

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



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

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **10-9a-103**, as last amended by Laws of Utah 2007, Chapters 188, 199, and 329
- 43 **10-9a-509**, as last amended by Laws of Utah 2007, Chapter 363
- 44 **10-9a-509.5**, as enacted by Laws of Utah 2007, Chapter 363
- 45 **17-27a-103**, as last amended by Laws of Utah 2007, Chapters 188, 199, and 329
- 46 **17-27a-508**, as last amended by Laws of Utah 2007, Chapter 363
- 47 **17-27a-509.5**, as enacted by Laws of Utah 2007, Chapter 363

48 ENACTS:

- 49 **10-9a-604.5**, Utah Code Annotated 1953
- 50 **17-27a-604.5**, Utah Code Annotated 1953



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

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

54 **10-9a-103. Definitions.**

55 As used in this chapter:

- 56 (1) "Affected entity" means a county, municipality, local district, special service
- 57 district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, school district,
- 58 interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act,

59 specified public utility, a property owner, a property owners association, or the Utah
60 Department of Transportation, if:

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

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

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

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

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

74 (4) "Charter school" includes:

75 (a) an operating charter school;

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

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

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

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

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

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

89 (7) "Constitutional taking" means a governmental action that results in a taking of

90 private property so that compensation to the owner of the property is required by the:

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

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

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

96 (9) "Development activity" means:

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

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

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

103 [~~9~~] (10) (a) "Disability" means a physical or mental impairment that substantially
104 limits one or more of a person's major life activities, including a person having a record of such
105 an impairment or being regarded as having such an impairment.

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

109 [~~10~~] (11) "Elderly person" means a person who is 60 years old or older, who desires
110 or needs to live with other elderly persons in a group setting, but who is capable of living
111 independently.

112 [~~11~~] (12) "Fire authority" means the department, agency, or public entity with
113 responsibility to review and approve the feasibility of fire protection and suppression services
114 for the subject property.

115 [~~12~~] (13) "General plan" means a document that a municipality adopts that sets forth
116 general guidelines for proposed future development of the land within the municipality.

117 [~~13~~] (14) "Identical plans" means building plans submitted to a municipality that are
118 substantially identical to building plans that were previously submitted to and reviewed and
119 approved by the municipality and describe a building that is:

120 (a) located on land zoned the same as the land on which the building described in the

121 previously approved plans is located; and

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

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

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

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

128 (i) recording a subdivision plat; or

129 (ii) beginning development activity; and

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

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

133 (ii) issue a permit for development activity.

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

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

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

138 [~~14~~] (17) "Land use application" means an application required by a municipality's
139 land use ordinance.

140 [~~15~~] (18) "Land use authority" means a person, board, commission, agency, or other
141 body designated by the local legislative body to act upon a land use application.

142 [~~16~~] (19) "Land use ordinance" means a planning, zoning, development, or
143 subdivision ordinance of the municipality, but does not include the general plan.

144 [~~17~~] (20) "Land use permit" means a permit issued by a land use authority.

145 [~~18~~] (21) "Legislative body" means the municipal council.

146 [~~19~~] (22) "Local district" means an entity under Title 17B, Limited Purpose Local
147 Government Entities - Local Districts, and any other governmental or quasi-governmental
148 entity that is not a county, municipality, school district, or unit of the state.

149 [~~20~~] (23) "Lot line adjustment" means the relocation of the property boundary line in
150 a subdivision between two adjoining lots with the consent of the owners of record.

151 [~~21~~] (24) "Moderate income housing" means housing occupied or reserved for

152 occupancy by households with a gross household income equal to or less than 80% of the
153 median gross income for households of the same size in the county in which the city is located.

154 ~~[(22)]~~ (25) "Nominal fee" means a fee that reasonably reimburses a municipality only
155 for time spent and expenses incurred in:

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

159 ~~[(23)]~~ (26) "Noncomplying structure" means a structure that:

- 160 (a) legally existed before its current land use designation; and
- 161 (b) because of one or more subsequent land use ordinance changes, does not conform
162 to the setback, height restrictions, or other regulations, excluding those regulations, which
163 govern the use of land.

164 ~~[(24)]~~ (27) "Nonconforming use" means a use of land that:

- 165 (a) legally existed before its current land use designation;
- 166 (b) has been maintained continuously since the time the land use ordinance governing
167 the land changed; and
- 168 (c) because of one or more subsequent land use ordinance changes, does not conform
169 to the regulations that now govern the use of the land.

170 ~~[(25)]~~ (28) "Official map" means a map drawn by municipal authorities and recorded in
171 a county recorder's office that:

- 172 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
173 highways and other transportation facilities;
- 174 (b) provides a basis for restricting development in designated rights-of-way or between
175 designated setbacks to allow the government authorities time to purchase or otherwise reserve
176 the land; and
- 177 (c) has been adopted as an element of the municipality's general plan.

178 ~~[(26)]~~ (29) "Person" means an individual, corporation, partnership, organization,
179 association, trust, governmental agency, or any other legal entity.

180 ~~[(27)]~~ (30) "Plan for moderate income housing" means a written document adopted by
181 a city legislative body that includes:

- 182 (a) an estimate of the existing supply of moderate income housing located within the

183 city;

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

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

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

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

191 [~~(28)~~] (31) "Plat" means a map or other graphical representation of lands being laid out
192 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

193 [~~(29)~~] (32) "Public hearing" means a hearing at which members of the public are
194 provided a reasonable opportunity to comment on the subject of the hearing.

195 [~~(30)~~] (33) "Public meeting" means a meeting that is required to be open to the public
196 under Title 52, Chapter 4, Open and Public Meetings Act.

197 [~~(31)~~] (34) "Record of survey map" means a map of a survey of land prepared in
198 accordance with Section 17-23-17.

199 [~~(32)~~] (35) "Receiving zone" means an area of a municipality that the municipality's
200 land use authority designates as an area in which an owner of land may receive transferrable
201 development rights.

202 [~~(33)~~] (36) "Residential facility for elderly persons" means a single-family or
203 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not
204 include a health care facility as defined by Section 26-21-2.

205 [~~(34)~~] (37) "Residential facility for persons with a disability" means a residence:

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

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

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

211 [~~(35)~~] (38) "Sanitary sewer authority" means the department, agency, or public entity
212 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
213 wastewater systems.

214 [~~(36)~~] (39) "Sending zone" means an area of a municipality that the municipality's land
215 use authority designates as an area from which an owner of land may transfer transferrable
216 development rights to an owner of land in a receiving zone.

217 [~~(37)~~] (40) "Specified public utility" means an electrical corporation, gas corporation,
218 or telephone corporation, as those terms are defined in Section 54-2-1.

219 [~~(38)~~] (41) "Street" means a public right-of-way, including a highway, avenue,
220 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
221 or other way.

222 [~~(39)~~] (42) (a) "Subdivision" means any land that is divided, resubdivided or proposed
223 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
224 purpose, whether immediate or future, for offer, sale, lease, or development either on the
225 installment plan or upon any and all other plans, terms, and conditions.

226 (b) "Subdivision" includes:

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

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

232 (c) "Subdivision" does not include:

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

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

239 (A) no new lot is created; and

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

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

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

244 (B) joining a subdivided parcel of property to another parcel of property that has not

245 been subdivided, if the joinder does not violate applicable land use ordinances; or

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

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

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

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

254 [~~(40)~~ (43) "Transferrable development right" means the entitlement to develop land
255 within a sending zone that would vest according to the municipality's existing land use
256 ordinances on the date that a completed land use application is filed seeking the approval of
257 development activity on the land.

258 [~~(41)~~ (44) "Unincorporated" means the area outside of the incorporated area of a city
259 or town.

260 [~~(42)~~ (45) "Zoning map" means a map, adopted as part of a land use ordinance, that
261 depicts land use zones, overlays, or districts.

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

263 **10-9a-509. When a land use applicant is entitled to approval -- Exception --**
264 **Municipality may not impose unexpressed requirements -- Municipality required to**
265 **comply with land use ordinances.**

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

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

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

275 (b) The municipality shall process an application without regard to proceedings

276 initiated to amend the municipality's ordinances if:

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

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

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

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

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

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

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

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

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

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

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

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

301 **10-9a-509.5. Review for application completeness -- Substantive application**
302 **review -- Reasonable diligence required -- Money damages claim prohibited.**

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

305 (b) After a reasonable period of time to allow the municipality diligently to evaluate
306 whether all objective ordinance-based application criteria have been met, if application fees

307 have been paid, the applicant may in writing request that the municipality provide a written
308 determination either that the application is:

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

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

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

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

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

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

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

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

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

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

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

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

337 (c) The land use authority shall take final action, approving or denying the application

338 within 45 days of the written request.

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

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

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

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

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

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

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

363 [~~3~~] (4) Subject to Section 10-9a-509, nothing in this section and no action or inaction
364 of the land use authority relieves an applicant's duty to comply with all applicable substantive
365 ordinances and regulations.

366 [~~4~~] (5) There shall be no money damages remedy arising from a claim under this
367 section.

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

369 **10-9a-604.5. Subdivision plat recording or development activity before required**
370 **improvements are completed -- Improvement assurance -- Warranty.**

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

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

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

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

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

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

381 (B) has substantial evidence of:

382 (I) prior poor performance of the applicant;

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

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

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

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

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

390 **17-27a-103. Definitions.**

391 As used in this chapter:

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

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

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

400 or

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

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

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

410 (4) "Charter school" includes:

411 (a) an operating charter school;

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

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

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

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

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

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

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

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

429 (9) "Development activity" means:

430 (a) any construction or expansion of a building, structure, or use that creates additional

431 demand and need for public facilities;

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

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

436 [~~9~~] (10) (a) "Disability" means a physical or mental impairment that substantially
437 limits one or more of a person's major life activities, including a person having a record of such
438 an impairment or being regarded as having such an impairment.

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

442 [~~10~~] (11) "Elderly person" means a person who is 60 years old or older, who desires
443 or needs to live with other elderly persons in a group setting, but who is capable of living
444 independently.

445 [~~11~~] (12) "Fire authority" means the department, agency, or public entity with
446 responsibility to review and approve the feasibility of fire protection and suppression services
447 for the subject property.

448 [~~12~~] (13) "Gas corporation" has the same meaning as defined in Section 54-2-1.

449 [~~13~~] (14) "General plan" means a document that a county adopts that sets forth
450 general guidelines for proposed future development of the unincorporated land within the
451 county.

452 [~~14~~] (15) "Identical plans" means building plans submitted to a county that are
453 substantially identical building plans that were previously submitted to and reviewed and
454 approved by the county and describe a building that is:

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

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

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

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

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

463 (i) recording a subdivision plat; or

464 (ii) beginning development activity; and

465 (c) that is offered to a land use authority to induce the land use authority, before actual

466 construction of required improvements, to:

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

468 (ii) issue a permit for development activity.

469 (17) "Improvement assurance warranty" means a promise that the materials and

470 workmanship of improvements:

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

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

473 ~~[(15)]~~ (18) "Interstate pipeline company" means a person or entity engaged in natural
474 gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission
475 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

476 ~~[(16)]~~ (19) "Intrastate pipeline company" means a person or entity engaged in natural
477 gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
478 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

479 ~~[(17)]~~ (20) "Land use application" means an application required by a county's land use
480 ordinance.

481 ~~[(18)]~~ (21) "Land use authority" means a person, board, commission, agency, or other
482 body designated by the local legislative body to act upon a land use application.

483 ~~[(19)]~~ (22) "Land use ordinance" means a planning, zoning, development, or
484 subdivision ordinance of the county, but does not include the general plan.

485 ~~[(20)]~~ (23) "Land use permit" means a permit issued by a land use authority.

486 ~~[(21)]~~ (24) "Legislative body" means the county legislative body, or for a county that
487 has adopted an alternative form of government, the body exercising legislative powers.

488 ~~[(22)]~~ (25) "Local district" means any entity under Title 17B, Limited Purpose Local
489 Government Entities - Local Districts, and any other governmental or quasi-governmental
490 entity that is not a county, municipality, school district, or unit of the state.

491 ~~[(23)]~~ (26) "Lot line adjustment" means the relocation of the property boundary line in
492 a subdivision between two adjoining lots with the consent of the owners of record.

493 [~~(24)~~] (27) "Moderate income housing" means housing occupied or reserved for
494 occupancy by households with a gross household income equal to or less than 80% of the
495 median gross income for households of the same size in the county in which the housing is
496 located.

497 [~~(25)~~] (28) "Nominal fee" means a fee that reasonably reimburses a county only for
498 time spent and expenses incurred in:

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

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

502 [~~(26)~~] (29) "Noncomplying structure" means a structure that:

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

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

507 [~~(27)~~] (30) "Nonconforming use" means a use of land that:

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

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

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

513 [~~(28)~~] (31) "Official map" means a map drawn by county authorities and recorded in
514 the county recorder's office that:

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

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

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

521 [~~(29)~~] (32) "Person" means an individual, corporation, partnership, organization,
522 association, trust, governmental agency, or any other legal entity.

523 [~~(30)~~] (33) "Plan for moderate income housing" means a written document adopted by

524 a county legislative body that includes:

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

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

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

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

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

534 [~~(31)~~] (34) "Plat" means a map or other graphical representation of lands being laid out
535 and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

536 [~~(32)~~] (35) "Public hearing" means a hearing at which members of the public are
537 provided a reasonable opportunity to comment on the subject of the hearing.

538 [~~(33)~~] (36) "Public meeting" means a meeting that is required to be open to the public
539 under Title 52, Chapter 4, Open and Public Meetings Act.

540 [~~(34)~~] (37) "Receiving zone" means an unincorporated area of a county that the
541 county's land use authority designates as an area in which an owner of land may receive
542 transferrable development rights.

543 [~~(35)~~] (38) "Record of survey map" means a map of a survey of land prepared in
544 accordance with Section 17-23-17.

545 [~~(36)~~] (39) "Residential facility for elderly persons" means a single-family or
546 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not
547 include a health care facility as defined by Section 26-21-2.

548 [~~(37)~~] (40) "Residential facility for persons with a disability" means a residence:

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

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

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

554 [~~(38)~~] (41) "Sanitary sewer authority" means the department, agency, or public entity

555 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
556 wastewater systems.

557 [~~(39)~~] (42) "Sending zone" means an unincorporated area of a county that the county's
558 land use authority designates as an area from which an owner of land may transfer transferrable
559 development rights to an owner of land in a receiving zone.

560 [~~(40)~~] (43) "Specified public utility" means an electrical corporation, gas corporation,
561 or telephone corporation, as those terms are defined in Section 54-2-1.

562 [~~(41)~~] (44) "Street" means a public right-of-way, including a highway, avenue,
563 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
564 or other way.

565 [~~(42)~~] (45) (a) "Subdivision" means any land that is divided, resubdivided or proposed
566 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
567 purpose, whether immediate or future, for offer, sale, lease, or development either on the
568 installment plan or upon any and all other plans, terms, and conditions.

569 (b) "Subdivision" includes:

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

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

575 (c) "Subdivision" does not include:

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

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

579 (A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

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

600 [~~(43)~~] (46) "Township" means a contiguous, geographically defined portion of the
601 unincorporated area of a county, established under this part or reconstituted or reinstated under
602 Section 17-27a-306, with planning and zoning functions as exercised through the township
603 planning commission, as provided in this chapter, but with no legal or political identity
604 separate from the county and no taxing authority, except that "township" means a former
605 township under Chapter 308, Laws of Utah 1996 where the context so indicates.

606 [~~(44)~~] (47) "Transferrable development right" means the entitlement to develop land
607 within a sending zone that would vest according to the county's existing land use ordinances on
608 the date that a completed land use application is filed seeking the approval of development
609 activity on the land.

610 [~~(45)~~] (48) "Unincorporated" means the area outside of the incorporated area of a
611 municipality.

612 [~~(46)~~] (49) "Zoning map" means a map, adopted as part of a land use ordinance, that
613 depicts land use zones, overlays, or districts.

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

615 **17-27a-508. When a land use applicant is entitled to approval -- Exception --**
616 **County may not impose unexpressed requirements -- County required to comply with**

617 **land use ordinances.**

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

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

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

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

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

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

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

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

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

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

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

643 (f) A county may not withhold issuance of a certificate of occupancy or acceptance of
644 subdivision improvements because of an applicant's failure to comply with a requirement that
645 is not expressed:

646 (i) in the building permit or ~~[it]~~ subdivision plat, documents on which the building
647 permit ~~[is based]~~ or subdivision plat is based, or the written record evidencing approval of the

648 building permit or subdivision plat; or

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

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

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

653 **17-27a-509.5. Review for application completeness -- Substantive application**
654 **review -- Reasonable diligence required -- Money damages claim prohibited.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

698 (3) (a) With reasonable diligence, each land use authority shall determine whether the
699 installation of required subdivision improvements or the performance of warranty work meets
700 the county's adopted standards.

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

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

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

710 winter weather conditions.

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

715 [~~3~~] (4) Subject to Section [~~17-9a-509~~] 17-27a-508, nothing in this section and no
716 action or inaction of the land use authority relieves an applicant's duty to comply with all
717 applicable substantive ordinances and regulations.

718 [~~4~~] (5) There shall be no money damages remedy arising from a claim under this
719 section.

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

721 **17-27a-604.5. Subdivision plat recording or development activity before required**
722 **improvements are completed -- Improvement assurance -- Warranty.**

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

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

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

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

729 (ii) two years after final acceptance of the improvement or warranty work, if the

730 county:

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

733 (B) has substantial evidence of:

734 (I) prior poor performance of the applicant;

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

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

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

739 (2) the land use authority establishes objective inspection standards for final

740 acceptance of the required improvements.

Legislative Review Note
as of 2-5-08 12:56 PM

Office of Legislative Research and General Counsel

S.B. 196 - County and Municipal Land Use Amendments

Fiscal Note

2008 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 likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
