

**ENVIRONMENTALLY RESTRICTED ZONING  
DISTRICTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

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

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**LONG TITLE**

**General Description:**

This bill amends county and municipal land use provisions.

**Highlighted Provisions:**

This bill:

- ▶ enacts a definition for environmentally restricted zoning districts;
- ▶ authorizes counties and municipalities to enact an ordinance creating an environmentally restricted zoning district, but only if specified conditions are met;
- ▶ limits the factors on which a county or municipality may base an environmentally restricted zoning district;
- ▶ limits the ability of counties and municipalities to deny a land use application for land located within an environmentally restricted zoning district;
- ▶ requires approval of a land use application to the extent that land located within an environmentally restricted zoning district complies with requirements, even if the remainder does not;
- ▶ establishes a presumption in favor of a land use application relating to land located within an environmentally restricted zoning district;
- ▶ provides an option for review by binding arbitration of an appeal authority's decision on a land use application for land located within an environmentally restricted zoning district; and



28           ▶ requires a court to award a reasonable attorney fee to a prevailing applicant in a  
29 court review of an appeal authority's final decision of a land use application relating  
30 to land located within an environmentally restricted zoning district.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **10-9a-103**, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah 2006

38           **10-9a-503**, as renumbered and amended by Chapter 254, Laws of Utah 2005

39           **10-9a-505**, as renumbered and amended by Chapter 254, Laws of Utah 2005

40           **10-9a-603**, as last amended by Chapters 163, 240 and 257, Laws of Utah 2006

41           **10-9a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005

42           **17-27a-103**, as last amended by Chapters 14, 163, 240, 257 and 289, Laws of Utah

43 2006

44           **17-27a-503**, as renumbered and amended by Chapter 254, Laws of Utah 2005

45           **17-27a-505**, as renumbered and amended by Chapter 254, Laws of Utah 2005

46           **17-27a-603**, as last amended by Chapters 163, 240 and 257, Laws of Utah 2006

47           **17-27a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005

48 ENACTS:

49           **10-9a-505.5**, Utah Code Annotated 1953

50           **10-9a-709**, Utah Code Annotated 1953

51           **17-27a-505.5**, Utah Code Annotated 1953

52           **17-27a-709**, Utah Code Annotated 1953



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

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

56           **10-9a-103. Definitions.**

57           As used in this chapter:

58           (1) "Affected entity" means a county, municipality, independent special district under

59 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,  
60 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter  
61 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners  
62 association, or the Utah Department of Transportation, if:

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

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

67 (c) the entity has filed with the municipality a request for notice during the same  
68 calendar year and before the municipality provides notice to an affected entity in compliance  
69 with a requirement imposed under this chapter.

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

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

76 (4) "Charter school" includes:

77 (a) an operating charter school;

78 (b) a charter school applicant that has its application approved by a chartering entity in  
79 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

80 (c) an entity who is working on behalf of a charter school or approved charter applicant  
81 to develop or construct a charter school building.

82 (5) "Chief executive officer" means the:

83 (a) mayor in municipalities operating under all forms of municipal government except  
84 the council-manager form; or

85 (b) city manager in municipalities operating under the council-manager form of  
86 municipal government.

87 (6) "Conditional use" means a land use that, because of its unique characteristics or  
88 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be  
89 compatible in some areas or may be compatible only if certain conditions are required that

90 mitigate or eliminate the detrimental impacts.

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

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

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

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

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

101 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
102 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
103 802.

104 (10) "Elderly person" means a person who is 60 years old or older, who desires or  
105 needs to live with other elderly persons in a group setting, but who is capable of living  
106 independently.

107 (11) "Environmentally restricted zoning district" means a zoning district in which a  
108 municipality places restrictions on permitted uses, densities, or structures:

109 (a) because of environmental concerns, including the quality of air, forests, soils, rivers  
110 and other waters, harbors, fisheries, wildlife, minerals, or other natural resources; or

111 (b) as a means of avoiding or mitigating the danger of flood, geologic hazard,  
112 earthquake, erosion, landslide, rockslide, debris flow, subsidence, avalanche, or wildfire.

113 [~~11~~] (12) "General plan" means a document that a municipality adopts that sets forth  
114 general guidelines for proposed future development of the land within the municipality.

115 [~~12~~] (13) "Identical plans" means building plans submitted to a municipality that are  
116 substantially identical to building plans that were previously submitted to and reviewed and  
117 approved by the municipality and describe a building that is:

118 (a) located on land zoned the same as the land on which the building described in the  
119 previously approved plans is located; and

120 (b) subject to the same geological and meteorological conditions and the same law as

121 the building described in the previously approved plans.

122 ~~[(13)]~~ (14) "Land use application" means an application required by a municipality's  
123 land use ordinance.

124 ~~[(14)]~~ (15) "Land use authority" means a person, board, commission, agency, or other  
125 body designated by the local legislative body to act upon a land use application.

126 ~~[(15)]~~ (16) "Land use ordinance" means a planning, zoning, development, or  
127 subdivision ordinance of the municipality, but does not include the general plan.

128 ~~[(16)]~~ (17) "Land use permit" means a permit issued by a land use authority.

129 ~~[(17)]~~ (18) "Legislative body" means the municipal council.

130 ~~[(18)]~~ (19) "Lot line adjustment" means the relocation of the property boundary line in  
131 a subdivision between two adjoining lots with the consent of the owners of record.

132 ~~[(19)]~~ (20) "Moderate income housing" means housing occupied or reserved for  
133 occupancy by households with a gross household income equal to or less than 80% of the  
134 median gross income for households of the same size in the county in which the city is located.

135 ~~[(20)]~~ (21) "Nominal fee" means a fee that reasonably reimburses a municipality only  
136 for time spent and expenses incurred in:

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

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

140 ~~[(21)]~~ (22) "Noncomplying structure" means a structure that:

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

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

145 ~~[(22)]~~ (23) "Nonconforming use" means a use of land that:

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

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

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

151 ~~[(23)]~~ (24) "Official map" means a map drawn by municipal authorities and recorded in

152 a county recorder's office that:

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

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

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

159 [~~24~~] (25) "Person" means an individual, corporation, partnership, organization,  
160 association, trust, governmental agency, or any other legal entity.

161 [~~25~~] (26) "Plan for moderate income housing" means a written document adopted by  
162 a city legislative body that includes:

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

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

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

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

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

172 [~~26~~] (27) "Plat" means a map or other graphical representation of lands being laid out  
173 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

174 [~~27~~] (28) "Public hearing" means a hearing at which members of the public are  
175 provided a reasonable opportunity to comment on the subject of the hearing.

176 [~~28~~] (29) "Public meeting" means a meeting that is required to be open to the public  
177 under Title 52, Chapter 4, Open and Public Meetings Act.

178 [~~29~~] (30) "Record of survey map" means a map of a survey of land prepared in  
179 accordance with Section 17-23-17.

180 [~~30~~] (31) "Residential facility for elderly persons" means a single-family or  
181 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not  
182 include a health care facility as defined by Section 26-21-2.

183 [~~(31)~~] (32) "Residential facility for persons with a disability" means a residence:

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

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

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

189 [~~(32)~~] (33) "Sanitary sewer authority" means the department, agency, or public entity  
190 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
191 wastewater systems.

192 [~~(33)~~] (34) "Special district" means an entity established under the authority of Title  
193 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a  
194 county, municipality, school district, or unit of the state.

195 [~~(34)~~] (35) "Specified public utility" means an electrical corporation, gas corporation,  
196 or telephone corporation, as those terms are defined in Section 54-2-1.

197 [~~(35)~~] (36) "Street" means a public right-of-way, including a highway, avenue,  
198 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,  
199 or other way.

200 [~~(36)~~] (37) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
201 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
202 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
203 installment plan or upon any and all other plans, terms, and conditions.

204 (b) "Subdivision" includes:

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

207 (ii) except as provided in Subsection [~~(36)~~] (37)(c), divisions of land for residential and  
208 nonresidential uses, including land used or to be used for commercial, agricultural, and  
209 industrial purposes.

210 (c) "Subdivision" does not include:

211 (i) a bona fide division or partition of agricultural land for the purpose of joining one of  
212 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if  
213 neither the resulting combined parcel nor the parcel remaining from the division or partition

214 violates an applicable land use ordinance;

215 (ii) a recorded agreement between owners of adjoining unsubdivided properties

216 adjusting their mutual boundary if:

217 (A) no new lot is created; and

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

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

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

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

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

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

227 (B) the adjustment will not violate any applicable land use ordinance.

228 (d) The joining of a subdivided parcel of property to another parcel of property that has  
229 not been subdivided does not constitute a subdivision under this Subsection [~~(36)~~] (37) as to  
230 the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
231 subdivision ordinance.

232 [~~(37)~~] (38) "Unincorporated" means the area outside of the incorporated area of a city  
233 or town.

234 [~~(38)~~] (39) "Zoning map" means a map, adopted as part of a land use ordinance, that  
235 depicts land use zones, overlays, or districts.

236 Section 2. Section **10-9a-503** is amended to read:

237 **10-9a-503. Land use ordinance or zoning map amendments.**

238 (1) The legislative body may amend:

239 (a) the number, shape, boundaries, or area of any zoning district;

240 (b) any regulation of or within the zoning district, subject to Section 10-9a-505.5 for an  
241 environmentally restricted zoning district; or

242 (c) any other provision of a land use ordinance.

243 (2) The legislative body may not make any amendment authorized by this subsection  
244 unless the amendment was proposed by the planning commission or was first submitted to the



245 planning commission for its recommendation.

246 (3) The legislative body shall comply with the procedure specified in Section  
247 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.

248 Section 3. Section **10-9a-505** is amended to read:

249 **10-9a-505. Zoning districts.**

250 (1) (a) The legislative body may divide the territory over which it has jurisdiction into  
251 zoning districts of a number, shape, and area that it considers appropriate to carry out the  
252 purposes of this chapter.

253 (b) Within those zoning districts and subject to Section 10-9a-505.5 for an  
254 environmentally restricted zoning district, the legislative body may regulate and restrict the  
255 erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and  
256 the use of land.

257 (2) The legislative body shall ensure that the regulations are uniform for each class or  
258 kind of buildings throughout each zoning district, but the regulations in one zone may differ  
259 from those in other zones.

260 (3) (a) There is no minimum area or diversity of ownership requirement for a zone  
261 designation.

262 (b) Neither the size of a zoning district nor the number of landowners within the  
263 district may be used as evidence of the illegality of a zoning district or of the invalidity of a  
264 municipal decision.

265 Section 4. Section **10-9a-505.5** is enacted to read:

266 **10-9a-505.5. Environmentally restricted zoning districts.**

267 (1) Subject to Subsection (2), a municipality may enact an ordinance creating an  
268 environmentally restricted zoning district only if:

269 (a) the municipality's general plan includes an environmental element as provided in  
270 Subsection 10-9a-403(3)(a); and

271 (b) enactment of the ordinance is supported by substantial and compelling evidence in  
272 the record demonstrating the need for:

273 (i) the environmentally restricted zoning district; and

274 (ii) a restriction on the specific property that is proposed to be subject to the zoning  
275 designation.

276 (2) A municipality may not base the need for an environmentally restricted zoning  
 277 district on:

278 (a) a desire to preserve a view of or from the property;

279 (b) the aesthetic appearance of the landscape;

280 (c) the protection of wildlife habitat or vegetation, unless required by federal law;

281 (d) the unwillingness of a municipality to provide essential services to the property

282 such as water, fire protection, garbage collection, or snow removal; and

283 (e) a slope less than 30 degrees.

284 (3) ~~H→~~ (a) ~~←H~~ A municipality may not deny a land use application with respect  
 284a to land located in

285 an environmentally restricted zoning district based on the application's failure to conform to the  
 286 requirements of that zoning district if:

287 ~~H→~~ [(a)] (i) ~~←H~~ the municipality failed to comply with the requirements of  
 287a Subsection (1); or

288 ~~H→~~ [(b) (i)] (ii)(A) ~~←H~~ the applicant:

289 ~~H→~~ [(A)] (I) ~~←H~~ presents competent evidence ~~H→~~, subject to Subsection (3)(b), ~~←H~~  
 289a demonstrating that use of the land as proposed in the

290 land use application is unlikely to result in the detrimental effects that the municipality

291 attempted to avoid by establishing the environmentally restricted zoning district; or

292 ~~H→~~ [(B)] (II) ~~←H~~ establishes by professional engineering data and the testimony  
 292a of competent

293 experts ~~H→~~, subject to Subsection (3)(b), ~~←H~~ that the potential detrimental effects resulting  
 293a from the use of the land as proposed in

294 the land use application are readily mitigated;

295 ~~H→~~ [(iii)] (B) ~~←H~~ the land use application proposes lots with an average size that is  
 295a no smaller than

296 the average size of lots approved in the municipality during the three years immediately  
 297 preceding the filing of the land use application; and

298 ~~H→~~ [(iii)] (C) ~~←H~~ the land use application otherwise complies with all other  
 298a requirements applicable

299 to ~~H→~~ [all other] ~~←H~~ zoning districts ~~H→~~ of similar use and density ~~←H~~ in the municipality.

299a ~~H→~~ (b)(i) A municipality may reject evidence, professional engineering data, and expert  
 299b testimony that an applicant presents under Subsection (3)(a)(ii)(A) if the municipality  
 299c determines that the evidence, data, or testimony is incomplete or inaccurate or does

299d not adequately assess the risks to the public of the municipality's approving the land use  
299e application.

299f (ii) All disputes between an applicant and a municipality regarding a municipality's  
299g rejection of evidence, data, or testimony under Subsection (3)(b)(i) with respect to a land use  
299h application shall be resolved in a single binding arbitration proceeding, as provided in Section  
299i 10-9a-709. ←H

300 (4) If an applicant in a land use application with respect to land located in an  
301 environmentally restricted zoning district complies with Subsection (3)(b) as to some but not  
302 all of the land included in the application, a municipality may not deny approval of the land use  
303 application for that portion of the land on the basis that the remaining portion of land does not  
304 comply with the requirements of the environmentally restricted zoning district.

305 (5) In processing a land use application for land located in an environmentally  
306 restricted zoning district, there is a presumption in favor of the use proposed under the land use

307 application, unless the municipality establishes that restrictions imposed in the zoning district  
308 are:

- 309 (a) necessary;
- 310 (b) prudent;
- 311 (c) backed by professional engineering data;
- 312 (d) comparable to restrictions on property in similar situations; and
- 313 (e) generally accepted by the state or a majority of other local government entities in  
314 the state.

315 Section 5. Section **10-9a-603** is amended to read:

316 **10-9a-603. Plat required when land is subdivided -- Approval of plat -- Recording**  
317 **plat.**

318 (1) Unless exempt under Section 10-9a-605 or excluded from the definition of  
319 subdivision under Subsection 10-9a-103[~~(36)~~](37), whenever any land is laid out and platted,  
320 the owner of the land shall provide an accurate plat that describes or specifies:

321 (a) a name or designation of the subdivision that is distinct from any plat already  
322 recorded in the county recorder's office;

323 (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by  
324 their boundaries, course, and extent, whether the owner proposes that any parcel of ground is  
325 intended to be used as a street or for any other public use, and whether any such area is  
326 reserved or proposed for dedication for a public purpose;

327 (c) the lot or unit reference, block or building reference, street or site address, street  
328 name or coordinate address, acreage or square footage for all parcels, units, or lots, and length  
329 and width of the blocks and lots intended for sale; and

330 (d) every existing right-of-way and easement grant of record for underground facilities,  
331 as defined in Section 54-8a-2, and for other utility facilities.

332 (2) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's  
333 ordinances and this part and has been approved by the culinary water authority and the sanitary  
334 sewer authority, the municipality shall approve the plat.

335 (3) The municipality may withhold an otherwise valid plat approval until the owner of  
336 the land provides the legislative body with a tax clearance indicating that all taxes, interest, and  
337 penalties owing on the land have been paid.

338 (4) (a) The owner of the land shall acknowledge the plat before an officer authorized  
339 by law to take the acknowledgement of conveyances of real estate and shall obtain the  
340 signature of each individual designated by the municipality.

341 (b) The surveyor making the plat shall certify that the surveyor:

342 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and  
343 Professional Land Surveyors Licensing Act;

344 (ii) has completed a survey of the property described on the plat in accordance with  
345 Section 17-23-17 and has verified all measurements; and

346 (iii) has placed monuments as represented on the plat.

347 (c) As applicable, the owner or operator of the underground and utility facilities shall  
348 approve the:

349 (i) boundary, course, dimensions, and intended use of the right-of-way and easement  
350 grants of record;

351 (ii) location of existing underground and utility facilities; and

352 (iii) conditions or restrictions governing the location of the facilities within the  
353 right-of-way, and easement grants of records, and utility facilities within the subdivision.

354 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the  
355 land shall, within the time period designated by ordinance, record the plat in the county  
356 recorder's office in the county in which the lands platted and laid out are situated.

357 (b) An owner's failure to record a plat within the time period designated by ordinance  
358 renders the plat voidable.

359 Section 6. Section **10-9a-709** is enacted to read:

360 **10-9a-709. Binding arbitration relating to the denial of an application in an**  
361 **environmentally restricted zoning district.**

362 (1) An applicant under a land use application relating to land within an  
363 environmentally restricted zoning district may, within 30 days after an adverse final decision of  
364 an appeal authority and in lieu of district court review under Part 8, District Court Review,  
365 submit the application to binding arbitration by filing with the municipal clerk or recorder a  
366 notice of election for binding arbitration.

367 (2) (a) Within 30 days after the filing of a notice of election under Subsection (1), the  
368 applicant and the municipal legislative body shall each appoint an arbitrator.

369 (b) Within 20 days after their appointment under Subsection (2)(a), the two arbitrators  
370 shall appoint a third arbitrator.

371 (3) Within 60 days after the appointment of the third arbitrator under Subsection (2),  
372 the three arbitrators shall convene and conduct a hearing on the land use application.

373 (4) Each arbitration proceeding under this section shall review the land use application  
374 de novo.

375 (5) Within 30 days after the hearing under Subsection (3), the arbitration panel shall  
376 issue a written decision, which shall be final and binding on the applicant and municipality.

377 (6) The expenses associated with an arbitration proceeding under this section shall be  
378 paid by the municipality.

379 Section 7. Section **10-9a-801** is amended to read:

380 **10-9a-801. No district court review until administrative remedies exhausted --**  
381 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
382 **-- Staying of decision.**

383 (1) No person may challenge in district court a municipality's land use decision made  
384 under this chapter, or under a regulation made under authority of this chapter, until that person  
385 has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and  
386 Variances, if applicable.

387 (2) (a) Any person adversely affected by a final decision made in the exercise of or in  
388 violation of the provisions of this chapter may file a petition for review of the decision with the  
389 district court within 30 days after the local land use decision is final.

390 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a  
391 property owner files a request for arbitration of a constitutional taking issue with the property  
392 rights ombudsman under Section ~~[63-34-13]~~ 13-43-204 until 30 days after:

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

394 (B) the property rights ombudsman issues a written statement under Subsection  
395 ~~[63-34-13(4)(b)]~~ 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

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

399 (iii) A request for arbitration filed with the property rights ombudsman after the time

400 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

401 (3) (a) The courts shall:

402 (i) presume that a decision, ordinance, or regulation made under the authority of this  
403 chapter is valid; and

404 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,  
405 capricious, or illegal.

406 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion  
407 is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

408 (c) A final decision of a land use authority or an appeal authority is valid if the decision  
409 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

410 (d) A determination of illegality requires a determination that the decision, ordinance,  
411 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or  
412 the ordinance or regulation adopted.

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

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

420 (6) The petition is barred unless it is filed within 30 days after the appeal authority's  
421 decision is final.

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

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

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

429 (ii) The court may not accept or consider any evidence outside the record of the land  
430 use authority or appeal authority, as the case may be, unless that evidence was offered to the

431 land use authority or appeal authority, respectively, and the court determines that it was  
432 improperly excluded.

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

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

436 (b) (i) Before filing a petition under this section or a request for mediation or  
437 arbitration of a constitutional taking issue under Section [~~63-34-13~~] 13-43-204, the aggrieved  
438 party may petition the appeal authority to stay its decision.

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

442 (iii) After a petition is filed under this section or a request for mediation or arbitration  
443 of a constitutional taking issue is filed under Section [~~63-34-13~~] 13-43-204, the petitioner may  
444 seek an injunction staying the appeal authority's decision.

445 (10) In an appeal of a final decision of a land use application relating to land located  
446 within an environmentally restricted zoning district, the court shall award a reasonable attorney  
447 fee to each prevailing land use applicant.

448 Section 8. Section **17-27a-103** is amended to read:

449 **17-27a-103. Definitions.**

450 As used in this chapter:

451 (1) "Affected entity" means a county, municipality, independent special district under  
452 Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2,  
453 Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter  
454 13, Interlocal Cooperation Act, specified property owner, property owners association, public  
455 utility, or the Utah Department of Transportation, if:

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

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

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



462 requirement imposed under this chapter.

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

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

469 (4) "Charter school" includes:

470 (a) an operating charter school;

471 (b) a charter school applicant that has its application approved by a chartering entity in  
472 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

473 (c) an entity who is working on behalf of a charter school or approved charter applicant  
474 to develop or construct a charter school building.

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

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

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

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

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

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

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

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

493 802.

494 (10) "Elderly person" means a person who is 60 years old or older, who desires or  
495 needs to live with other elderly persons in a group setting, but who is capable of living  
496 independently.

497 (11) "Environmentally restricted zoning district" means a zoning district in which a  
498 county places restrictions on permitted uses, densities, or structures:

499 (a) because of environmental concerns, including the quality of air, forests, soils, rivers  
500 and other waters, harbors, fisheries, wildlife, minerals, or other natural resources; or

501 (b) as a means of avoiding or mitigating the danger of flood, geologic hazard,  
502 earthquake, erosion, landslide, rockslide, debris flow, subsidence, avalanche, or wildfire.

503 [~~H~~] (12) "Gas corporation" has the same meaning as defined in Section 54-2-1.

504 [~~H2~~] (13) "General plan" means a document that a county adopts that sets forth  
505 general guidelines for proposed future development of the unincorporated land within the  
506 county.

507 [~~H3~~] (14) "Identical plans" means building plans submitted to a county that are  
508 substantially identical building plans that were previously submitted to and reviewed and  
509 approved by the county and describe a building that is:

510 (a) located on land zoned the same as the land on which the building described in the  
511 previously approved plans is located; and

512 (b) subject to the same geological and meteorological conditions and the same law as  
513 the building described in the previously approved plans.

514 [~~H4~~] (15) "Interstate pipeline company" means a person or entity engaged in natural  
515 gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission  
516 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

517 [~~H5~~] (16) "Intrastate pipeline company" means a person or entity engaged in natural  
518 gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory  
519 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

520 [~~H6~~] (17) "Land use application" means an application required by a county's land use  
521 ordinance.

522 [~~H7~~] (18) "Land use authority" means a person, board, commission, agency, or other  
523 body designated by the local legislative body to act upon a land use application.

524            [~~(18)~~] (19) "Land use ordinance" means a planning, zoning, development, or  
525 subdivision ordinance of the county, but does not include the general plan.

526            [~~(19)~~] (20) "Land use permit" means a permit issued by a land use authority.

527            [~~(20)~~] (21) "Legislative body" means the county legislative body, or for a county that  
528 has adopted an alternative form of government, the body exercising legislative powers.

529            [~~(21)~~] (22) "Lot line adjustment" means the relocation of the property boundary line in  
530 a subdivision between two adjoining lots with the consent of the owners of record.

531            [~~(22)~~] (23) "Moderate income housing" means housing occupied or reserved for  
532 occupancy by households with a gross household income equal to or less than 80% of the  
533 median gross income for households of the same size in the county in which the housing is  
534 located.

535            [~~(23)~~] (24) "Nominal fee" means a fee that reasonably reimburses a county only for  
536 time spent and expenses incurred in:

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

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

540            [~~(24)~~] (25) "Noncomplying structure" means a structure that:

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

542            (b) because of one or more subsequent land use ordinance changes, does not conform  
543 to the setback, height restrictions, or other regulations, excluding those regulations that govern  
544 the use of land.

545            [~~(25)~~] (26) "Nonconforming use" means a use of land that:

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

547            (b) has been maintained continuously since the time the land use ordinance regulation  
548 governing the land changed; and

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

551            [~~(26)~~] (27) "Official map" means a map drawn by county authorities and recorded in  
552 the county recorder's office that:

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

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

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

559 ~~[(27)]~~ (28) "Person" means an individual, corporation, partnership, organization,  
560 association, trust, governmental agency, or any other legal entity.

561 ~~[(28)]~~ (29) "Plan for moderate income housing" means a written document adopted by  
562 a county legislative body that includes:

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

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

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

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

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

572 ~~[(29)]~~ (30) "Plat" means a map or other graphical representation of lands being laid out  
573 and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

574 ~~[(30)]~~ (31) "Public hearing" means a hearing at which members of the public are  
575 provided a reasonable opportunity to comment on the subject of the hearing.

576 ~~[(31)]~~ (32) "Public meeting" means a meeting that is required to be open to the public  
577 under Title 52, Chapter 4, Open and Public Meetings Act.

578 ~~[(32)]~~ (33) "Record of survey map" means a map of a survey of land prepared in  
579 accordance with Section 17-23-17.

580 ~~[(33)]~~ (34) "Residential facility for elderly persons" means a single-family or  
581 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not  
582 include a health care facility as defined by Section 26-21-2.

583 ~~[(34)]~~ (35) "Residential facility for persons with a disability" means a residence:

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

585 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,

586 Chapter 2, Licensure of Programs and Facilities; or

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

589 [~~(35)~~] (36) "Sanitary sewer authority" means the department, agency, or public entity  
590 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
591 wastewater systems.

592 [~~(36)~~] (37) "Special district" means any entity established under the authority of Title  
593 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a  
594 county, municipality, school district, or unit of the state.

595 [~~(37)~~] (38) "Specified public utility" means an electrical corporation, gas corporation,  
596 or telephone corporation, as those terms are defined in Section 54-2-1.

597 [~~(38)~~] (39) "Street" means a public right-of-way, including a highway, avenue,  
598 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,  
599 or other way.

600 [~~(39)~~] (40) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
601 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
602 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
603 installment plan or upon any and all other plans, terms, and conditions.

604 (b) "Subdivision" includes:

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

607 (ii) except as provided in Subsection [~~(39)~~] (40)(c), divisions of land for residential and  
608 nonresidential uses, including land used or to be used for commercial, agricultural, and  
609 industrial purposes.

610 (c) "Subdivision" does not include:

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

612 (ii) a recorded agreement between owners of adjoining properties adjusting their  
613 mutual boundary if:

614 (A) no new lot is created; and

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

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

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

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

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

623 (A) an unmanned facility appurtenant to a pipeline owned or operated by a gas  
624 corporation, interstate pipeline company, or intrastate pipeline company; or

625 (B) an unmanned telecommunications, microwave, fiber optic, electrical, or other  
626 utility service regeneration, transformation, retransmission, or amplification facility; or

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

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

630 (B) the adjustment will not violate any applicable land use ordinance.

631 (d) The joining of a subdivided parcel of property to another parcel of property that has  
632 not been subdivided does not constitute a subdivision under this Subsection [~~(39)~~ (40) as to  
633 the unsubdivided parcel of property or subject the unsubdivided parcel to the county's  
634 subdivision ordinance.

635 [~~(40)~~ (41) "Township" means a contiguous, geographically defined portion of the  
636 unincorporated area of a county, established under this part or reconstituted or reinstated under  
637 Section 17-27a-306, with planning and zoning functions as exercised through the township  
638 planning commission, as provided in this chapter, but with no legal or political identity  
639 separate from the county and no taxing authority, except that "township" means a former  
640 township under Chapter 308, Laws of Utah 1996 where the context so indicates.

641 [~~(41)~~ (42) "Unincorporated" means the area outside of the incorporated area of a  
642 municipality.

643 [~~(42)~~ (43) "Zoning map" means a map, adopted as part of a land use ordinance, that  
644 depicts land use zones, overlays, or districts.

645 Section 9. Section **17-27a-503** is amended to read:

646 **17-27a-503. Land use ordinance or zoning map amendments.**

647 (1) The legislative body may amend:

- 648 (a) the number, shape, boundaries, or area of any zoning district;
- 649 (b) any regulation of or within the zoning district, subject to Section 17-27a-505.5 for
- 650 an environmentally restricted zoning district; or
- 651 (c) any other provision of a land use ordinance.

652 (2) The legislative body may not make any amendment authorized by this subsection  
653 unless the amendment was proposed by the planning commission or is first submitted to the  
654 planning commission for its recommendation.

655 (3) The legislative body shall comply with the procedure specified in Section  
656 17-27a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.  
657 Section 10. Section **17-27a-505** is amended to read:

658 **17-27a-505. Zoning districts.**

659 (1) (a) The legislative body may divide the territory over which it has jurisdiction into  
660 zoning districts of a number, shape, and area that it considers appropriate to carry out the  
661 purposes of this chapter.

662 (b) Within those zoning districts and subject to Section 17-27a-505.5 for an  
663 environmentally restricted zoning district, the legislative body may regulate and restrict the  
664 erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and  
665 the use of land.

666 (2) The legislative body shall ensure that the regulations are uniform for each class or  
667 kind of buildings throughout each zone, but the regulations in one zone may differ from those  
668 in other zones.

669 (3) (a) There is no minimum area or diversity of ownership requirement for a zone  
670 designation.

671 (b) Neither the size of a zoning district nor the number of landowners within the  
672 district may be used as evidence of the illegality of a zoning district or of the invalidity of a  
673 county decision.

674 Section 11. Section **17-27a-505.5** is enacted to read:

675 **17-27a-505.5. Environmentally restricted zoning districts.**

676 (1) Subject to Subsection (2), a county may enact an ordinance creating an  
677 environmentally restricted zoning district only if:

678 (a) the county's general plan includes an environmental element as provided in

679 Subsection 17-27a-403(3)(a); and

680 (b) enactment of the ordinance is supported by substantial and compelling evidence in  
681 the record demonstrating the need for:

682 (i) the environmentally restricted zoning district; and

683 (ii) a restriction on the specific property that is proposed to be subject to the zoning  
684 designation.

685 (2) A county may not base the need for an environmentally restricted zoning district  
686 on:

687 (a) a desire to preserve a view of or from the property;

688 (b) the aesthetic appearance of the landscape;

689 (c) the protection of wildlife habitat or vegetation, unless required by federal law;

690 (d) the unwillingness of a county to provide essential services to the property such as  
691 water, fire protection, garbage collection, or snow removal; and

692 (e) a slope less than 30 degrees.

693 (3) ~~H~~→ (a) ←~~H~~ A county may not deny a land use application with respect to land  
693a located in an

694 environmentally restricted zoning district based on the application's failure to conform to the  
695 requirements of that zoning district if:

696 ~~H~~→ [(a)] (i) ←~~H~~ the county failed to comply with the requirements of Subsection (1); or

697 ~~H~~→ [(b)-(i)] (ii)(A) ←~~H~~ the applicant:

698 ~~H~~→ [(A)] (I) ←~~H~~ presents competent evidence ~~H~~→ , subject to Subsection (3)(b), ←~~H~~  
698a demonstrating that use of the land as proposed in the

699 land use application is unlikely to result in the detrimental effects that the county attempted to  
700 avoid by establishing the environmentally restricted zoning district; or

701 ~~H~~→ [(B)] (II) ←~~H~~ establishes by professional engineering data and the testimony  
701a of competent

702 experts ~~H~~→ , subject to Subsection (3)(b), ←~~H~~ that the potential detrimental effects resulting  
702a from the use of the land as proposed in

703 the land use application are readily mitigated;

704 ~~H~~→ [(iii)] (B) ←~~H~~ the land use application proposes lots with an average size that  
704a is no smaller than

705 the average size of lots approved in the municipality during the three years immediately  
706 preceding the filing of the land use application; and

707 ~~H~~→ [(iii)] (C) ←~~H~~ the land use application otherwise complies with all other



707a requirements applicable

708 to ~~H→~~ [all other] ~~←H~~ zoning districts ~~H→~~ of similar use and density ~~←H~~ in the county.

708a ~~H→~~ **(b)(i) A county may reject evidence, professional engineering data, and expert**  
708b **testimony that an applicant presents under Subsection (3)(a)(ii)(A) if the county determines**  
708c **that the evidence, data, or testimony is incomplete or inaccurate or does not adequately assess**  
708d **the risks to the public of the county's approving the land use application.**

708e **(ii) All disputes between an applicant and a county regarding a county's rejection of**  
708f **evidence, data, or testimony under Subsection (3)(b)(i) with respect to a land use application**  
708g **shall be resolved by a single binding arbitration proceeding, as provided in**

708h **Section 17-27a-709.** ~~←H~~

709 (4) If an applicant in a land use application with respect to land located in an

710 environmentally restricted zoning district complies with Subsection (3)(b) as to some but not  
711 all of the land included in the application, a county may not deny approval of the land use  
712 application for that portion of the land on the basis that the remaining portion of land does not  
713 comply with the requirements of the environmentally restricted zoning district.

714 (5) In processing a land use application for land located in an environmentally  
715 restricted zoning district, there is a presumption in favor of the use proposed under the land use  
716 application, unless the county establishes that restrictions imposed in the zoning district are:

717 (a) necessary;

718 (b) prudent;

719 (c) backed by professional engineering data;

720 (d) comparable to restrictions on property in similar situations; and

721 (e) generally accepted by the state or a majority of other local government entities in  
722 the state.

723 Section 12. Section **17-27a-603** is amended to read:

724 **17-27a-603. Plat required when land is subdivided -- Approval of plat --**  
725 **Recording plat.**

726 (1) Unless exempt under Section 17-27a-605 or excluded from the definition of  
727 subdivision under Subsection 17-27a-103[~~(39)~~](40), whenever any land is laid out and platted,  
728 the owner of the land shall provide an accurate plat that describes or specifies:

729 (a) a name or designation of the subdivision that is distinct from any plat already  
730 recorded in the county recorder's office;

731 (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by  
732 their boundaries, course, and extent, whether the owner proposes that any parcel of ground is  
733 intended to be used as a street or for any other public use, and whether any such area is  
734 reserved or proposed for dedication for a public purpose;

735 (c) the lot or unit reference, block or building reference, street or site address, street  
736 name or coordinate address, acreage or square footage for all parcels, units, or lots, and length  
737 and width of the blocks and lots intended for sale; and

738 (d) every existing right-of-way and easement grant of record for underground facilities,  
739 as defined in Section 54-8a-2, and for other utility facilities.

740 (2) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's

741 ordinances and this part and has been approved by the culinary water authority and the sanitary  
742 sewer authority, the county shall approve the plat.

743 (3) The county may withhold an otherwise valid plat approval until the owner of the  
744 land provides the legislative body with a tax clearance indicating that all taxes, interest, and  
745 penalties owing on the land have been paid.

746 (4) (a) The owner of the land shall acknowledge the plat before an officer authorized  
747 by law to take the acknowledgment of conveyances of real estate and shall obtain the signature  
748 of each individual designated by the county.

749 (b) The surveyor making the plat shall certify that the surveyor:

750 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and  
751 Land Surveyors Licensing Act;

752 (ii) has completed a survey of the property described on the plat in accordance with  
753 Section 17-23-17 and has verified all measurements; and

754 (iii) has placed monuments as represented on the plat.

755 (c) As applicable, the owner or operator of the underground and utility facilities shall  
756 approve the:

757 (i) boundary, course, dimensions, and intended use of the right-of-way and easement  
758 grants of record;

759 (ii) location of existing underground and utility facilities; and

760 (iii) conditions or restrictions governing the location of the facilities within the  
761 right-of-way, and easement grants of records, and utility facilities within the subdivision.

762 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the  
763 land shall, within the time period designated by ordinance, record the plat in the county  
764 recorder's office in the county in which the lands platted and laid out are situated.

765 (b) An owner's failure to record a plat within the time period designated by ordinance  
766 renders the plat voidable.

767 Section 13. Section **17-27a-709** is enacted to read:

768 **17-27a-709. Binding arbitration relating to the denial of an application in an**  
769 **environmentally restricted zoning district.**

770 **(1) An applicant under a land use application relating to land within an**  
771 **environmentally restricted zoning district may, within 30 days after an adverse final decision of**

772 an appeal authority and in lieu of district court review under Part 8, District Court Review,  
 773 submit the application to binding arbitration by filing with the county clerk a notice of election  
 774 for binding arbitration.

775 (2) (a) Within 30 days after the filing of a notice of election under Subsection (1), the  
 776 applicant and the county legislative body shall each appoint an arbitrator.

777 (b) Within 20 days after their appointment under Subsection (2)(a), the two arbitrators  
 778 shall appoint a third arbitrator.

779 (3) Within 60 days after the appointment of the third arbitrator under Subsection (2),  
 780 the three arbitrators shall convene and conduct a hearing on the land use application.

781 (4) Each arbitration proceeding under this section shall review the land use application  
 782 de novo.

783 (5) Within 30 days after the hearing under Subsection (3), the arbitration panel shall  
 784 issue a written decision, which shall be final and binding on the applicant and county.

785 (6) The expenses associated with an arbitration proceeding under this section shall be  
 786 paid by the county.

787 Section 14. Section **17-27a-801** is amended to read:

788 **17-27a-801. No district court review until administrative remedies exhausted --**  
 789 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
 790 **-- Staying of decision.**

791 (1) No person may challenge in district court a county's land use decision made under  
 792 this chapter, or under a regulation made under authority of this chapter, until that person has  
 793 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and  
 794 Variances, if applicable.

795 (2) (a) Any person adversely affected by a final decision made in the exercise of or in  
 796 violation of the provisions of this chapter may file a petition for review of the decision with the  
 797 district court within 30 days after the local land use decision is final.

798 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a  
 799 property owner files a request for arbitration of a constitutional taking issue with the property  
 800 rights ombudsman under Section [~~63-34-13~~] 13-43-204 until 30 days after:

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

802 (B) the property rights ombudsman issues a written statement under Subsection

803 [~~63-34-13(4)(b)~~] 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

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

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

809 (3) (a) The courts shall:

810 (i) presume that a decision, ordinance, or regulation made under the authority of this  
811 chapter is valid; and

812 (ii) determine only whether or not the decision, ordinance, or regulation is arbitrary,  
813 capricious, or illegal.

814 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion  
815 is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

816 (c) A final decision of a land use authority or an appeal authority is valid if the decision  
817 is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

818 (d) A determination of illegality requires a determination that the decision, ordinance,  
819 or regulation violates a law, statute, or ordinance in effect at the time the decision was made or  
820 the ordinance or regulation adopted.

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

825 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment  
826 of a land use ordinance or general plan may not be filed with the district court more than 30  
827 days after the enactment.

828 (6) The petition is barred unless it is filed within 30 days after land use authority or the  
829 appeal authority's decision is final.

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

833 (b) If the proceeding was tape recorded, a transcript of that tape recording is a true and

834 correct transcript for purposes of this Subsection (7).

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

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

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

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

844 (b) (i) Before filing a petition under this section or a request for mediation or  
845 arbitration of a constitutional taking issue under Section [~~63-34-13~~] 13-43-204, the aggrieved  
846 party may petition the appeal authority to stay its decision.

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

850 (iii) After a petition is filed under this section or a request for mediation or arbitration  
851 of a constitutional taking issue is filed under Section [~~63-34-13~~] 13-43-204, the petitioner may  
852 seek an injunction staying the appeal authority's decision.

853 (10) In an appeal of a final decision of a land use application relating to land located  
854 within an environmentally restricted zoning district, the court shall award a reasonable attorney  
855 fee to each prevailing land use applicant.

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**Legislative Review Note**  
**as of 11-16-06 8:39 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 233 - Environmentally Restricted Zoning Districts**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill could increase the compliance costs for municipalities who choose to create environmentally restricted zoning districts.

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*1/11/2007, 2:45:33 PM, Lead Analyst: Wilko, A.*

**Office of the Legislative Fiscal Analyst**