

COUNTY AND MUNICIPAL LAND USE

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies provisions relating to county and municipal land use, development, and management.

Highlighted Provisions:

This bill:

- ▶ prohibits counties and municipalities from imposing a requirement on the holder of an approved subdivision plat that is not expressed in the plat, documents on which the plat is based, or the written record evidencing approval of the plat;

- ▶ prohibits counties and municipalities from imposing a requirement on the holder of an issued land use permit that is not expressed in the written record evidencing approval of the land use permit;

- ▶ prohibits counties and municipalities from withholding acceptance of subdivision improvements because of a failure to comply with a requirement that is not expressed in the subdivision plat, documents on which the plat is based, or the written record evidencing approval of the plat;

- ▶ prohibits counties and municipalities from withholding issuance of a certificate of occupancy because of a failure to comply with a requirement that is not expressed in the written record evidencing approval of the building permit;

- ▶ requires county and municipal land use authorities to determine, with reasonable diligence, whether a subdivision improvement or warranty work meets adopted standards;

- 30 ▶ provides a process for an applicant to make a written request to a land use authority
- 31 to accept or reject subdivision improvements or warranty work and a timetable in
- 32 which the land use authority must respond;
- 33 ▶ authorizes counties and municipalities to allow subdivision plat recording or
- 34 development activity before completing required improvements if an improvement
- 35 assurance is provided and other conditions met; and
- 36 ▶ makes technical changes.

37 Monies Appropriated in this Bill:

38 None

39 Other Special Clauses:

40 None

41 Utah Code Sections Affected:

42 AMENDS:

- 43 **10-9a-103**, as last amended by Laws of Utah 2007, Chapters 188, 199, and 329
- 44 **10-9a-509**, as last amended by Laws of Utah 2007, Chapter 363
- 45 **10-9a-509.5**, as enacted by Laws of Utah 2007, Chapter 363
- 46 **17-27a-103**, as last amended by Laws of Utah 2007, Chapters 188, 199, and 329
- 47 **17-27a-508**, as last amended by Laws of Utah 2007, Chapter 363
- 48 **17-27a-509.5**, as enacted by Laws of Utah 2007, Chapter 363

49 ENACTS:

- 50 **10-9a-604.5**, Utah Code Annotated 1953
- 51 **17-27a-604.5**, Utah Code Annotated 1953



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

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

55 **10-9a-103. Definitions.**

56 As used in this chapter:

- 57 (1) "Affected entity" means a county, municipality, local district, special service district

58 under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, school district, interlocal
59 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
60 public utility, a property owner, a property owners association, or the Utah Department of
61 Transportation, if:

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

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

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

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

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

75 (4) "Charter school" includes:

76 (a) an operating charter school;

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

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

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

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

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

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

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

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

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

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

97 (9) "Development activity" means:

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

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

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

104 [~~9~~] (10) (a) "Disability" means a physical or mental impairment that substantially limits
105 one or more of a person's major life activities, including a person having a record of such an
106 impairment or being regarded as having such an impairment.

107 (b) "Disability" does not include current illegal use of, or addiction to, any federally
108 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
109 802.

110 [~~10~~] (11) "Elderly person" means a person who is 60 years old or older, who desires
111 or needs to live with other elderly persons in a group setting, but who is capable of living
112 independently.

113 [~~11~~] (12) "Fire authority" means the department, agency, or public entity with

114 responsibility to review and approve the feasibility of fire protection and suppression services
115 for the subject property.

116 ~~[(12)]~~ (13) "General plan" means a document that a municipality adopts that sets forth
117 general guidelines for proposed future development of the land within the municipality.

118 ~~[(13)]~~ (14) "Identical plans" means building plans submitted to a municipality that are
119 substantially identical to building plans that were previously submitted to and reviewed and
120 approved by the municipality and describe a building that is:

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

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

125 (15) "Improvement assurance" means a surety bond, letter of credit, cash, or other
126 security:

127 (a) to guaranty the proper completion of an improvement;

128 (b) that is required as a condition precedent to:

129 (i) recording a subdivision plat; or

130 (ii) beginning development activity; and

131 (c) that is offered to a land use authority to induce the land use authority, before actual
132 construction of required improvements, to:

133 (i) consent to the recording of a subdivision plat; or

134 (ii) issue a permit for development activity.

135 (16) "Improvement assurance warranty" means a promise that the materials and
136 workmanship of improvements:

137 (a) comport with standards that the municipality has officially adopted; and

138 (b) will not fail in any material respect within a warranty period.

139 ~~[(14)]~~ (17) "Land use application" means an application required by a municipality's
140 land use ordinance.

141 ~~[(15)]~~ (18) "Land use authority" means a person, board, commission, agency, or other

142 body designated by the local legislative body to act upon a land use application.

143 ~~[(16)]~~ (19) "Land use ordinance" means a planning, zoning, development, or
144 subdivision ordinance of the municipality, but does not include the general plan.

145 ~~[(17)]~~ (20) "Land use permit" means a permit issued by a land use authority.

146 ~~[(18)]~~ (21) "Legislative body" means the municipal council.

147 ~~[(19)]~~ (22) "Local district" means an entity under Title 17B, Limited Purpose Local
148 Government Entities - Local Districts, and any other governmental or quasi-governmental entity
149 that is not a county, municipality, school district, or unit of the state.

150 ~~[(20)]~~ (23) "Lot line adjustment" means the relocation of the property boundary line in
151 a subdivision between two adjoining lots with the consent of the owners of record.

152 ~~[(21)]~~ (24) "Moderate income housing" means housing occupied or reserved for
153 occupancy by households with a gross household income equal to or less than 80% of the
154 median gross income for households of the same size in the county in which the city is located.

155 ~~[(22)]~~ (25) "Nominal fee" means a fee that reasonably reimburses a municipality only
156 for time spent and expenses incurred in:

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

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

160 ~~[(23)]~~ (26) "Noncomplying structure" means a structure that:

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

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

165 ~~[(24)]~~ (27) "Nonconforming use" means a use of land that:

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

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

169 (c) because of one or more subsequent land use ordinance changes, does not conform

170 to the regulations that now govern the use of the land.

171 ~~[(25)]~~ (28) "Official map" means a map drawn by municipal authorities and recorded in
172 a county recorder's office that:

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

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

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

179 ~~[(26)]~~ (29) "Person" means an individual, corporation, partnership, organization,
180 association, trust, governmental agency, or any other legal entity.

181 ~~[(27)]~~ (30) "Plan for moderate income housing" means a written document adopted by
182 a city legislative body that includes:

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

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

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

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

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

192 ~~[(28)]~~ (31) "Plat" means a map or other graphical representation of lands being laid out
193 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

194 ~~[(29)]~~ (32) "Public hearing" means a hearing at which members of the public are
195 provided a reasonable opportunity to comment on the subject of the hearing.

196 ~~[(30)]~~ (33) "Public meeting" means a meeting that is required to be open to the public
197 under Title 52, Chapter 4, Open and Public Meetings Act.

198 [~~(31)~~] (34) "Record of survey map" means a map of a survey of land prepared in
199 accordance with Section 17-23-17.

200 [~~(32)~~] (35) "Receiving zone" means an area of a municipality that the municipality's land
201 use authority designates as an area in which an owner of land may receive transferrable
202 development rights.

203 [~~(33)~~] (36) "Residential facility for elderly persons" means a single-family or
204 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not
205 include a health care facility as defined by Section 26-21-2.

206 [~~(34)~~] (37) "Residential facility for persons with a disability" means a residence:

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

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

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

212 [~~(35)~~] (38) "Sanitary sewer authority" means the department, agency, or public entity
213 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
214 wastewater systems.

215 [~~(36)~~] (39) "Sending zone" means an area of a municipality that the municipality's land
216 use authority designates as an area from which an owner of land may transfer transferrable
217 development rights to an owner of land in a receiving zone.

218 [~~(37)~~] (40) "Specified public utility" means an electrical corporation, gas corporation,
219 or telephone corporation, as those terms are defined in Section 54-2-1.

220 [~~(38)~~] (41) "Street" means a public right-of-way, including a highway, avenue,
221 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or
222 other way.

223 [~~(39)~~] (42) (a) "Subdivision" means any land that is divided, resubdivided or proposed
224 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
225 purpose, whether immediate or future, for offer, sale, lease, or development either on the

226 installment plan or upon any and all other plans, terms, and conditions.

227 (b) "Subdivision" includes:

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

230 (ii) except as provided in Subsection [~~(39)~~] (42)(c), divisions of land for residential and
231 nonresidential uses, including land used or to be used for commercial, agricultural, and
232 industrial purposes.

233 (c) "Subdivision" does not include:

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

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

240 (A) no new lot is created; and

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

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

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

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

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

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

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

251 (d) The joining of a subdivided parcel of property to another parcel of property that has
252 not been subdivided does not constitute a subdivision under this Subsection [~~(39)~~] (42) as to the
253 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's

254 subdivision ordinance.

255 [~~(40)~~] (43) "Transferrable development right" means the entitlement to develop land
256 within a sending zone that would vest according to the municipality's existing land use
257 ordinances on the date that a completed land use application is filed seeking the approval of
258 development activity on the land.

259 [~~(41)~~] (44) "Unincorporated" means the area outside of the incorporated area of a city
260 or town.

261 [~~(42)~~] (45) "Zoning map" means a map, adopted as part of a land use ordinance, that
262 depicts land use zones, overlays, or districts.

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

264 **10-9a-509. When a land use applicant is entitled to approval -- Exception --**
265 **Municipality may not impose unexpressed requirements -- Municipality required to**
266 **comply with land use ordinances.**

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

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

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

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

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

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

281 (c) An application for a land use approval is considered submitted and complete when

282 the application is provided in a form that complies with the requirements of applicable
283 ordinances and all applicable fees have been paid.

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

286 (e) A municipality may not impose on a holder of an issued land use permit or approved
287 subdivision plat a requirement that is not expressed:

288 (i) in the land use permit or ~~[m]~~ subdivision plat, documents on which the land use
289 permit ~~[is based]~~ or subdivision plat is based, or the written record evidencing approval of the
290 land use permit or subdivision plat; or

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

292 (f) A municipality may not withhold issuance of a certificate of occupancy or
293 acceptance of subdivision improvements because of an applicant's failure to comply with a
294 requirement that is not expressed:

295 (i) in the building permit or ~~[m]~~ subdivision plat, documents on which the building
296 permit ~~[is based]~~ or subdivision plat is based, or the written record evidencing approval of the
297 land use permit or subdivision plat; or

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

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

301 Section 3. Section **10-9a-509.5** is amended to read:

302 **10-9a-509.5. Review for application completeness -- Substantive application**
303 **review -- Reasonable diligence required for determination of whether improvements or**
304 **warranty work meets standards -- Money damages claim prohibited.**

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

307 (b) After a reasonable period of time to allow the municipality diligently to evaluate
308 whether all objective ordinance-based application criteria have been met, if application fees have
309 been paid, the applicant may in writing request that the municipality provide a written

310 determination either that the application is:

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

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

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

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

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

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

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

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

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

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

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

336 (b) After a reasonable period of time to allow the land use authority to consider an
337 application, the applicant may in writing request that the land use authority take final action

338 within 45 days from date of service of the written request.

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

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

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

348 (3) (a) With reasonable diligence, each land use authority shall determine whether the
349 installation of required subdivision improvements or the performance of warranty work meets
350 the municipality's adopted standards.

351 (b) (i) An applicant may in writing request the land use authority to accept or reject the
352 applicant's installation of required subdivision improvements or performance of warranty work.

353 (ii) The land use authority shall accept or reject subdivision improvements within 15
354 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
355 practicable after that 15-day period if inspection of the subdivision improvements is impeded by
356 winter weather conditions.

357 (iii) The land use authority shall accept or reject the performance of warranty work
358 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
359 soon as practicable after that 45-day period if inspection of the warranty work is impeded by
360 winter weather conditions.

361 (c) If a land use authority determines that the installation of required subdivision
362 improvements or the performance of warranty work does not meet the municipality's adopted
363 standards, the land use authority shall comprehensively and with specificity list the reasons for
364 its determination.

365 [~~3~~] (4) Subject to Section 10-9a-509, nothing in this section and no action or inaction

366 of the land use authority relieves an applicant's duty to comply with all applicable substantive
367 ordinances and regulations.

368 ~~[(4)]~~ (5) There shall be no money damages remedy arising from a claim under this
369 section.

370 Section 4. Section **10-9a-604.5** is enacted to read:

371 **10-9a-604.5. Subdivision plat recording or development activity before required**
372 **improvements are completed -- Improvement assurance -- Warranty.**

373 A land use authority may allow a land use applicant to proceed with subdivision plat
374 recording or development activity before completing improvements required as a condition
375 precedent to subdivision plat recording or development activity if:

376 (1) the land use authority requires an improvement assurance that provides for:

377 (a) an improvement assurance warranty for a period of up to:

378 (i) one year after final acceptance of the improvement or warranty work; or

379 (ii) two years after final acceptance of the improvement or warranty work, if the
380 municipality:

381 (A) determines for good cause that a lesser period would be inadequate to protect the
382 public health, safety, and welfare; and

383 (B) has substantial evidence of:

384 (I) prior poor performance of the applicant;

385 (II) unstable soil conditions within the subdivision or development area; or

386 (III) extreme fluctuations in climatic conditions that would render impracticable the
387 discovery of substandard or defective performance within a one-year period; and

388 (b) a partial release of the improvement assurance, if appropriate; and

389 (2) the land use authority establishes objective inspection standards for final acceptance
390 of the required improvements.

391 Section 5. Section **17-27a-103** is amended to read:

392 **17-27a-103. Definitions.**

393 As used in this chapter:

394 (1) "Affected entity" means a county, municipality, local district, special service district
395 under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, school district, interlocal
396 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
397 property owner, property owners association, public utility, or the Utah Department of
398 Transportation, if:

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

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

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

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

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

412 (4) "Charter school" includes:

413 (a) an operating charter school;

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

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

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

420 (6) "Conditional use" means a land use that, because of its unique characteristics or
421 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be

422 compatible in some areas or may be compatible only if certain conditions are required that
423 mitigate or eliminate the detrimental impacts.

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

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

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

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

431 (9) "Development activity" means:

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

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

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

438 [~~(9)~~] (10) (a) "Disability" means a physical or mental impairment that substantially limits
439 one or more of a person's major life activities, including a person having a record of such an
440 impairment or being regarded as having such an impairment.

441 (b) "Disability" does not include current illegal use of, or addiction to, any federally
442 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
443 802.

444 [~~(10)~~] (11) "Elderly person" means a person who is 60 years old or older, who desires
445 or needs to live with other elderly persons in a group setting, but who is capable of living
446 independently.

447 [~~(11)~~] (12) "Fire authority" means the department, agency, or public entity with
448 responsibility to review and approve the feasibility of fire protection and suppression services
449 for the subject property.

450 ~~[(12)]~~ (13) "Gas corporation" has the same meaning as defined in Section 54-2-1.

451 ~~[(13)]~~ (14) "General plan" means a document that a county adopts that sets forth
452 general guidelines for proposed future development of the unincorporated land within the
453 county.

454 ~~[(14)]~~ (15) "Identical plans" means building plans submitted to a county that are
455 substantially identical building plans that were previously submitted to and reviewed and
456 approved by the county and describe a building that is:

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

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

461 (16) "Improvement assurance" means a surety bond, letter of credit, cash, or other
462 security:

463 (a) to guaranty the proper completion of an improvement;

464 (b) that is required as a condition precedent to:

465 (i) recording a subdivision plat; or

466 (ii) beginning development activity; and

467 (c) that is offered to a land use authority to induce the land use authority, before actual
468 construction of required improvements, to:

469 (i) consent to the recording of a subdivision plat; or

470 (ii) issue a permit for development activity.

471 (17) "Improvement assurance warranty" means a promise that the materials and
472 workmanship of improvements:

473 (a) comport with standards that the county has officially adopted; and

474 (b) will not fail in any material respect within a warranty period.

475 ~~[(15)]~~ (18) "Interstate pipeline company" means a person or entity engaged in natural
476 gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission
477 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

478 [~~(16)~~] (19) "Intrastate pipeline company" means a person or entity engaged in natural
479 gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
480 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

481 [~~(17)~~] (20) "Land use application" means an application required by a county's land use
482 ordinance.

483 [~~(18)~~] (21) "Land use authority" means a person, board, commission, agency, or other
484 body designated by the local legislative body to act upon a land use application.

485 [~~(19)~~] (22) "Land use ordinance" means a planning, zoning, development, or
486 subdivision ordinance of the county, but does not include the general plan.

487 [~~(20)~~] (23) "Land use permit" means a permit issued by a land use authority.

488 [~~(21)~~] (24) "Legislative body" means the county legislative body, or for a county that
489 has adopted an alternative form of government, the body exercising legislative powers.

490 [~~(22)~~] (25) "Local district" means any entity under Title 17B, Limited Purpose Local
491 Government Entities - Local Districts, and any other governmental or quasi-governmental entity
492 that is not a county, municipality, school district, or unit of the state.

493 [~~(23)~~] (26) "Lot line adjustment" means the relocation of the property boundary line in
494 a subdivision between two adjoining lots with the consent of the owners of record.

495 [~~(24)~~] (27) "Moderate income housing" means housing occupied or reserved for
496 occupancy by households with a gross household income equal to or less than 80% of the
497 median gross income for households of the same size in the county in which the housing is
498 located.

499 [~~(25)~~] (28) "Nominal fee" means a fee that reasonably reimburses a county only for time
500 spent and expenses incurred in:

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

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

504 [~~(26)~~] (29) "Noncomplying structure" means a structure that:

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

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

509 [~~(27)~~] (30) "Nonconforming use" means a use of land that:

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

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

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

515 [~~(28)~~] (31) "Official map" means a map drawn by county authorities and recorded in the
516 county recorder's office that:

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

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

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

523 [~~(29)~~] (32) "Person" means an individual, corporation, partnership, organization,
524 association, trust, governmental agency, or any other legal entity.

525 [~~(30)~~] (33) "Plan for moderate income housing" means a written document adopted by
526 a county legislative body that includes:

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

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

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

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

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

536 [~~(31)~~] (34) "Plat" means a map or other graphical representation of lands being laid out
537 and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

538 [~~(32)~~] (35) "Public hearing" means a hearing at which members of the public are
539 provided a reasonable opportunity to comment on the subject of the hearing.

540 [~~(33)~~] (36) "Public meeting" means a meeting that is required to be open to the public
541 under Title 52, Chapter 4, Open and Public Meetings Act.

542 [~~(34)~~] (37) "Receiving zone" means an unincorporated area of a county that the
543 county's land use authority designates as an area in which an owner of land may receive
544 transferrable development rights.

545 [~~(35)~~] (38) "Record of survey map" means a map of a survey of land prepared in
546 accordance with Section 17-23-17.

547 [~~(36)~~] (39) "Residential facility for elderly persons" means a single-family or
548 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not
549 include a health care facility as defined by Section 26-21-2.

550 [~~(37)~~] (40) "Residential facility for persons with a disability" means a residence:

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

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

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

556 [~~(38)~~] (41) "Sanitary sewer authority" means the department, agency, or public entity
557 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
558 wastewater systems.

559 [~~(39)~~] (42) "Sending zone" means an unincorporated area of a county that the county's
560 land use authority designates as an area from which an owner of land may transfer transferrable
561 development rights to an owner of land in a receiving zone.

562 [~~(40)~~] (43) "Specified public utility" means an electrical corporation, gas corporation,
563 or telephone corporation, as those terms are defined in Section 54-2-1.

564 [~~(41)~~] (44) "Street" means a public right-of-way, including a highway, avenue,
565 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or
566 other way.

567 [~~(42)~~] (45) (a) "Subdivision" means any land that is divided, resubdivided or proposed
568 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
569 purpose, whether immediate or future, for offer, sale, lease, or development either on the
570 installment plan or upon any and all other plans, terms, and conditions.

571 (b) "Subdivision" includes:

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

574 (ii) except as provided in Subsection [~~(42)~~] (45)(c), divisions of land for residential and
575 nonresidential uses, including land used or to be used for commercial, agricultural, and
576 industrial purposes.

577 (c) "Subdivision" does not include:

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

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

581 (A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

598 (d) The joining of a subdivided parcel of property to another parcel of property that has
599 not been subdivided does not constitute a subdivision under this Subsection [~~(42)~~] (45) as to the
600 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
601 ordinance.

602 [~~(43)~~] (46) "Township" means a contiguous, geographically defined portion of the
603 unincorporated area of a county, established under this part or reconstituted or reinstated under
604 Section 17-27a-306, with planning and zoning functions as exercised through the township
605 planning commission, as provided in this chapter, but with no legal or political identity separate
606 from the county and no taxing authority, except that "township" means a former township under
607 Chapter 308, Laws of Utah 1996 where the context so indicates.

608 [~~(44)~~] (47) "Transferrable development right" means the entitlement to develop land
609 within a sending zone that would vest according to the county's existing land use ordinances on
610 the date that a completed land use application is filed seeking the approval of development
611 activity on the land.

612 [~~(45)~~] (48) "Unincorporated" means the area outside of the incorporated area of a
613 municipality.

614 [~~(46)~~] (49) "Zoning map" means a map, adopted as part of a land use ordinance, that
615 depicts land use zones, overlays, or districts.

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

617 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**

618 **County may not impose unexpressed requirements -- County required to comply with**
619 **land use ordinances.**

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

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

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

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

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

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

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

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

639 (e) A county may not impose on a holder of an issued land use permit or approved
640 subdivision plat a requirement that is not expressed:

641 (i) in the land use permit or ~~[in]~~ subdivision plat documents on which the land use
642 permit ~~[is based]~~ or subdivision plat is based, or the written record evidencing approval of the
643 land use permit or subdivision plat; or

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

645 (f) A county may not withhold issuance of a certificate of occupancy or acceptance of

646 subdivision improvements because of an applicant's failure to comply with a requirement that is
647 not expressed:

648 (i) in the building permit or [m] subdivision plat, documents on which the building
649 permit [~~is based~~] or subdivision plat is based, or the written record evidencing approval of the
650 building permit or subdivision plat; or

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

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

654 Section 7. Section **17-27a-509.5** is amended to read:

655 **17-27a-509.5. Review for application completeness -- Substantive application**
656 **review -- Reasonable diligence required for determination of whether improvements or**
657 **warranty work meets standards -- Money damages claim prohibited.**

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

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

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

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

668 (c) Within 30 days of receipt of an applicant's request under this section, the county
669 shall either:

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

673 (ii) accept the application as complete for the purposes of further substantive processing

674 by the land use authority.

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

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

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

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

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

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

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

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

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

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

701 (3) (a) With reasonable diligence, each land use authority shall determine whether the

702 installation of required subdivision improvements or the performance of warranty work meets
703 the county's adopted standards.

704 (b) (i) An applicant may in writing request the land use authority to accept or reject the
705 applicant's installation of required subdivision improvements or performance of warranty work.

706 (ii) The land use authority shall accept or reject subdivision improvements within 15
707 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
708 practicable after that 15-day period if inspection of the subdivision improvements is impeded by
709 winter weather conditions.

710 (iii) The land use authority shall accept or reject the performance of warranty work
711 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
712 soon as practicable after that 45-day period if inspection of the warranty work is impeded by
713 winter weather conditions.

714 (c) If a land use authority determines that the installation of required subdivision
715 improvements or the performance of warranty work does not meet the county's adopted
716 standards, the land use authority shall comprehensively and with specificity list the reasons for
717 its determination.

718 [~~3~~] (4) Subject to Section [~~17-9a-509~~] 17-27a-508, nothing in this section and no
719 action or inaction of the land use authority relieves an applicant's duty to comply with all
720 applicable substantive ordinances and regulations.

721 [~~4~~] (5) There shall be no money damages remedy arising from a claim under this
722 section.

723 Section 8. Section **17-27a-604.5** is enacted to read:

724 **17-27a-604.5. Subdivision plat recording or development activity before required**
725 **improvements are completed -- Improvement assurance -- Warranty.**

726 A land use authority may allow a land use applicant to proceed with subdivision plat
727 recording or development activity before completing improvements required as a condition
728 precedent to subdivision plat recording or development activity if:

729 (1) the land use authority requires an improvement assurance that provides for:

730 (a) an improvement assurance warranty for a period of up to:
731 (i) one year after final acceptance of the improvement or warranty work; or
732 (ii) two years after final acceptance of the improvement or warranty work, if the
733 county:
734 (A) determines for good cause that a lesser period would be inadequate to protect the
735 public health, safety, and welfare; and
736 (B) has substantial evidence of:
737 (I) prior poor performance of the applicant;
738 (II) unstable soil conditions within the subdivision or development area; or
739 (III) extreme fluctuations in climatic conditions that would render impracticable the
740 discovery of substandard or defective performance within a one-year period; and
741 (b) a partial release of the improvement assurance, if appropriate; and
742 (2) the land use authority establishes objective inspection standards for final acceptance
743 of the required improvements.