

**ENVIRONMENTALLY RESTRICTED ZONING
DISTRICTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

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

53

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

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

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

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

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

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

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

(4) "Charter school" includes:

(a) an operating charter school;

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

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

(5) "Chief executive officer" means the:

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

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

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

mitigate or eliminate the detrimental impacts.

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

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

(b) Utah Constitution Article I, Section 22.

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

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

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

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

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

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

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

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

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

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

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

the building described in the previously approved plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a county recorder's office that:

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

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

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

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

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

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

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

(c) a survey of total residential land use;

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

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

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

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

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

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

~~[(30)]~~ (31) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not 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

violates an applicable land use ordinance;

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

(A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

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

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

(1) The legislative body may amend:

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

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

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

(2) The legislative body may not make any amendment authorized by this subsection 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) A municipality may not deny a land use application with respect 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 (a) the municipality failed to comply with the requirements of Subsection (1); or

288 (b) (i) the applicant:

289 (A) presents competent evidence 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 (B) establishes by professional engineering data and the testimony of competent
293 experts that the potential detrimental effects resulting from the use of the land as proposed in
294 the land use application are readily mitigated;

295 (ii) the land use application proposes lots with an average size that is 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 (iii) the land use application otherwise complies with all other requirements applicable
299 to all other zoning districts in the municipality.

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

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

(a) necessary;

(b) prudent;

(c) backed by professional engineering data;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the arbitrator issues a final award; or

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

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

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

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

(3) (a) The courts shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17-27a-103. Definitions.

As used in this chapter:

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

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

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

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

requirement imposed under this chapter.

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

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

(4) "Charter school" includes:

(a) an operating charter school;

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

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

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

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

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

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

(b) Utah Constitution Article I, Section 22.

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

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

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

802.

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

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

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

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

~~[(11)]~~ (12) "Gas corporation" has the same meaning as defined in Section 54-2-1.

~~[(12)]~~ (13) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the unincorporated land within the county.

~~[(13)]~~ (14) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

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

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

~~[(14)]~~ (15) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

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

~~[(16)]~~ (17) "Land use application" means an application required by a county's land use ordinance.

~~[(17)]~~ (18) "Land use authority" means a person, board, commission, agency, or other 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;

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

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

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

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

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

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

(c) a survey of total residential land use;

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

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

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

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

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

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

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

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

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

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

Chapter 2, Licensure of Programs and Facilities; or

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

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

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

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

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

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

(b) "Subdivision" includes:

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

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

(c) "Subdivision" does not include:

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

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

(A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The legislative body may amend:

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

(b) any regulation of or within the zoning district, subject to Section 17-27a-505.5 for an environmentally restricted zoning district; or

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

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

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

17-27a-505. Zoning districts.

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

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

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

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

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

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

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

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

(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) A county may not deny a land use application with respect to land 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 (a) the county failed to comply with the requirements of Subsection (1); or

697 (b) (i) the applicant:

698 (A) presents competent evidence 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 (B) establishes by professional engineering data and the testimony of competent
702 experts that the potential detrimental effects resulting from the use of the land as proposed in
703 the land use application are readily mitigated;

704 (ii) the land use application proposes lots with an average size that 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 (iii) the land use application otherwise complies with all other requirements applicable
708 to all other zoning districts in the county.

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

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

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

(a) necessary;

(b) prudent;

(c) backed by professional engineering data;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the arbitrator issues a final award; or

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

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

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

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

(3) (a) The courts shall:

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

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

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

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

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

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

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

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

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

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

correct transcript for purposes of this Subsection (7).

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

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

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

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

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

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

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

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

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

Office of Legislative Research and General Counsel

H.B. 233 - Environmentally Restricted Zoning Districts

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.

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

Office of the Legislative Fiscal Analyst