulations, land use  
439 decisions, and development standards in effect when the applicant submits a complete  
440 application ~~[is submitted and all]~~ and pays application fees ~~[have been paid]~~, unless:

441 (A) the land use authority, on the record, formally finds that a compelling,  
442 countervailing public interest would be jeopardized by approving the application and specifies  
443 the compelling, countervailing public interest in writing; or

444 (B) in the manner provided by local ordinance and before the applicant submits the  
445 application ~~[is submitted]~~, the municipality ~~[has]~~ formally ~~[initiated]~~ initiates proceedings to  
446 amend the municipality's land use regulations in a manner that would prohibit approval of the  
447 application as submitted.

448 (b) The municipality shall process an application without regard to proceedings the  
449 municipality initiated to amend the municipality's ordinances as ~~[provided]~~ described in  
450 Subsection (1)(a)(ii)(B) if:

451 (i) 180 days have passed since the municipality initiated the proceedings ~~[were~~  
452 ~~initiated]~~; and

453 (ii) the proceedings have not resulted in an enactment that prohibits approval of the  
454 application as submitted.

455 (c) ~~[An application for a land use approval]~~ A land use application is considered  
456 submitted and complete when the applicant provides the application ~~[is provided]~~ in a form  
457 that complies with the requirements of applicable ordinances and pays all applicable fees ~~[have~~  
458 ~~been paid]~~.

459 (d) The continuing validity of an approval of a land use application is conditioned upon  
460 the applicant proceeding after approval to implement the approval with reasonable diligence.

461 (e) A municipality may not impose on an applicant who has submitted a complete

462 application for preliminary subdivision approval a requirement that is not expressed in:

463 (i) this chapter;

464 (ii) a municipal ordinance; or

465 (iii) a municipal specification for public improvements applicable to a subdivision or  
466 development that is in effect on the date that the applicant submits an application.

467 (f) A municipality may not impose on a holder of an issued land use permit or a final,  
468 unexpired subdivision plat a requirement that is not expressed:

469 (i) in a land use permit;

470 (ii) on the subdivision plat;

471 (iii) in a document on which the land use permit or subdivision plat is based;

472 (iv) in the written record evidencing approval of the land use permit or subdivision  
473 plat;

474 (v) in this chapter; or

475 (vi) in a municipal ordinance.

476 (g) A municipality may not withhold issuance of a certificate of occupancy or  
477 acceptance of subdivision improvements because of an applicant's failure to comply with a  
478 requirement that is not expressed:

479 (i) in the building permit or subdivision plat, documents on which the building permit  
480 or subdivision plat is based, or the written record evidencing approval of the land use permit or  
481 subdivision plat; or

482 (ii) in this chapter or the municipality's ordinances.

483 (2) A municipality is bound by the terms and standards of applicable land use  
484 regulations and shall comply with mandatory provisions of those regulations.

485 (3) A municipality may not, as a condition of land use application approval, require a  
486 person filing a land use application to obtain documentation regarding a school district's  
487 willingness, capacity, or ability to serve the development proposed in the land use application.

488 (4) Upon a specified public agency's submission of a development plan and schedule as  
489 required in Subsection [10-9a-305](#)(8) that complies with the requirements of that subsection, the  
490 specified public agency vests in the municipality's applicable land use maps, zoning map,  
491 hookup fees, impact fees, other applicable development fees, and land use regulations in effect  
492 on the date of submission.



493 Section 4. Section **10-9a-604.5** is amended to read:

494 **10-9a-604.5. Subdivision plat recording or development activity before required**  
495 **infrastructure is completed -- Improvement completion assurance -- Improvement**  
496 **warranty.**

497 (1) A land use authority shall establish objective inspection standards for acceptance of  
498 a [required] landscaping or infrastructure improvement that the land use authority requires.

499 ~~[(2) (a) A land use authority shall require an applicant to complete a required~~  
500 ~~landscaping or infrastructure improvement prior to any plat recordation or development~~  
501 ~~activity.]~~

502 ~~[(b) Subsection (2)(a) does not apply if:]~~

503 ~~[(i) upon the applicant's request, the land use authority has authorized the applicant to~~  
504 ~~post an improvement completion assurance in a manner that is consistent with local ordinance;~~  
505 ~~and]~~

506 ~~[(ii) the land use authority has established a system for the partial release of the~~  
507 ~~improvement completion assurance as portions of required improvements are completed and~~  
508 ~~accepted.]~~

509 (2) (a) Before an applicant conducts any development activity or records a plat, the  
510 applicant shall:

511 (i) complete any required landscaping or infrastructure improvements; or

512 (ii) post an improvement completion assurance for any required landscaping or  
513 infrastructure improvements.

514 (b) If an applicant elects to post an improvement completion assurance, the applicant  
515 shall ensure that the assurance:

516 (i) provides for completion of 100% of the required landscaping or infrastructure  
517 improvements; or

518 (ii) if the municipality has inspected and accepted a portion of the landscaping or  
519 infrastructure improvements, provides for completion of 100% of the unaccepted landscaping  
520 or infrastructure improvements.

521 (c) A municipality shall:

522 (i) if an applicant elects to post an improvement completion assurance, allow the  
523 applicant to post an assurance that meets the conditions of this title, and any local ordinances;

524 (ii) establish a system for the partial release of an improvement completion assurance  
 525 as portions of required landscaping or infrastructure improvements are completed and accepted  
 526 in accordance with local ordinance; and

527 (iii) issue or deny a building permit in accordance with Section 10-9a-802 based on the  
 528 installation of landscaping or infrastructure improvements.

529 (d) A municipality may not require an applicant to post an improvement completion  
 530 assurance for landscaping or an infrastructure improvement that the municipality has  
 531 previously inspected and accepted.

532 (3) At any time [~~up to the land use authority's acceptance of~~] before a municipality  
 533 accepts a landscaping or infrastructure improvement, and for the duration of each improvement  
 534 warranty period, the [~~land use authority~~] municipality may require the [~~developer~~] applicant to:

535 (a) execute an improvement warranty for the improvement warranty period; and

536 (b) post a cash deposit, surety bond, letter of credit, or other similar security, as  
 537 required by the municipality, in the amount of up to 10% of the lesser of the:

538 (i) municipal engineer's original estimated cost of completion; or

539 (ii) applicant's reasonable proven cost of completion.

540 (4) When a municipality accepts an improvement completion assurance for  
 541 landscaping or infrastructure improvements for a development in accordance with Subsection  
 542 (2)(c)(i), the municipality may not deny an applicant a building permit if the development  
 543 meets the requirements for the issuance of a building permit under the building code and fire  
 544 code.

545 [~~(4)~~] (5) The provisions of this section [~~may not be interpreted to~~] do not supersede the  
 546 terms of a valid development agreement, an adopted phasing plan, or the state construction  
 547 code.

548 Section 5. Section **10-9a-801** is amended to read:

549 **10-9a-801. No district court review until administrative remedies exhausted --**  
 550 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
 551 **-- Staying of decision.**

552 (1) No person may challenge in district court a land use decision until that person has  
 553 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and  
 554 Variances, if applicable.

555 (2) (a) Any person adversely affected by a final decision made in the exercise of or in  
556 violation of the provisions of this chapter may file a petition for review of the decision with the  
557 district court within 30 days after the decision is final.

558 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a  
559 property owner files a request for arbitration of a constitutional taking issue with the property  
560 rights ombudsman under Section 13-43-204 until 30 days after:

561 (A) the arbitrator issues a final award; or

562 (B) the property rights ombudsman issues a written statement under Subsection  
563 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

564 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional  
565 taking issue that is the subject of the request for arbitration filed with the property rights  
566 ombudsman by a property owner.

567 (iii) A request for arbitration filed with the property rights ombudsman after the time  
568 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

569 (3) (a) A court shall:

570 (i) presume that a land use regulation properly enacted under the authority of this  
571 chapter is valid; and

572 (ii) determine only whether:

573 (A) the land use regulation is expressly preempted by, or was enacted contrary to, state  
574 or federal law; and

575 (B) it is reasonably debatable that the land use regulation is consistent with this  
576 chapter.

577 (b) A court shall:

578 (i) presume that a final decision of a land use authority or an appeal authority is valid;  
579 and

580 (ii) uphold the decision unless the decision is:

581 (A) arbitrary and capricious; or

582 (B) illegal.

583 (c) (i) A decision is arbitrary and capricious [~~unless~~] if the decision is not supported by  
584 substantial evidence in the record.

585 (ii) A decision is illegal if the decision is:

586 (A) based on an incorrect interpretation of a land use regulation; or

587 (B) contrary to law.

588 (4) The provisions of Subsection (2)(a) apply from the date on which the municipality  
589 takes final action on a land use application for any adversely affected third party, if the  
590 municipality conformed with the notice provisions of Part 2, Notice, or for any person who had  
591 actual notice of the pending decision.

592 (5) If the municipality has complied with Section 10-9a-205, a challenge to the  
593 enactment of a land use regulation or general plan may not be filed with the district court more  
594 than 30 days after the enactment.

595 (6) A challenge to a land use decision is barred unless the challenge is filed within 30  
596 days after the land use decision is final.

597 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to  
598 the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if  
599 available, a true and correct transcript of its proceedings.

600 (b) If the proceeding was recorded, a transcript of that recording is a true and correct  
601 transcript for purposes of this Subsection (7).

602 (8) (a) (i) If there is a record, the district court's review is limited to the record provided  
603 by the land use authority or appeal authority, as the case may be.

604 (ii) The court may not accept or consider any evidence outside the record of the land  
605 use authority or appeal authority, as the case may be, unless that evidence was offered to the  
606 land use authority or appeal authority, respectively, and the court determines that it was  
607 improperly excluded.

608 (b) If there is no record, the court may call witnesses and take evidence.

609 (9) (a) The filing of a petition does not stay the decision of the land use authority or  
610 authority appeal authority, as the case may be.

611 (b) (i) Before filing a petition under this section or a request for mediation or  
612 arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may  
613 petition the appeal authority to stay its decision.

614 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed  
615 pending district court review if the appeal authority finds it to be in the best interest of the  
616 municipality.

617 (iii) After a petition is filed under this section or a request for mediation or arbitration  
618 of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an  
619 injunction staying the appeal authority's decision.

620 Section 6. Section 10-9a-802 is amended to read:

621 **10-9a-802. Enforcement.**

622 (1) (a) A municipality or any adversely affected owner of real estate within the  
623 municipality in which violations of this chapter or ordinances enacted under the authority of  
624 this chapter occur or are about to occur may, in addition to other remedies provided by law,  
625 institute:

626 (i) injunctions, mandamus, abatement, or any other appropriate actions; or  
627 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

628 (b) A municipality need only establish the violation to obtain the injunction.

629 (2) (a) A municipality may enforce the municipality's ordinance by withholding a  
630 building permit.

631 (b) It is an infraction to erect, construct, reconstruct, alter, or change the use of any  
632 building or other structure within a municipality without approval of a building permit.

633 (c) A municipality may not issue a building permit unless the plans of and for the  
634 proposed erection, construction, reconstruction, alteration, or use fully conform to all  
635 regulations then in effect.

636 (d) A municipality may not deny an applicant a building permit because the applicant  
637 has not completed an infrastructure improvement:

638 (i) that is not essential to meet the requirements for the issuance of a building permit  
639 under the building code and fire code; and

640 (ii) for which the municipality has accepted an [~~infrastructure~~] improvement  
641 completion assurance for landscaping or infrastructure improvements for the development.

642 Section 7. Section 17-27a-103 is amended to read:

643 **17-27a-103. Definitions.**

644 As used in this chapter:

645 (1) "Affected entity" means a county, municipality, local district, special service  
646 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal  
647 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified

648 property owner, property owners association, public utility, or the Utah Department of  
649 Transportation, if:

650 (a) the entity's services or facilities are likely to require expansion or significant  
651 modification because of an intended use of land;

652 (b) the entity has filed with the county a copy of the entity's general or long-range plan;  
653 or

654 (c) the entity has filed with the county a request for notice during the same calendar  
655 year and before the county provides notice to an affected entity in compliance with a  
656 requirement imposed under this chapter.

657 (2) "Appeal authority" means the person, board, commission, agency, or other body  
658 designated by ordinance to decide an appeal of a decision of a land use application or a  
659 variance.

660 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
661 residential property if the sign is designed or intended to direct attention to a business, product,  
662 or service that is not sold, offered, or existing on the property where the sign is located.

663 (4) (a) "Charter school" means:

664 (i) an operating charter school;

665 (ii) a charter school applicant that has its application approved by a charter school  
666 authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

667 (iii) an entity that is working on behalf of a charter school or approved charter  
668 applicant to develop or construct a charter school building.

669 (b) "Charter school" does not include a therapeutic school.

670 (5) "Chief executive officer" means the person or body that exercises the executive  
671 powers of the county.

672 (6) "Conditional use" means a land use that, because of its unique characteristics or  
673 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be  
674 compatible in some areas or may be compatible only if certain conditions are required that  
675 mitigate or eliminate the detrimental impacts.

676 (7) "Constitutional taking" means a governmental action that results in a taking of  
677 private property so that compensation to the owner of the property is required by the:

678 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

679 (b) Utah Constitution, Article I, Section 22.

680 (8) "Culinary water authority" means the department, agency, or public entity with  
681 responsibility to review and approve the feasibility of the culinary water system and sources for  
682 the subject property.

683 (9) "Development activity" means:

684 (a) any construction or expansion of a building, structure, or use that creates additional  
685 demand and need for public facilities;

686 (b) any change in use of a building or structure that creates additional demand and need  
687 for public facilities; or

688 (c) any change in the use of land that creates additional demand and need for public  
689 facilities.

690 (10) (a) "Disability" means a physical or mental impairment that substantially limits  
691 one or more of a person's major life activities, including a person having a record of such an  
692 impairment or being regarded as having such an impairment.

693 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
694 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
695 802.

696 (11) "Educational facility":

697 (a) means:

698 (i) a school district's building at which pupils assemble to receive instruction in a  
699 program for any combination of grades from preschool through grade 12, including  
700 kindergarten and a program for children with disabilities;

701 (ii) a structure or facility:

702 (A) located on the same property as a building described in Subsection (11)(a)(i); and

703 (B) used in support of the use of that building; and

704 (iii) a building to provide office and related space to a school district's administrative  
705 personnel; and

706 (b) does not include:

707 (i) land or a structure, including land or a structure for inventory storage, equipment  
708 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

709 (A) not located on the same property as a building described in Subsection (11)(a)(i);

710 and

711 (B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

712 (ii) a therapeutic school.

713 (12) "Fire authority" means the department, agency, or public entity with responsibility

714 to review and approve the feasibility of fire protection and suppression services for the subject

715 property.

716 (13) "Flood plain" means land that:

717 (a) is within the 100-year flood plain designated by the Federal Emergency

718 Management Agency; or

719 (b) has not been studied or designated by the Federal Emergency Management Agency

720 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because

721 the land has characteristics that are similar to those of a 100-year flood plain designated by the

722 Federal Emergency Management Agency.

723 (14) "Gas corporation" has the same meaning as defined in Section [54-2-1](#).

724 (15) "General plan" means a document that a county adopts that sets forth general

725 guidelines for proposed future development of:

726 (a) the unincorporated land within the county; or

727 (b) for a mountainous planning district, the land within the mountainous planning

728 district.

729 (16) "Geologic hazard" means:

730 (a) a surface fault rupture;

731 (b) shallow groundwater;

732 (c) liquefaction;

733 (d) a landslide;

734 (e) a debris flow;

735 (f) unstable soil;

736 (g) a rock fall; or

737 (h) any other geologic condition that presents a risk:

738 (i) to life;

739 (ii) of substantial loss of real property; or

740 (iii) of substantial damage to real property.



741 (17) "Hookup fee" means a fee for the installation and inspection of any pipe, line,  
742 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility  
743 system.

744 (18) "Identical plans" means building plans submitted to a county that:

745 (a) are clearly marked as "identical plans";

746 (b) are substantially identical building plans that were previously submitted to and  
747 reviewed and approved by the county; and

748 (c) describe a building that:

749 (i) is located on land zoned the same as the land on which the building described in the  
750 previously approved plans is located;

751 (ii) is subject to the same geological and meteorological conditions and the same law  
752 as the building described in the previously approved plans;

753 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
754 and approved by the county; and

755 (iv) does not require any additional engineering or analysis.

756 (19) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a,  
757 Impact Fees Act.

758 (20) "Improvement completion assurance" means a surety bond, letter of credit,  
759 financial institution bond, cash, assignment of rights, lien, or other equivalent security required  
760 by a county to guaranty the proper completion of landscaping or an infrastructure improvement  
761 required as a condition precedent to:

762 (a) recording a subdivision plat; or

763 (b) development of a commercial, industrial, mixed use, or multifamily project.

764 (21) "Improvement warranty" means an applicant's unconditional warranty that the  
765 applicant's installed and accepted landscaping or infrastructure improvement:

766 (a) complies with the county's written standards for design, materials, and  
767 workmanship; and

768 (b) will not fail in any material respect, as a result of poor workmanship or materials,  
769 within the improvement warranty period.

770 (22) "Improvement warranty period" means a period:

771 (a) no later than one year after a county's acceptance of required landscaping; or

772 (b) no later than one year after a county's acceptance of required infrastructure, unless  
773 the county:

774 (i) determines for good cause that a one-year period would be inadequate to protect the  
775 public health, safety, and welfare; and

776 (ii) has substantial evidence, on record:

777 (A) of prior poor performance by the applicant; or

778 (B) that the area upon which the infrastructure will be constructed contains suspect soil  
779 and the county has not otherwise required the applicant to mitigate the suspect soil.

780 (23) "Infrastructure improvement" means permanent infrastructure that an applicant  
781 must install:

782 (a) pursuant to published installation and inspection specifications for public  
783 improvements; and

784 (b) as a condition of:

785 (i) recording a subdivision plat; or

786 (ii) development of a commercial, industrial, mixed use, condominium, or multifamily  
787 project.

788 (24) "Internal lot restriction" means a platted note, platted demarcation, or platted  
789 designation that:

790 (a) runs with the land; and

791 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on  
792 the plat; or

793 (ii) designates a development condition that is enclosed within the perimeter of a lot  
794 described on the plat.

795 (25) "Interstate pipeline company" means a person or entity engaged in natural gas  
796 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under  
797 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

798 (26) "Intrastate pipeline company" means a person or entity engaged in natural gas  
799 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory  
800 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

801 (27) "Land use applicant" means a property owner, or the property owner's designee,  
802 who submits a land use application regarding the property owner's land.

- 803 (28) "Land use application":
- 804 (a) means an application that is:
- 805 (i) required by a county; and
- 806 (ii) submitted by a land use applicant to obtain a land use decision; and
- 807 (b) does not mean an application to enact, amend, or repeal a land use regulation.
- 808 (29) "Land use authority" means:
- 809 (a) a person, board, commission, agency, or body, including the local legislative body,
- 810 designated by the local legislative body to act upon a land use application; or
- 811 (b) if the local legislative body has not designated a person, board, commission,
- 812 agency, or body, the local legislative body.
- 813 (30) "Land use decision" means ~~[a final action]~~ an administrative decision of a land use
- 814 authority or appeal authority regarding:
- 815 (a) a land use permit;
- 816 (b) a land use application; or
- 817 (c) the enforcement of a land use regulation, land use permit, or development
- 818 agreement.
- 819 (31) "Land use permit" means a permit issued by a land use authority.
- 820 (32) "Land use regulation":
- 821 (a) means ~~[an]~~ a legislative decision enacted by ordinance, law, code, map, resolution,
- 822 specification, fee, or rule that governs the use or development of land; ~~[and]~~
- 823 (b) includes the adoption or amendment of a zoning map or the text of the zoning code;
- 824 and
- 825 ~~[(b)]~~ (c) does not include:
- 826 ~~[(i) a general plan;]~~
- 827 ~~[(ii)]~~ (i) a land use decision of the legislative body acting as the land use authority,
- 828 even if the decision is expressed in a resolution or ordinance; or
- 829 ~~[(iii)]~~ (ii) a temporary revision to an engineering specification that does not materially:
- 830 (A) increase a land use applicant's cost of development compared to the existing
- 831 specification; or
- 832 (B) impact a land use applicant's use of land.
- 833 (33) "Legislative body" means the county legislative body, or for a county that has

834 adopted an alternative form of government, the body exercising legislative powers.

835 (34) "Local district" means any entity under Title 17B, Limited Purpose Local  
836 Government Entities - Local Districts, and any other governmental or quasi-governmental  
837 entity that is not a county, municipality, school district, or the state.

838 (35) "Lot line adjustment" means the relocation of the property boundary line in a  
839 subdivision between two adjoining lots with the consent of the owners of record.

840 (36) "Moderate income housing" means housing occupied or reserved for occupancy  
841 by households with a gross household income equal to or less than 80% of the median gross  
842 income for households of the same size in the county in which the housing is located.

843 (37) "Mountainous planning district" means an area:

- 844 (a) designated by a county legislative body in accordance with Section 17-27a-901; and
- 845 (b) that is not otherwise exempt under Section 10-9a-304.

846 (38) "Nominal fee" means a fee that reasonably reimburses a county only for time spent  
847 and expenses incurred in:

- 848 (a) verifying that building plans are identical plans; and
- 849 (b) reviewing and approving those minor aspects of identical plans that differ from the  
850 previously reviewed and approved building plans.

851 (39) "Noncomplying structure" means a structure that:

- 852 (a) legally existed before its current land use designation; and
- 853 (b) because of one or more subsequent land use ordinance changes, does not conform  
854 to the setback, height restrictions, or other regulations, excluding those regulations that govern  
855 the use of land.

856 (40) "Nonconforming use" means a use of land that:

- 857 (a) legally existed before its current land use designation;
- 858 (b) has been maintained continuously since the time the land use ordinance regulation  
859 governing the land changed; and
- 860 (c) because of one or more subsequent land use ordinance changes, does not conform  
861 to the regulations that now govern the use of the land.

862 (41) "Official map" means a map drawn by county authorities and recorded in the  
863 county recorder's office that:

- 864 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for

865 highways and other transportation facilities;

866 (b) provides a basis for restricting development in designated rights-of-way or between  
867 designated setbacks to allow the government authorities time to purchase or otherwise reserve  
868 the land; and

869 (c) has been adopted as an element of the county's general plan.

870 (42) "Parcel boundary adjustment" means a recorded agreement between owners of  
871 adjoining properties adjusting their mutual boundary if:

872 (a) no additional parcel is created; and

873 (b) each property identified in the agreement is unsubdivided land, including a  
874 remainder of subdivided land.

875 (43) "Person" means an individual, corporation, partnership, organization, association,  
876 trust, governmental agency, or any other legal entity.

877 (44) "Plan for moderate income housing" means a written document adopted by a  
878 county legislative body that includes:

879 (a) an estimate of the existing supply of moderate income housing located within the  
880 county;

881 (b) an estimate of the need for moderate income housing in the county for the next five  
882 years as revised biennially;

883 (c) a survey of total residential land use;

884 (d) an evaluation of how existing land uses and zones affect opportunities for moderate  
885 income housing; and

886 (e) a description of the county's program to encourage an adequate supply of moderate  
887 income housing.

888 (45) "Planning advisory area" means a contiguous, geographically defined portion of  
889 the unincorporated area of a county established under this part with planning and zoning  
890 functions as exercised through the planning advisory area planning commission, as provided in  
891 this chapter, but with no legal or political identity separate from the county and no taxing  
892 authority.

893 (46) "Plat" means a map or other graphical representation of lands being laid out and  
894 prepared in accordance with Section [17-27a-603](#), [17-23-17](#), or [57-8-13](#).

895 (47) "Potential geologic hazard area" means an area that:

896 (a) is designated by a Utah Geological Survey map, county geologist map, or other  
897 relevant map or report as needing further study to determine the area's potential for geologic  
898 hazard; or

899 (b) has not been studied by the Utah Geological Survey or a county geologist but  
900 presents the potential of geologic hazard because the area has characteristics similar to those of  
901 a designated geologic hazard area.

902 (48) "Public agency" means:

903 (a) the federal government;

904 (b) the state;

905 (c) a county, municipality, school district, local district, special service district, or other  
906 political subdivision of the state; or

907 (d) a charter school.

908 (49) "Public hearing" means a hearing at which members of the public are provided a  
909 reasonable opportunity to comment on the subject of the hearing.

910 (50) "Public meeting" means a meeting that is required to be open to the public under  
911 Title 52, Chapter 4, Open and Public Meetings Act.

912 (51) "Receiving zone" means an unincorporated area of a county that the county  
913 designates, by ordinance, as an area in which an owner of land may receive a transferable  
914 development right.

915 (52) "Record of survey map" means a map of a survey of land prepared in accordance  
916 with Section [17-23-17](#).

917 (53) "Residential facility for persons with a disability" means a residence:

918 (a) in which more than one person with a disability resides; and

919 (b) (i) which is licensed or certified by the Department of Human Services under Title  
920 62A, Chapter 2, Licensure of Programs and Facilities; or

921 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter  
922 21, Health Care Facility Licensing and Inspection Act.

923 (54) "Rules of order and procedure" means a set of rules that govern and prescribe in a  
924 public meeting:

925 (a) parliamentary order and procedure;

926 (b) ethical behavior; and

927 (c) civil discourse.

928 (55) "Sanitary sewer authority" means the department, agency, or public entity with  
929 responsibility to review and approve the feasibility of sanitary sewer services or onsite  
930 wastewater systems.

931 (56) "Sending zone" means an unincorporated area of a county that the county  
932 designates, by ordinance, as an area from which an owner of land may transfer a transferable  
933 development right.

934 (57) "Site plan" means a document or map that may be required by a county during a  
935 preliminary review preceding the issuance of a building permit to demonstrate that an owner's  
936 or developer's proposed development activity meets a land use requirement.

937 (58) "Specified public agency" means:

938 (a) the state;

939 (b) a school district; or

940 (c) a charter school.

941 (59) "Specified public utility" means an electrical corporation, gas corporation, or  
942 telephone corporation, as those terms are defined in Section [54-2-1](#).

943 (60) "State" includes any department, division, or agency of the state.

944 (61) "Street" means a public right-of-way, including a highway, avenue, boulevard,  
945 parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other  
946 way.

947 (62) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be  
948 divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
949 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
950 installment plan or upon any and all other plans, terms, and conditions.

951 (b) "Subdivision" includes:

952 (i) the division or development of land whether by deed, metes and bounds description,  
953 devise and testacy, map, plat, or other recorded instrument; and

954 (ii) except as provided in Subsection (62)(c), divisions of land for residential and  
955 nonresidential uses, including land used or to be used for commercial, agricultural, and  
956 industrial purposes.

957 (c) "Subdivision" does not include:

958 (i) a bona fide division or partition of agricultural land for agricultural purposes;

959 (ii) a recorded agreement between owners of adjoining properties adjusting their

960 mutual boundary if:

961 (A) no new lot is created; and

962 (B) the adjustment does not violate applicable land use ordinances;

963 (iii) a recorded document, executed by the owner of record:

964 (A) revising the legal description of more than one contiguous unsubdivided parcel of  
965 property into one legal description encompassing all such parcels of property; or

966 (B) joining a subdivided parcel of property to another parcel of property that has not  
967 been subdivided, if the joinder does not violate applicable land use ordinances;

968 (iv) a bona fide division or partition of land in a county other than a first class county  
969 for the purpose of siting, on one or more of the resulting separate parcels:

970 (A) an electrical transmission line or a substation;

971 (B) a natural gas pipeline or a regulation station; or

972 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other  
973 utility service regeneration, transformation, retransmission, or amplification facility;

974 (v) a recorded agreement between owners of adjoining subdivided properties adjusting  
975 their mutual boundary if:

976 (A) no new dwelling lot or housing unit will result from the adjustment; and

977 (B) the adjustment will not violate any applicable land use ordinance;

978 (vi) a bona fide division or partition of land by deed or other instrument where the land  
979 use authority expressly approves in writing the division in anticipation of further land use  
980 approvals on the parcel or parcels; or

981 (vii) a parcel boundary adjustment.

982 (d) The joining of a subdivided parcel of property to another parcel of property that has  
983 not been subdivided does not constitute a subdivision under this Subsection (62) as to the  
984 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision  
985 ordinance.

986 (63) "Suspect soil" means soil that has:

987 (a) a high susceptibility for volumetric change, typically clay rich, having more than a  
988 3% swell potential;



989 (b) bedrock units with high shrink or swell susceptibility; or  
990 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum  
991 commonly associated with dissolution and collapse features.

992 (64) "Therapeutic school" means a residential group living facility:

993 (a) for four or more individuals who are not related to:

994 (i) the owner of the facility; or

995 (ii) the primary service provider of the facility;

996 (b) that serves students who have a history of failing to function:

997 (i) at home;

998 (ii) in a public school; or

999 (iii) in a nonresidential private school; and

1000 (c) that offers:

1001 (i) room and board; and

1002 (ii) an academic education integrated with:

1003 (A) specialized structure and supervision; or

1004 (B) services or treatment related to a disability, an emotional development, a  
1005 behavioral development, a familial development, or a social development.

1006 (65) "Transferable development right" means a right to develop and use land that  
1007 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer  
1008 land use rights from a designated sending zone to a designated receiving zone.

1009 (66) "Unincorporated" means the area outside of the incorporated area of a  
1010 municipality.

1011 (67) "Water interest" means any right to the beneficial use of water, including:

1012 (a) each of the rights listed in Section 73-1-11; and

1013 (b) an ownership interest in the right to the beneficial use of water represented by:

1014 (i) a contract; or

1015 (ii) a share in a water company, as defined in Section 73-3-3.5.

1016 (68) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts  
1017 land use zones, overlays, or districts.

1018 Section 8. Section 17-27a-506 is amended to read:

1019 **17-27a-506. Conditional uses.**

1020 (1) (a) A county may adopt a land use ordinance ~~[may include]~~ that includes  
1021 conditional uses and provisions for conditional uses that require compliance with standards set  
1022 forth in an applicable ordinance.

1023 (b) A county may not impose a requirement or standard on a conditional use that  
1024 conflicts with a provision of this chapter or other state or federal law.

1025 (2) (a) (i) A land use authority shall approve a conditional use ~~[shall be approved]~~ if  
1026 reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated  
1027 detrimental effects of the proposed use in accordance with applicable standards.

1028 (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate  
1029 anticipated detrimental effects of the proposed conditional use does not require elimination of  
1030 the detrimental effects.

1031 (b) If a land use authority proposes reasonable conditions on a proposed conditional  
1032 use, the land use authority shall ensure that the conditions are stated on the record and  
1033 reasonably relate to mitigating the anticipated detrimental effects of the proposed use.

1034 ~~[(b)]~~ (c) If the reasonably anticipated detrimental effects of a proposed conditional use  
1035 cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to  
1036 achieve compliance with applicable standards, the land use authority may deny the conditional  
1037 use ~~[may be denied].~~

1038 (3) A land use authority's decision to approve or deny a conditional use is an  
1039 administrative land use decision.

1040 Section 9. Section **17-27a-508** is amended to read:

1041 **17-27a-508. Applicant's entitlement to land use application approval --**  
1042 **Application relating to land in a high priority transportation corridor -- County's**  
1043 **requirements and limitations -- Vesting upon submission of development plan and**  
1044 **schedule.**

1045 (1) (a) (i) An applicant who has ~~[filed]~~ submitted a complete land use application,  
1046 including the payment of all application fees, is entitled to substantive ~~[land use]~~ review of the  
1047 ~~[land use]~~ application under the land use regulations;

1048 (A) in effect on the date that the application is complete; and ~~[as further provided in~~  
1049 ~~this section.]~~

1050 (B) applicable to the application or to the information shown on the submitted

1051 application.

1052 (ii) An applicant is entitled to approval of a land use application if the application  
1053 conforms to the requirements of the ~~[county's]~~ applicable land use regulations, land use  
1054 decisions, and development standards in effect when the applicant submits a complete  
1055 application ~~[is submitted]~~ and pays all application fees ~~[have been paid]~~, unless:

1056 (A) the land use authority, on the record, formally finds that a compelling,  
1057 countervailing public interest would be jeopardized by approving the application and specifies  
1058 the compelling, countervailing public interest in writing; or

1059 (B) in the manner provided by local ordinance and before the ~~[application is submitted;~~  
1060 ~~the county has formally initiated]~~ applicant submits the application, the county formally  
1061 initiates proceedings to amend the county's land use regulations in a manner that would  
1062 prohibit approval of the application as submitted.

1063 (b) The county shall process an application without regard to proceedings the county  
1064 initiated to amend the county's ordinances as ~~[provided]~~ described in Subsection (1)(a)(ii)(B)  
1065 if:

1066 (i) 180 days have passed since the county initiated the proceedings ~~[were initiated]~~; and

1067 (ii) the proceedings have not resulted in an enactment that prohibits approval of the  
1068 application as submitted.

1069 (c) ~~[An application for a land use approval]~~ A land use application is considered  
1070 submitted and complete when the applicant provides the application ~~[is provided]~~ in a form  
1071 that complies with the requirements of applicable ordinances and pays all applicable fees ~~[have~~  
1072 ~~been paid]~~.

1073 (d) The continuing validity of an approval of a land use application is conditioned upon  
1074 the applicant proceeding after approval to implement the approval with reasonable diligence.

1075 (e) A county may not impose on an applicant who has submitted a complete  
1076 application for preliminary subdivision approval a requirement that is not expressed:

1077 (i) in this chapter;

1078 (ii) in a county ordinance; or

1079 (iii) in a county specification for public improvements applicable to a subdivision or  
1080 development that is in effect on the date that the applicant submits an application.

1081 (f) A county may not impose on a holder of an issued land use permit or a final,

1082 unexpired subdivision plat a requirement that is not expressed:

1083 (i) in a land use permit;

1084 (ii) on the subdivision plat;

1085 (iii) in a document on which the land use permit or subdivision plat is based;

1086 (iv) in the written record evidencing approval of the land use permit or subdivision  
1087 plat;

1088 (v) in this chapter; or

1089 (vi) in a county ordinance.

1090 (g) A county may not withhold issuance of a certificate of occupancy or acceptance of  
1091 subdivision improvements because of an applicant's failure to comply with a requirement that  
1092 is not expressed:

1093 (i) in the building permit or subdivision plat, documents on which the building permit  
1094 or subdivision plat is based, or the written record evidencing approval of the building permit or  
1095 subdivision plat; or

1096 (ii) in this chapter or the county's ordinances.

1097 (2) A county is bound by the terms and standards of applicable land use regulations and  
1098 shall comply with mandatory provisions of those regulations.

1099 (3) A county may not, as a condition of land use application approval, require a person  
1100 filing a land use application to obtain documentation regarding a school district's willingness,  
1101 capacity, or ability to serve the development proposed in the land use application.

1102 (4) Upon a specified public agency's submission of a development plan and schedule as  
1103 required in Subsection [17-27a-305](#)(8) that complies with the requirements of that subsection,  
1104 the specified public agency vests in the county's applicable land use maps, zoning map, hookup  
1105 fees, impact fees, other applicable development fees, and land use regulations in effect on the  
1106 date of submission.

1107 Section 10. Section [17-27a-604.5](#) is amended to read:

1108 **17-27a-604.5. Subdivision plat recording or development activity before required**  
1109 **infrastructure is completed -- Improvement completion assurance -- Improvement**  
1110 **warranty.**

1111 (1) A land use authority shall establish objective inspection standards for acceptance of  
1112 a required landscaping or infrastructure improvement.

1113 ~~[(2) (a) A land use authority shall require an applicant to complete a required~~  
1114 ~~landscaping or infrastructure improvement prior to any plat recordation or development~~  
1115 ~~activity.]~~

1116 ~~[(b) Subsection (2)(a) does not apply if:]~~

1117 ~~[(i) upon the applicant's request, the land use authority has authorized the applicant to~~  
1118 ~~post an improvement completion assurance in a manner that is consistent with local ordinance;~~  
1119 ~~and]~~

1120 ~~[(ii) the land use authority has established a system for the partial release of the~~  
1121 ~~improvement completion assurance as portions of required improvements are completed and~~  
1122 ~~accepted.]~~

1123 (2) (a) Before an applicant conducts any development activity or records a plat, the  
1124 applicant shall:

1125 (i) complete any required landscaping or infrastructure improvements; or

1126 (ii) post an improvement completion assurance for any required landscaping or  
1127 infrastructure improvements.

1128 (b) If an applicant elects to post an improvement completion assurance, the applicant  
1129 shall ensure that the assurance:

1130 (i) provides for completion of 100% of the required landscaping or infrastructure  
1131 improvements; or

1132 (ii) if the county has inspected and accepted a portion of the landscaping or  
1133 infrastructure improvements, provides for completion of 100% of the unaccepted landscaping  
1134 or infrastructure improvements.

1135 (c) A county shall:

1136 (i) if an applicant elects to post an improvement completion assurance, allow the  
1137 applicant to post an assurance that meets the conditions of this title, and any local ordinances;

1138 (ii) establish a system for the partial release of an improvement completion assurance  
1139 as portions of required landscaping or infrastructure improvements are completed and accepted  
1140 in accordance with local ordinance; and

1141 (iii) issue or deny a building permit in accordance with Section [17-27a-802](#) based on  
1142 the installation of landscaping or infrastructure improvements.

1143 (d) A county may not require an applicant to post an improvement completion

1144 assurance for landscaping or an infrastructure improvement that the county has previously  
1145 inspected and accepted.

1146 (3) At any time [~~up to the land use authority's acceptance of~~] before a county accepts a  
1147 landscaping or infrastructure improvement, and for the duration of each improvement warranty  
1148 period, the land use authority may require the [developer] applicant to:

1149 (a) execute an improvement warranty for the improvement warranty period; and

1150 (b) post a cash deposit, surety bond, letter of credit, or other similar security, as  
1151 required by the county, in the amount of up to 10% of the lesser of the:

1152 (i) county engineer's original estimated cost of completion; or

1153 (ii) applicant's reasonable proven cost of completion.

1154 (4) When a county accepts an improvement completion assurance for landscaping or  
1155 infrastructure improvements for a development in accordance with Subsection (2)(c)(i), the  
1156 county may not deny an applicant a building permit if the development meets the requirements  
1157 for the issuance of a building permit under the building code and fire code.

1158 [~~(4)~~] (5) The provisions of this section [~~may not be interpreted to~~] do not supersede the  
1159 terms of a valid development agreement, an adopted phasing plan, or the state construction  
1160 code.

1161 Section 11. Section **17-27a-801** is amended to read:

1162 **17-27a-801. No district court review until administrative remedies exhausted --**  
1163 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
1164 **-- Staying of decision.**

1165 (1) No person may challenge in district court a land use decision until that person has  
1166 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and  
1167 Variances, if applicable.

1168 (2) (a) Any person adversely affected by a final decision made in the exercise of or in  
1169 violation of the provisions of this chapter may file a petition for review of the decision with the  
1170 district court within 30 days after the decision is final.

1171 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a  
1172 property owner files a request for arbitration of a constitutional taking issue with the property  
1173 rights ombudsman under Section **13-43-204** until 30 days after:

1174 (A) the arbitrator issues a final award; or

1175 (B) the property rights ombudsman issues a written statement under Subsection  
1176 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

1177 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional  
1178 taking issue that is the subject of the request for arbitration filed with the property rights  
1179 ombudsman by a property owner.

1180 (iii) A request for arbitration filed with the property rights ombudsman after the time  
1181 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

1182 (3) (a) A court shall:

1183 (i) presume that a land use regulation properly enacted under the authority of this  
1184 chapter is valid; and

1185 (ii) determine only whether:

1186 (A) the land use regulation is expressly preempted by, or was enacted contrary to, state  
1187 or federal law; and

1188 (B) it is reasonably debatable that the land use regulation is consistent with this  
1189 chapter.

1190 (b) A court shall:

1191 (i) presume that a final decision of a land use authority or an appeal authority is valid;  
1192 and

1193 (ii) uphold the decision unless the decision is:

1194 (A) arbitrary and capricious; or

1195 (B) illegal.

1196 (c) (i) A decision is arbitrary and capricious ~~unless~~ if the decision is not supported by  
1197 substantial evidence in the record.

1198 (ii) A decision is illegal if the decision is:

1199 (A) based on an incorrect interpretation of a land use regulation; or

1200 (B) contrary to law.

1201 (4) The provisions of Subsection (2)(a) apply from the date on which the county takes  
1202 final action on a land use application for any adversely affected third party, if the county  
1203 conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice  
1204 of the pending decision.

1205 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment

1206 of a land use regulation or general plan may not be filed with the district court more than 30  
1207 days after the enactment.

1208 (6) A challenge to a land use decision is barred unless the challenge is filed within 30  
1209 days after the land use decision is final.

1210 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to  
1211 the reviewing court the record of its proceedings, including its minutes, findings, orders and, if  
1212 available, a true and correct transcript of its proceedings.

1213 (b) If the proceeding was recorded, a transcript of that recording is a true and correct  
1214 transcript for purposes of this Subsection (7).

1215 (8) (a) (i) If there is a record, the district court's review is limited to the record provided  
1216 by the land use authority or appeal authority, as the case may be.

1217 (ii) The court may not accept or consider any evidence outside the record of the land  
1218 use authority or appeal authority, as the case may be, unless that evidence was offered to the  
1219 land use authority or appeal authority, respectively, and the court determines that it was  
1220 improperly excluded.

1221 (b) If there is no record, the court may call witnesses and take evidence.

1222 (9) (a) The filing of a petition does not stay the decision of the land use authority or  
1223 appeal authority, as the case may be.

1224 (b) (i) Before filing a petition under this section or a request for mediation or  
1225 arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may  
1226 petition the appeal authority to stay its decision.

1227 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed  
1228 pending district court review if the appeal authority finds it to be in the best interest of the  
1229 county.

1230 (iii) After a petition is filed under this section or a request for mediation or arbitration  
1231 of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an  
1232 injunction staying the appeal authority's decision.

1233 Section 12. Section 17-27a-802 is amended to read:

1234 **17-27a-802. Enforcement.**

1235 (1) (a) A county or any adversely affected owner of real estate within the county in  
1236 which violations of this chapter or ordinances enacted under the authority of this chapter occur



1237 or are about to occur may, in addition to other remedies provided by law, institute:  
1238 (i) injunctions, mandamus, abatement, or any other appropriate actions; or  
1239 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.  
1240 (b) A county need only establish the violation to obtain the injunction.  
1241 (2) (a) A county may enforce the county's ordinance by withholding a building permit.  
1242 (b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any  
1243 building or other structure within a county without approval of a building permit.  
1244 (c) The county may not issue a building permit unless the plans of and for the proposed  
1245 erection, construction, reconstruction, alteration, or use fully conform to all regulations then in  
1246 effect.  
1247 (d) A county may not deny an applicant a building permit because the applicant has not  
1248 completed an infrastructure improvement:  
1249 (i) that is not essential to meet the requirements for the issuance of a building permit  
1250 under the building code and fire code; and  
1251 (ii) for which the county has accepted an [~~infrastructure~~] improvement completion  
1252 assurance for landscaping or infrastructure improvements for the development.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**