LAND USE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to land use provisions.

Highlighted Provisions:

This bill:

- defines terms;
- imposes requirements on proposed conditions for a proposed conditional use;
- states that a conditional use is an administrative land use decision;
- amends provisions related to an applicant's rights vesting in a land use application;
- removes land use authority discretion in allowing an applicant to post an improvement completion assurance;
- prohibits municipalities and counties from denying a building permit application where the land use authority has accepted an improvement completion assurance;
- modifies the arbitrary and capricious standard for judicial review of a land use decision; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2017, Chapters 17 and 84
Be it enacted by the Legislature of the state of Utah:

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

10-9a-103. Definitions.

As used in this chapter:

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

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

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

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

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

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

(4) (a) "Charter school" means:

(i) an operating charter school;

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

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

(b) "Charter school" does not include a therapeutic school.

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

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

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

(b) Utah Constitution Article I, Section 22.

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

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional
demand and need for public facilities;
(b) any change in use of a building or structure that creates additional demand and need for public facilities; or
(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":
(a) means:
(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;
(ii) a structure or facility:
(A) located on the same property as a building described in Subsection (10)(a)(i); and
(B) used in support of the use of that building; and
(iii) a building to provide office and related space to a school district's administrative personnel; and
(b) does not include:
(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:
(A) not located on the same property as a building described in Subsection (10)(a)(i); and
(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or
(ii) a therapeutic school.
(11) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(12) "Flood plain" means land that:
(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or
(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

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

(14) "Geologic hazard" means:
(a) a surface fault rupture;
(b) shallow groundwater;
(c) liquefaction;
(d) a landslide;
(e) a debris flow;
(f) unstable soil;
(g) a rock fall; or
(h) any other geologic condition that presents a risk:
(i) to life;
(ii) of substantial loss of real property; or
(iii) of substantial damage to real property.

(15) "Historic preservation authority" means a person, board, commission, or other body designated by a legislative body to:
(a) recommend land use regulations to preserve local historic districts or areas; and
(b) administer local historic preservation land use regulations within a local historic
(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(17) "Identical plans" means building plans submitted to a municipality that:

(a) are clearly marked as "identical plans";
(b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and
(c) describe a building that:
(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and
(iv) does not require any additional engineering or analysis.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(19) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or
(b) development of a commercial, industrial, mixed use, or multifamily project.

(20) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the municipality's written standards for design, materials, and workmanship; and
(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(21) "Improvement warranty period" means a period:

(a) no later than one year after a municipality's acceptance of required landscaping; or

(b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

(22) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(23) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(24) "Land use applicant" means a property owner, or the property owner's designee,
who submits a land use application regarding the property owner's land.

(25) "Land use application":

(a) means an application that is:

(i) required by a municipality; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

(26) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

(27) "Land use decision" means [a final action] an administrative decision of a land use authority or appeal authority regarding:

(a) a land use permit;

(b) a land use application; or

(c) the enforcement of a land use regulation, land use permit, or development agreement.

(28) "Land use permit" means a permit issued by a land use authority.

(29) "Land use regulation":

(a) means [an] a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land; [and]

(b) includes the adoption or amendment of a zoning map or the text of the zoning code; and

(c) does not include:

[i] a general plan;

[ii] a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or

[iii] a temporary revision to an engineering specification that does not materially:
(A) increase a land use applicant's cost of development compared to the existing specification; or
(B) impact a land use applicant's use of land.

(30) "Legislative body" means the municipal council.
(31) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.
(32) "Local historic district or area" means a geographically definable area that:
(a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and
(b) is subject to land use regulations to preserve the historic significance of the local historic district or area.
(33) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.
(34) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.
(35) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:
(a) verifying that building plans are identical plans; and
(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.
(36) "Noncomplying structure" means a structure that:
(a) legally existed before its current land use designation; and
(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.
(37) "Nonconforming use" means a use of land that:
   (a) legally existed before its current land use designation;
   (b) has been maintained continuously since the time the land use ordinance governing
       the land changed; and
   (c) because of one or more subsequent land use ordinance changes, does not conform
       to the regulations that now govern the use of the land.

(38) "Official map" means a map drawn by municipal authorities and recorded in a
     county recorder's office that:
     (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
         highways and other transportation facilities;
     (b) provides a basis for restricting development in designated rights-of-way or between
         designated setbacks to allow the government authorities time to purchase or otherwise reserve
         the land; and
     (c) has been adopted as an element of the municipality's general plan.

(39) "Parcel boundary adjustment" means a recorded agreement between owners of
     adjoining properties adjusting their mutual boundary if:
     (a) no additional parcel is created; and
     (b) each property identified in the agreement is unsubdivided land, including a
         remainder of subdivided land.

(40) "Person" means an individual, corporation, partnership, organization, association,
     trust, governmental agency, or any other legal entity.

(41) "Plan for moderate income housing" means a written document adopted by a city
     legislative body that includes:
     (a) an estimate of the existing supply of moderate income housing located within the
         city;
     (b) an estimate of the need for moderate income housing in the city for the next five
         years as revised biennially;
     (c) a survey of total residential land use;
(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

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

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

(43) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(44) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(45) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

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

(47) "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

(48) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.
(49) "Residential facility for persons with a disability" means a residence:
(a) in which more than one person with a disability resides; and
(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(50) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:
(a) parliamentary order and procedure;
(b) ethical behavior; and
(c) civil discourse.

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

(52) "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

(53) "Specified public agency" means:
(a) the state;
(b) a school district; or
(c) a charter school.

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

(55) "State" includes any department, division, or agency of the state.

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

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

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, 
device and testacy, map, plat, or other recorded instrument; and 
(ii) except as provided in Subsection (57)(c), divisions of land for residential and 
nonresidential uses, including land used or to be used for commercial, agricultural, and 
industrial purposes.

(c) "Subdivision" does not include:

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

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

(A) no new lot is created; and 
(B) the adjustment does not violate applicable land use ordinances;

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

(A) revising the legal description of more than one contiguous unsubdivided parcel of 
property into one legal description encompassing all such parcels of property; or 
(B) joining a subdivided parcel of property to another parcel of property that has not 
been subdivided, if the joinder does not violate applicable land use ordinances;

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

(A) no new dwelling lot or housing unit will result from the adjustment; and 
(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division or partition of land by deed or other instrument where the land
use authority expressly approves in writing the division in anticipation of further land use
approvals on the parcel or parcels; or
(vi) a parcel boundary adjustment.
(d) The joining of a subdivided parcel of property to another parcel of property that has
not been subdivided does not constitute a subdivision under this Subsection (57) as to the
unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
subdivision ordinance.
(58) "Suspect soil" means soil that has:
(a) a high susceptibility for volumetric change, typically clay rich, having more than a
3% swell potential;
(b) bedrock units with high shrink or swell susceptibility; or
(c) gypsic silt and clay, gypsum, or bedrock units containing abundant gypsum
commonly associated with dissolution and collapse features.
(59) "Therapeutic school" means a residential group living facility:
(a) for four or more individuals who are not related to:
(i) the owner of the facility; or
(ii) the primary service provider of the facility;
(b) that serves students who have a history of failing to function:
(i) at home;
(ii) in a public school; or
(iii) in a nonresidential private school; and
(c) that offers:
(i) room and board; and
(ii) an academic education integrated with:
(A) specialized structure and supervision; or
(B) services or treatment related to a disability, an emotional development, a
behavioral development, a familial development, or a social development.
(60) "Transferable development right" means a right to develop and use land that
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394 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

396 (61) "Unincorporated" means the area outside of the incorporated area of a city or town.

398 (62) "Water interest" means any right to the beneficial use of water, including:
399 (a) each of the rights listed in Section 73-1-11; and
400 (b) an ownership interest in the right to the beneficial use of water represented by:
401 (i) a contract; or
402 (ii) a share in a water company, as defined in Section 73-3-3.5.
403 (63) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

405 Section 2. Section 10-9a-507 is amended to read:

10-9a-507. Conditional uses.

407 (1) (a) A municipality may adopt a land use ordinance that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

410 (b) A municipality may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.

412 (2) (a) (i) A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

415 (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.

418 (b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.

421 [(b)] (c) If the reasonably anticipated detrimental effects of a proposed conditional use
cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.

(3) A land use authority's decision to approve or deny conditional use is an administrative land use decision.

Section 3. Section 10-9a-509 is amended to read:

10-9a-509. Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has submitted a complete land use application as described in Subsection (1)(c), including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:

(A) in effect on the date that the application is complete; and [as further provided in this section.]

(B) applicable to the application or to the information shown on the application.

(ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, unless:

(A) the land use authority, on the record, formally finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or

(B) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

(b) The municipality shall process an application without regard to proceedings the municipality initiated to amend the municipality's ordinances as described in
Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the municipality initiated the proceedings [were initiated]; and

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

(c) [An application for a land use approval] A land use application is considered submitted and complete when the applicant provides the application [is provided] in a form that complies with the requirements of applicable ordinances and pays all applicable fees [have been paid].

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

(e) A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance; or

(iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(f) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

(g) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a
requirements that are not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit
or subdivision plat is based, or the written record evidencing approval of the land use permit or
subdivision plat; or

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

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

(3) A municipality may not, as a condition of land use application approval, require a
person filing a land use application to obtain documentation regarding a school district's
willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as
required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the
specified public agency vests in the municipality's applicable land use maps, zoning map,
hookup fees, impact fees, other applicable development fees, and land use regulations in effect
on the date of submission.

Section 4. Section 10-9a-604.5 is amended to read:

10-9a-604.5. Subdivision plat recording or development activity before required
infrastructure is completed -- Improvement completion assurance -- Improvement
warranty.

(1) A land use authority shall establish objective inspection standards for acceptance of
a [required] landscaping or infrastructure improvement that the land use authority requires.

[(2) (a) A land use authority shall require an applicant to complete a required
landscaping or infrastructure improvement prior to any plat recordation or development
activity:]

[(b) Subsection (2)(a) does not apply if:]

[(i) upon the applicant's request, the land use authority has authorized the applicant to
post an improvement completion assurance in a manner that is consistent with local ordinance;
and]
(ii) the land use authority has established a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted:

(2) (a) Before an applicant conducts any development activity or records a plat, the applicant shall:

   (i) complete any required landscaping or infrastructure improvements; or
   
   (ii) post an improvement completion assurance for any required landscaping or infrastructure improvements.

   (b) If an applicant elects to post an improvement completion assurance, the applicant shall ensure that the assurance:

   (i) provides for completion of 100% of the required landscaping or infrastructure improvements; or

   (ii) if the municipality has inspected and accepted a portion of the landscaping or infrastructure improvements, provides for completion of 100% of the unaccepted landscaping or infrastructure improvements.

   (c) A municipality shall:

   (i) if an applicant elects to post an improvement completion assurance, allow the applicant to post an assurance that meets the conditions of this title, and any local ordinances;

   (ii) establish a system for the partial release of an improvement completion assurance as portions of required landscaping or infrastructure improvements are completed and accepted in accordance with local ordinance; and

   (iii) issue or deny a building permit in accordance with Section 10-9a-802 based on the installation of landscaping or infrastructure improvements.

   (d) A municipality may not require an applicant to post an improvement completion assurance for landscaping or an infrastructure improvement that the municipality has previously inspected and accepted.

   (3) At any time before a municipality accepts a landscaping or infrastructure improvement, and for the duration of each improvement
warranty period, the municipality may require the applicant to:

(a) execute an improvement warranty for the improvement warranty period; and

(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:

(i) municipal engineer's original estimated cost of completion; or

(ii) applicant's reasonable proven cost of completion.

(4) When a municipality accepts an improvement completion assurance for landscaping or infrastructure improvements for a development in accordance with Subsection (2)(c)(i), the municipality may not deny an applicant a building permit if the development meets the requirements for the issuance of a building permit under the building code and fire code.

[(4)] (5) The provisions of this section do not supersede the terms of a valid development agreement, an adopted phasing plan, or the state construction code.

Section 5. Section 10-9a-801 is amended to read:

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

(1) No person may challenge in district court a land use decision until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

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

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

(A) the arbitrator issues a final award; or
the property rights ombudsman issues a written statement under Subsection 562 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

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

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

(3) (a) A court shall:

(i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and

(ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c) (i) A decision is arbitrary and capricious [unless] if the decision is not supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

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

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

(6) A challenge to a land use decision is barred unless the challenge is filed within 30
days after the land use decision is final.

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

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

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

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

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

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

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

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

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

Section 6. Section 10-9a-802 is amended to read:

10-9a-802. Enforcement.

(1) (a) A municipality or any adversely affected owner of real estate within the
municipality in which violations of this chapter or ordinances enacted under the authority of
this chapter occur or are about to occur may, in addition to other remedies provided by law,
institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) A municipality need only establish the violation to obtain the injunction.

(2) (a) A municipality may enforce the municipality's ordinance by withholding a
building permit.

(b) It is an infraction to erect, construct, reconstruct, alter, or change the use of any
building or other structure within a municipality without approval of a building permit.

(c) A municipality may not issue a building permit unless the plans of and for the
proposed erection, construction, reconstruction, alteration, or use fully conform to all
regulations then in effect.

(d) A municipality may not deny an applicant a building permit because the applicant
has not completed an infrastructure improvement:

(i) that is not essential to meet the requirements for the issuance of a building permit
under the building code and fire code; and

(ii) for which the municipality has accepted an [infrastructure] improvement
completion assurance for landscaping or infrastructure improvements for the development.

Section 7. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service
646 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
647 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
648 property owner, property owners association, public utility, or the Utah Department of
649 Transportation, if:
650 (a) the entity's services or facilities are likely to require expansion or significant
651 modification because of an intended use of land;
652 (b) the entity has filed with the county a copy of the entity's general or long-range plan;
653 or
654 (c) the entity has filed with the county a request for notice during the same calendar
655 year and before the county provides notice to an affected entity in compliance with a
656 requirement imposed under this chapter.
657 (2) "Appeal authority" means the person, board, commission, agency, or other body
658 designated by ordinance to decide an appeal of a decision of a land use application or a
659 variance.
660 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or
661 residential property if the sign is designed or intended to direct attention to a business, product,
662 or service that is not sold, offered, or existing on the property where the sign is located.
663 (4) (a) "Charter school" means:
664 (i) an operating charter school;
665 (ii) a charter school applicant that has its application approved by a charter school
666 authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or
667 (iii) an entity that is working on behalf of a charter school or approved charter
668 applicant to develop or construct a charter school building.
669 (b) "Charter school" does not include a therapeutic school.
670 (5) "Chief executive officer" means the person or body that exercises the executive
671 powers of the county.
672 (6) "Conditional use" means a land use that, because of its unique characteristics or
673 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
compatible in some areas or may be compatible only if certain conditions are required that
mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of
private property so that compensation to the owner of the property is required by the:
(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
(b) Utah Constitution, Article I, Section 22.

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

(9) "Development activity" means:
(a) any construction or expansion of a building, structure, or use that creates additional
demand and need for public facilities;
(b) any change in use of a building or structure that creates additional demand and need
for public facilities; or
(c) any change in the use of land that creates additional demand and need for public
facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits
one or more of a person's major life activities, including a person having a record of such an
impairment or being regarded as having such an impairment.
(b) "Disability" does not include current illegal use of, or addiction to, any federally
controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
802.

(11) "Educational facility":
(a) means:
(i) a school district's building at which pupils assemble to receive instruction in a
program for any combination of grades from preschool through grade 12, including
kindergarten and a program for children with disabilities;
(ii) a structure or facility:
(A) located on the same property as a building described in Subsection (11)(a)(i); and
(B) used in support of the use of that building; and
(iii) a building to provide office and related space to a school district's administrative
personnel; and
(b) does not include:
(i) land or a structure, including land or a structure for inventory storage, equipment
storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:
(A) not located on the same property as a building described in Subsection (11)(a)(i);
and
(B) used in support of the purposes of a building described in Subsection (11)(a)(i); or
(ii) a therapeutic school.
(12) "Fire authority" means the department, agency, or public entity with responsibility
to review and approve the feasibility of fire protection and suppression services for the subject
property.
(13) "Flood plain" means land that:
(a) is within the 100-year flood plain designated by the Federal Emergency
Management Agency; or
(b) has not been studied or designated by the Federal Emergency Management Agency
but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
the land has characteristics that are similar to those of a 100-year flood plain designated by the
Federal Emergency Management Agency.
(14) "Gas corporation" has the same meaning as defined in Section 54-2-1.
(15) "General plan" means a document that a county adopts that sets forth general
guidelines for proposed future development of:
(a) the unincorporated land within the county; or
(b) for a mountainous planning district, the land within the mountainous planning
district.
(16) "Geologic hazard" means:
(a) a surface fault rupture;
(b) shallow groundwater;
(c) liquefaction;
(d) a landslide;
(e) a debris flow;
(f) unstable soil;
(g) a rock fall; or
(h) any other geologic condition that presents a risk:
(i) to life;
(ii) of substantial loss of real property; or
(iii) of substantial damage to real property.
(17) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.
(18) "Identical plans" means building plans submitted to a county that:
(a) are clearly marked as "identical plans";
(b) are substantially identical building plans that were previously submitted to and reviewed and approved by the county; and
(c) describe a building that:
(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the county; and
(iv) does not require any additional engineering or analysis.
(19) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.
(20) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a county to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or
(b) development of a commercial, industrial, mixed use, or multifamily project.

(21) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the county's written standards for design, materials, and workmanship; and
(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(22) "Improvement warranty period" means a period:

(a) no later than one year after a county's acceptance of required landscaping; or
(b) no later than one year after a county's acceptance of required infrastructure, unless the county:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or
(B) that the area upon which the infrastructure will be constructed contains suspect soil

and the county has not otherwise required the applicant to mitigate the suspect soil.

(23) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and
(b) as a condition of:

(i) recording a subdivision plat; or
(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(24) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

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

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

(27) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

(28) "Land use application":

(a) means an application that is:

(i) required by a county; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

(29) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

(30) "Land use decision" means [a final action] an administrative decision of a land use
authority or appeal authority regarding:

(a) a land use permit;
(b) a land use application; or
(c) the enforcement of a land use regulation, land use permit, or development agreement.

(31) "Land use permit" means a permit issued by a land use authority.

(32) "Land use regulation":
(a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land; and
(b) includes the adoption or amendment of a zoning map or the text of the zoning code; and
(c) does not include:
(i) a general plan;
(ii) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
(iii) a temporary revision to an engineering specification that does not materially:
(A) increase a land use applicant's cost of development compared to the existing specification; or
(B) impact a land use applicant's use of land.

(33) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(34) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

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

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

(37) "Mountainous planning district" means an area:
(a) designated by a county legislative body in accordance with Section 17-27a-901; and
(b) that is not otherwise exempt under Section 10-9a-304.

(38) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:
(a) verifying that building plans are identical plans; and
(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(39) "Noncomplying structure" means a structure that:
(a) legally existed before its current land use designation; and
(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(40) "Nonconforming use" means a use of land that:
(a) legally existed before its current land use designation;
(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and
(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(41) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:
(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
(c) has been adopted as an element of the county's general plan.
"Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(a) no additional parcel is created; and

(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

"Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

"Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

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

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

(c) a survey of total residential land use;

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

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

"Planning advisory area" means a contiguous, geographically defined portion of the unincorporated area of a county established under this part with planning and zoning functions as exercised through the planning advisory area planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority.

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

"Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic
(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(48) "Public agency" means:
   (a) the federal government;
   (b) the state;
   (c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or
   (d) a charter school.

(49) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

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

(51) "Receiving zone" means an unincorporated area of a county that the county designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

(52) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(53) "Residential facility for persons with a disability" means a residence:
   (a) in which more than one person with a disability resides; and
   (b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
   (ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(54) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:
   (a) parliamentary order and procedure;
(b) ethical behavior; and
(c) civil discourse.

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

(56) "Sending zone" means an unincorporated area of a county that the county designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

(57) "Site plan" means a document or map that may be required by a county during a preliminary review preceding the issuance of a building permit to demonstrate that an owner's or developer's proposed development activity meets a land use requirement.

(58) "Specified public agency" means:
(a) the state;
(b) a school district; or
(c) a charter school.

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

(60) "State" includes any department, division, or agency of the state.

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

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

(b) "Subdivision" includes:
(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and
(ii) except as provided in Subsection (62)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

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

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

(A) no new lot is created; and

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

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

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

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

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

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

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

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

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

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

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vii) a parcel boundary adjustment.
(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (62) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(63) "Suspect soil" means soil that has:
(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;
(b) bedrock units with high shrink or swell susceptibility; or
(c) gypserous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

(64) "Therapeutic school" means a residential group living facility:
(a) for four or more individuals who are not related to:
(i) the owner of the facility; or
(ii) the primary service provider of the facility;
(b) that serves students who have a history of failing to function:
(i) at home;
(ii) in a public school; or
(iii) in a nonresidential private school; and
(c) that offers:
(i) room and board; and
(ii) an academic education integrated with:
(A) specialized structure and supervision; or
(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

(65) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

(66) "Unincorporated" means the area outside of the incorporated area of a
"Water interest" means any right to the beneficial use of water, including:
(a) each of the rights listed in Section 73-1-11; and
(b) an ownership interest in the right to the beneficial use of water represented by:
(i) a contract; or
(ii) a share in a water company, as defined in Section 73-3-3.5.
(68) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 8. Section 17-27a-506 is amended to read:

17-27a-506. Conditional uses.
(1) (a) A county may adopt a land use ordinance [may include] that includes conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
(b) A county may not impose a requirement or standard on a conditional use that conflicts with a provision of this chapter or other state or federal law.
(2) (a)(i) A land use authority shall approve a conditional use [shall be approved] if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
(ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
(b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.
[(b)](c) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use [may be denied].
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1038 (3) A land use authority's decision to approve or deny a conditional use is an
administrative land use decision.

1039 Section 9. Section 17-27a-508 is amended to read:

1040 17-27a-508. Applicant's entitlement to land use application approval --
Application relating to land in a high priority transportation corridor -- County's
requirements and limitations -- Vesting upon submission of development plan and
schedule.

1041 (1) (a) (i) An applicant who has [filed] submitted a complete land use application,
including the payment of all application fees, is entitled to substantive [land use] review of the
[land use] application under the land use regulations:

(A) in effect on the date that the application is complete; and [as further provided in
this section.]

(B) applicable to the application or to the information shown on the submitted
application.

1045 (ii) An applicant is entitled to approval of a land use application if the application
conforms to the requirements of the [county's] applicable land use regulations, land use
decisions, and development standards in effect when the applicant submits a complete
application [is submitted] and pays all application fees [have been paid], unless:

(A) the land use authority, on the record, formally finds that a compelling,
countervailing public interest would be jeopardized by approving the application and specifies
the compelling, countervailing public interest in writing; or

(B) in the manner provided by local ordinance and before the [application is submitted;
the county has formally initiated] applicant submits the application, the county formally
initiates proceedings to amend the county's land use regulations in a manner that would
prohibit approval of the application as submitted.

(b) The county shall process an application without regard to proceedings the county
initiated to amend the county's ordinances as [provided] described in Subsection (1)(a)(ii)(B)
if:
(i) 180 days have passed since the county initiated the proceedings; and
(ii) the proceedings have not resulted in an enactment that prohibits approval of the
application as submitted.

(c) [An application for a land use approval] A land use application is considered
submitted and complete when the applicant provides the application in a form
that complies with the requirements of applicable ordinances and pays all applicable fees.

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

(e) A county may not impose on an applicant who has submitted a complete
application for preliminary subdivision approval a requirement that is not expressed:

(i) in this chapter;
(ii) in a county ordinance; or
(iii) in a county specification for public improvements applicable to a subdivision or
development that is in effect on the date that the applicant submits an application.

(f) A county may not impose on a holder of an issued land use permit or a final,
unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;
(ii) on the subdivision plat;
(iii) in a document on which the land use permit or subdivision plat is based;
(iv) in the written record evidencing approval of the land use permit or subdivision
plat;
(v) in this chapter; or
(vi) in a county ordinance.

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

(i) in the building permit or subdivision plat, documents on which the building permit
or subdivision plat is based, or the written record evidencing approval of the building permit or
subdivision plat; or
(ii) in this chapter or the county's ordinances.
(2) A county is bound by the terms and standards of applicable land use regulations and
shall comply with mandatory provisions of those regulations.
(3) A county may not, as a condition of land use application approval, require a person
filing a land use application to obtain documentation regarding a school district's willingness,
capacity, or ability to serve the development proposed in the land use application.
(4) Upon a specified public agency's submission of a development plan and schedule as
required in Subsection 17-27a-305(8) that complies with the requirements of that subsection,
the specified public agency vests in the county's applicable land use maps, zoning map, hookup
fees, impact fees, other applicable development fees, and land use regulations in effect on the
date of submission.
Section 10. Section 17-27a-604.5 is amended to read:
17-27a-604.5. Subdivision plat recording or development activity before required
infrastructure is completed -- Improvement completion assurance -- Improvement
warranty.
(1) A land use authority shall establish objective inspection standards for acceptance of
a required landscaping or infrastructure improvement.
[(2)(a) A land use authority shall require an applicant to complete a required
landscaping or infrastructure improvement prior to any plat recordation or development
activity.]
[(b) Subsection (2)(a) does not apply if:]
[(i) upon the applicant's request, the land use authority has authorized the applicant to
post an improvement completion assurance in a manner that is consistent with local ordinance;
and]
[(ii) the land use authority has established a system for the partial release of the
improvement completion assurance as portions of required improvements are completed and]
(2) (a) Before an applicant conducts any development activity or records a plat, the applicant shall:
   (i) complete any required landscaping or infrastructure improvements; or
   (ii) post an improvement completion assurance for any required landscaping or infrastructure improvements.

(b) If an applicant elects to post an improvement completion assurance, the applicant shall ensure that the assurance:
   (i) provides for completion of 100% of the required landscaping or infrastructure improvements; or
   (ii) if the county has inspected and accepted a portion of the landscaping or infrastructure improvements, provides for completion of 100% of the unaccepted landscaping or infrastructure improvements.

(c) A county shall:
   (i) if an applicant elects to post an improvement completion assurance, allow the applicant to post an assurance that meets the conditions of this title, and any local ordinances;
   (ii) establish a system for the partial release of an improvement completion assurance as portions of required landscaping or infrastructure improvements are completed and accepted in accordance with local ordinance; and
   (iii) issue or deny a building permit in accordance with Section 17-27a-802 based on the installation of landscaping or infrastructure improvements.

(d) A county may not require an applicant to post an improvement completion assurance for landscaping or an infrastructure improvement that the county has previously inspected and accepted.

(3) At any time [up to the land use authority's acceptance of] before a county accepts a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the [developer] applicant to:
   (a) execute an improvement warranty for the improvement warranty period; and
(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the county, in the amount of up to 10% of the lesser of the:

(i) county engineer's original estimated cost of completion; or

(ii) applicant's reasonable proven cost of completion.

(4) When a county accepts an improvement completion assurance for landscaping or infrastructure improvements for a development in accordance with Subsection (2)(c)(i), the county may not deny an applicant a building permit if the development meets the requirements for the issuance of a building permit under the building code and fire code.

[(4)] (5) The provisions of this section may not be interpreted to do not supersede the terms of a valid development agreement, an adopted phasing plan, or the state construction code.

Section 11. Section 17-27a-801 is amended to read:

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

(1) No person may challenge in district court a land use decision until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

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

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

(A) the arbitrator issues a final award; or

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

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

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

(3) (a) A court shall:

(i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and

(ii) determine only whether:

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c) (i) A decision is arbitrary and capricious [unless] if the decision is not supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

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

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

(6) A challenge to a land use decision is barred unless the challenge is filed within 30
days after the land use decision is final.

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

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

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

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

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

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

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

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

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

Section 12. Section 17-27a-802 is amended to read:
1234 17-27a-802. Enforcement.
1235 (1) (a) A county or any adversely affected owner of real estate within the county in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:
1236 (i) injunctions, mandamus, abatement, or any other appropriate actions; or
1237 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
1238 (b) A county need only establish the violation to obtain the injunction.
1239 (2) (a) A county may enforce the county's ordinance by withholding a building permit.
1240 (b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a county without approval of a building permit.
1241 (c) The county may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.
1242 (d) A county may not deny an applicant a building permit because the applicant has not completed an infrastructure improvement:
1243 (i) that is not essential to meet the requirements for the issuance of a building permit under the building code and fire code; and
1244 (ii) for which the county has accepted an [infrastructure] improvement completion assurance for landscaping or infrastructure improvements for the development.