

1                   **AMENDMENTS TO LAND USE DEVELOPMENT**  
2                                   **AND MANAGEMENT ACT**

3   2007 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Gregory S. Bell**

6                                   House Sponsor: Michael T. Morley

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies county and municipal land use, development, and management  
11   provisions.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ modifies language relating to the purposes of the county and municipal land use,  
15   development, and management provisions;
- 16           ▶ enacts provisions relating to a county or municipality's processing of a land use  
17   application; and
- 18           ▶ modifies the standard that applies in determining the validity of a county or  
19   municipal decision, ordinance, or regulation.

20   **Monies Appropriated in this Bill:**

21           None

22   **Other Special Clauses:**

23           None

24   **Utah Code Sections Affected:**

25   AMENDS:

26           **10-9a-102**, as renumbered and amended by Chapter 254, Laws of Utah 2005

27           **10-9a-509**, as last amended by Chapters 257 and 289, Laws of Utah 2006

28           **10-9a-801**, as renumbered and amended by Chapter 254, Laws of Utah 2005

29           **17-27a-102**, as renumbered and amended by Chapter 254, Laws of Utah 2005

30 17-27a-508, as last amended by Chapters 257 and 289, Laws of Utah 2006

31 17-27a-801, as renumbered and amended by Chapter 254, Laws of Utah 2005

32 ENACTS:

33 10-9a-509.5, Utah Code Annotated 1953

34 17-27a-509.5, Utah Code Annotated 1953



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

37 Section 1. Section 10-9a-102 is amended to read:

38 **10-9a-102. Purposes -- General land use authority.**

39 (1) The purposes of this chapter are to provide for the health, safety, and welfare, and  
40 promote the prosperity, improve the morals, peace and good order, comfort, convenience, and  
41 aesthetics of each municipality and its present and future inhabitants and businesses, to protect  
42 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural  
43 and other industries, to protect both urban and nonurban development, to protect and ensure  
44 access to sunlight for solar energy devices, to provide fundamental fairness in land use  
45 regulation, and to protect property values.

46 (2) To accomplish the purposes of this chapter, municipalities may enact all  
47 ordinances, resolutions, and rules and may enter into other forms of land use controls and  
48 development agreements that they consider necessary or appropriate for the use and  
49 development of land within the municipality, including ordinances, resolutions, rules,  
50 restrictive covenants, easements, and development agreements governing uses, density, open  
51 spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and  
52 public or alternative transportation, infrastructure, street and building orientation and width  
53 requirements, public facilities, ~~and~~ fundamental fairness in land use regulation,  
54 considerations of surrounding land uses and the balance of the foregoing purposes with a  
55 landowner's private property interests, height and location of vegetation, trees, and landscaping,  
56 unless expressly prohibited by law.

57 Section 2. Section 10-9a-509 is amended to read:

58           **10-9a-509. When a land use applicant is entitled to approval -- Exception --**  
59 **Municipality may not impose unexpressed requirements -- Municipality required to**  
60 **comply with land use ordinances.**

61           (1) (a) An applicant is entitled to approval of a land use application if the application  
62 conforms to the requirements of the municipality's land use maps, zoning map, and applicable  
63 land use ordinance in effect when a complete application is submitted and all fees have been  
64 paid, unless:

65           (i) the land use authority, on the record, finds that a compelling, countervailing public  
66 interest would be jeopardized by approving the application; or

67           (ii) in the manner provided by local ordinance and before the application is submitted,  
68 the municipality has formally initiated proceedings to amend its ordinances in a manner that  
69 would prohibit approval of the application as submitted.

70           (b) The municipality shall process an application without regard to proceedings  
71 initiated to amend the municipality's ordinances if:

72           (i) 180 days have passed since the proceedings were initiated; and

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

75           (c) An application for a land use approval is considered submitted and complete when  
76 the application is provided in a form that complies with the requirements of applicable  
77 ordinances and all applicable fees have been paid.

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

80           (e) A municipality may not impose on a holder of an issued land use permit a  
81 requirement that is not expressed:

82           (i) in the land use permit or in documents on which the land use permit is based; or

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

84           (f) A municipality may not withhold issuance of a certificate of occupancy because of  
85 an applicant's failure to comply with a requirement that is not expressed:

- 86 (i) in the building permit or in documents on which the building permit is based; or
- 87 (ii) in this chapter or the municipality's ordinances.

88 (2) A municipality is bound by the terms and standards of applicable land use  
89 ordinances and shall comply with mandatory provisions of those ordinances.

90 ~~[(3) Each municipality shall process and render a decision on each land use application~~  
91 ~~with reasonable diligence.]~~

92 Section 3. Section **10-9a-509.5** is enacted to read:

93 **10-9a-509.5. Review for application completeness -- Substantive application**  
94 **review -- Reasonable diligence required -- Money damages claim prohibited.**

95 (1) (a) Each municipality shall, in a timely manner, determine whether an application is  
96 complete for the purposes of subsequent, substantive land use authority review.

97 (b) After a reasonable period of time to allow the municipality diligently to evaluate  
98 whether all objective ordinance-based application criteria have been met, if application fees  
99 have been paid, the applicant may in writing request that the municipality provide a written  
100 determination either that the application is:

101 (i) complete for the purposes of allowing subsequent, substantive land use authority  
102 review; or

103 (ii) deficient with respect to a specific, objective, ordinance-based application  
104 requirement.

105 (c) Within 30 days of receipt of an applicant's request under this section, the  
106 municipality shall either:

107 (i) mail a written notice to the applicant advising that the application is deficient with  
108 respect to a specified, objective, ordinance-based criteria, and stating that the application must  
109 be supplemented by specific additional information identified in the notice; or

110 (ii) accept the application as complete for the purposes of further substantive  
111 processing by the land use authority.

112 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application  
113 shall be considered complete, for purposes of further substantive land use authority review.

114 (e) (i) The applicant may raise and resolve in a single appeal any determination made  
115 under this Subsection (1) to the appeal authority, including an allegation that a reasonable  
116 period of time has elapsed under Subsection (1)(a).

117 (ii) The appeal authority shall issue a written decision for any appeal requested under  
118 this Subsection (1)(e).

119 (f) (i) The applicant may appeal to district court the decision of the appeal authority  
120 made under Subsection (1)(e).

121 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of  
122 the written decision.

123 (2) (a) Each land use authority shall substantively review a complete application and an  
124 application considered complete under Subsection (1)(d), and shall approve or deny each  
125 application with reasonable diligence.

126 (b) After a reasonable period of time to allow the land use authority to consider an  
127 application, the applicant may in writing request that the land use authority take final action  
128 within 45 days from date of service of the written request.

129 (c) The land use authority shall take final action, approving or denying the application  
130 within 45 days of the written request.

131 (d) If the land use authority denies an application processed under the mandates of  
132 Subsection (2)(b), or if the applicant has requested a written decision in the application, the  
133 land use authority shall include its reasons for denial in writing, on the record, which may  
134 include the official minutes of the meeting in which the decision was rendered.

135 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may  
136 appeal this failure to district court within 30 days of the date on which the land use authority  
137 should have taken final action under Subsection (2)(c).

138 (3) Subject to Section 10-9a-509, nothing in this section and no action or inaction of  
139 the land use authority relieves an applicant's duty to comply with all applicable substantive  
140 ordinances and regulations.

141 (4) There shall be no money damages remedy arising from a claim under this section.

142 Section 4. Section **10-9a-801** is amended to read:

143 **10-9a-801. No district court review until administrative remedies exhausted --**  
144 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**  
145 **-- Staying of decision.**

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

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

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

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

157 (B) the property rights ombudsman issues a written statement under Subsection  
158 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

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

164 (3) (a) The courts shall:

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

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

169 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion

170 is valid if ~~[the decision, ordinance, or regulation]~~ it is reasonably debatable that the decision,  
171 ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 Section 5. Section **17-27a-102** is amended to read:

210 **17-27a-102. Purposes -- General land use authority.**

211 (1) (a) The purposes of this chapter are to provide for the health, safety, and welfare,  
212 and promote the prosperity, improve the morals, peace and good order, comfort, convenience,  
213 and aesthetics of each county and its present and future inhabitants and businesses, to protect  
214 the tax base, to secure economy in governmental expenditures, to foster the state's agricultural  
215 and other industries, to protect both urban and nonurban development, to protect and ensure  
216 access to sunlight for solar energy devices, to provide fundamental fairness in land use  
217 regulation, and to protect property values.

218 (b) To accomplish the purposes of this chapter, counties may enact all ordinances,  
219 resolutions, and rules and may enter into other forms of land use controls and development  
220 agreements that they consider necessary or appropriate for the use and development of land  
221 within the unincorporated area of the county, including ordinances, resolutions, rules,  
222 restrictive covenants, easements, and development agreements governing uses, density, open  
223 spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and  
224 public or alternative transportation, infrastructure, street and building orientation and width  
225 requirements, public facilities, [~~and~~] fundamental fairness in land use regulation,



226 considerations of surrounding land uses and the balance of the foregoing purposes with a  
227 landowner's private property interests, height and location of vegetation, trees, and landscaping,  
228 unless expressly prohibited by law.

229 (2) Each county shall comply with the mandatory provisions of this part before any  
230 agreement or contract to provide goods, services, or municipal-type services to any storage  
231 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive  
232 waste, may be executed or implemented.

233 Section 6. Section **17-27a-508** is amended to read:

234 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**  
235 **County may not impose unexpressed requirements -- County required to comply with**  
236 **land use ordinances.**

237 (1) (a) An applicant is entitled to approval of a land use application if the application  
238 conforms to the requirements of the county's land use maps, zoning map, and applicable land  
239 use ordinance in effect when a complete application is submitted and all fees have been paid,  
240 unless:

241 (i) the land use authority, on the record, finds that a compelling, countervailing public  
242 interest would be jeopardized by approving the application; or

243 (ii) in the manner provided by local ordinance and before the application is submitted,  
244 the county has formally initiated proceedings to amend its ordinances in a manner that would  
245 prohibit approval of the application as submitted.

246 (b) The county shall process an application without regard to proceedings initiated to  
247 amend the county's ordinances if:

248 (i) 180 days have passed since the proceedings were initiated; and

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

251 (c) An application for a land use approval is considered submitted and complete when  
252 the application is provided in a form that complies with the requirements of applicable  
253 ordinances and all applicable fees have been paid.

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

256 (e) A county may not impose on a holder of an issued land use permit a requirement  
257 that is not expressed:

258 (i) in the land use permit or in documents on which the land use permit is based; or

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

260 (f) A county may not withhold issuance of a certificate of occupancy because of an  
261 applicant's failure to comply with a requirement that is not expressed:

262 (i) in the building permit or in documents on which the building permit is based; or

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

264 (2) A county is bound by the terms and standards of applicable land use ordinances and  
265 shall comply with mandatory provisions of those ordinances.

266 ~~[(3) Each county shall process and render a decision on each land use application with~~  
267 ~~reasonable diligence.]~~

268 Section 7. Section **17-27a-509.5** is enacted to read:

269 **17-27a-509.5. Review for application completeness -- Substantive application**  
270 **review -- Reasonable diligence required -- Money damages claim prohibited.**

271 (1) (a) Each county shall, in a timely manner, determine whether an application is  
272 complete for the purposes of subsequent, substantive land use authority review.

273 (b) After a reasonable period of time to allow the county diligently to evaluate whether  
274 all objective ordinance-based application criteria have been met, if application fees have been  
275 paid, the applicant may in writing request that the county provide a written determination either  
276 that the application is:

277 (i) complete for the purposes of allowing subsequent, substantive land use authority  
278 review; or

279 (ii) deficient with respect to a specific, objective, ordinance-based application  
280 requirement.

281 (c) Within 30 days of receipt of an applicant's request under this section, the county

282 shall either:

283 (i) mail a written notice to the applicant advising that the application is deficient with  
284 respect to a specified, objective, ordinance-based criteria, and stating that the application must  
285 be supplemented by specific additional information identified in the notice; or

286 (ii) accept the application as complete for the purposes of further substantive  
287 processing by the land use authority.

288 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application  
289 shall be considered complete, for purposes of further substantive land use authority review.

290 (e) (i) The applicant may raise and resolve in a single appeal any determination made  
291 under this Subsection (1) to the appeal authority, including an allegation that a reasonable  
292 period of time has elapsed under Subsection (1)(a).

293 (ii) The appeal authority shall issue a written decision for any appeal requested under  
294 this Subsection (1)(e).

295 (f) (i) The applicant may appeal to district court the decision of the appeal authority  
296 made under Subsection (1)(e).

297 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of  
298 the written decision.

299 (2) (a) Each land use authority shall substantively review a complete application and an  
300 application considered complete under Subsection (1)(d), and shall approve or deny each  
301 application with reasonable diligence.

302 (b) After a reasonable period of time to allow the land use authority to consider an  
303 application, the applicant may in writing request that the land use authority take final action  
304 within 45 days from date of service of the written request.

305 (c) The land use authority shall take final action, approving or denying the application  
306 within 45 days of the written request.

307 (d) If the land use authority denies an application processed under the mandates of  
308 Subsection (2)(b), or if the applicant has requested a written decision in the application, the  
309 land use authority shall include its reasons for denial in writing, on the record, which may

310 include the official minutes of the meeting in which the decision was rendered.

311 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may  
312 appeal this failure to district court within 30 days of the date on which the land use authority  
313 should have taken final action under Subsection (2)(c).

314 (3) Subject to Section 17-9a-509, nothing in this section and no action or inaction of  
315 the land use authority relieves an applicant's duty to comply with all applicable substantive  
316 ordinances and regulations.

317 (4) There shall be no money damages remedy arising from a claim under this section.

318 Section 8. Section **17-27a-801** is amended to read:

319 **17-27a-801. No district court review until administrative remedies exhausted --**

320 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**

321 **-- Staying of decision.**

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

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

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

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

333 (B) the property rights ombudsman issues a written statement under Subsection  
334 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

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

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

340 (3) (a) The courts shall:

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

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

345 (b) A decision, ordinance, or regulation involving the exercise of legislative discretion  
346 is valid if [~~the decision, ordinance, or regulation~~] it is reasonably debatable that the decision,  
347 ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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