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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:



28 AMENDS:

29 **10-9a-103**, as last amended by Laws of Utah 2017, Chapters 17 and 84

30 **10-9a-507**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and
31 amended by Laws of Utah 2005, Chapter 254

32 **10-9a-509**, as last amended by Laws of Utah 2017, Chapters 84, 410, and 428

33 **10-9a-604.5**, as last amended by Laws of Utah 2015, Chapter 327

34 **10-9a-801**, as last amended by Laws of Utah 2017, Chapter 84

35 **10-9a-802**, as last amended by Laws of Utah 2016, Chapter 303

36 **17-27a-103**, as last amended by Laws of Utah 2017, Chapter 84

37 **17-27a-506**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and
38 amended by Laws of Utah 2005, Chapter 254

39 **17-27a-508**, as last amended by Laws of Utah 2017, Chapters 84, 410, and 428

40 **17-27a-604.5**, as last amended by Laws of Utah 2015, Chapter 327

41 **17-27a-801**, as last amended by Laws of Utah 2017, Chapter 84

42 **17-27a-802**, as last amended by Laws of Utah 2015, Chapter 327

43

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

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

46 **10-9a-103. Definitions.**

47 As used in this chapter:

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

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

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

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

59 with a requirement imposed under this chapter.

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

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

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

67 (i) an operating charter school;

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

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

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

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

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

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

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

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

84 (8) "Development activity" means:

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

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

89 (c) any change in the use of land that creates additional demand and need for public

90 facilities.

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

94 (b) "Disability" does not include current illegal use of, or addiction to, any federally
95 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
96 802.

97 (10) "Educational facility":

98 (a) means:

99 (i) a school district's building at which pupils assemble to receive instruction in a
100 program for any combination of grades from preschool through grade 12, including
101 kindergarten and a program for children with disabilities;

102 (ii) a structure or facility:

103 (A) located on the same property as a building described in Subsection (10)(a)(i); and

104 (B) used in support of the use of that building; and

105 (iii) a building to provide office and related space to a school district's administrative
106 personnel; and

107 (b) does not include:

108 (i) land or a structure, including land or a structure for inventory storage, equipment
109 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

110 (A) not located on the same property as a building described in Subsection (10)(a)(i);

111 and

112 (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

113 (ii) a therapeutic school.

114 (11) "Fire authority" means the department, agency, or public entity with responsibility
115 to review and approve the feasibility of fire protection and suppression services for the subject
116 property.

117 (12) "Flood plain" means land that:

118 (a) is within the 100-year flood plain designated by the Federal Emergency
119 Management Agency; or

120 (b) has not been studied or designated by the Federal Emergency Management Agency

121 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
122 the land has characteristics that are similar to those of a 100-year flood plain designated by the
123 Federal Emergency Management Agency.

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

126 (14) "Geologic hazard" means:

- 127 (a) a surface fault rupture;
- 128 (b) shallow groundwater;
- 129 (c) liquefaction;
- 130 (d) a landslide;
- 131 (e) a debris flow;
- 132 (f) unstable soil;
- 133 (g) a rock fall; or
- 134 (h) any other geologic condition that presents a risk:
 - 135 (i) to life;
 - 136 (ii) of substantial loss of real property; or
 - 137 (iii) of substantial damage to real property.

138 (15) "Historic preservation authority" means a person, board, commission, or other
139 body designated by a legislative body to:

- 140 (a) recommend land use regulations to preserve local historic districts or areas; and
- 141 (b) administer local historic preservation land use regulations within a local historic
142 district or area.

143 (16) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
144 meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other
145 utility system.

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

- 147 (a) are clearly marked as "identical plans";
- 148 (b) are substantially identical to building plans that were previously submitted to and
149 reviewed and approved by the municipality; and
- 150 (c) describe a building that:
 - 151 (i) is located on land zoned the same as the land on which the building described in the

152 previously approved plans is located;

153 (ii) is subject to the same geological and meteorological conditions and the same law
154 as the building described in the previously approved plans;

155 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
156 and approved by the municipality; and

157 (iv) does not require any additional engineering or analysis.

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

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

164 (a) recording a subdivision plat; or

165 (b) development of a commercial, industrial, mixed use, or multifamily project.

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

168 (a) complies with the municipality's written standards for design, materials, and
169 workmanship; and

170 (b) will not fail in any material respect, as a result of poor workmanship or materials,
171 within the improvement warranty period.

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

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

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

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

178 (ii) has substantial evidence, on record:

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

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

182 (22) "Infrastructure improvement" means permanent infrastructure that an applicant

183 must install:

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

186 (b) as a condition of:

187 (i) recording a subdivision plat; or

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

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

192 (a) runs with the land; and

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

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

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

199 (25) "Land use application":

200 (a) means an application that is:

201 (i) required by a municipality; and

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

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

204 (26) "Land use authority" means:

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

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

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

211 (a) a land use permit;

212 (b) a land use application; or

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

214 agreement.

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

216 (29) "Land use regulation":

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

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

220 and

221 ~~[(b)]~~ (c) does not include:

222 ~~[(i) a general plan;]~~

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

225 ~~[(iii)]~~ (ii) a temporary revision to an engineering specification that does not materially:

226 (A) increase a land use applicant's cost of development compared to the existing
227 specification; or

228 (B) impact a land use applicant's use of land.

229 (30) "Legislative body" means the municipal council.

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

233 (32) "Local historic district or area" means a geographically definable area that:

234 (a) contains any combination of buildings, structures, sites, objects, landscape features,
235 archeological sites, or works of art that contribute to the historic preservation goals of a
236 legislative body; and

237 (b) is subject to land use regulations to preserve the historic significance of the local
238 historic district or area.

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

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

244 (35) "Nominal fee" means a fee that reasonably reimburses a municipality only for time

245 spent and expenses incurred in:

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

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

249 (36) "Noncomplying structure" means a structure that:

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

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

254 (37) "Nonconforming use" means a use of land that:

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

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

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

260 (38) "Official map" means a map drawn by municipal authorities and recorded in a
261 county recorder's office that:

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

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

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

268 (39) "Parcel boundary adjustment" means a recorded agreement between owners of
269 adjoining properties adjusting their mutual boundary if:

270 (a) no additional parcel is created; and

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

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

275 (41) "Plan for moderate income housing" means a written document adopted by a city

276 legislative body that includes:

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

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

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

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

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

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

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

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

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

295 (44) "Public agency" means:

296 (a) the federal government;

297 (b) the state;

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

300 (d) a charter school.

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

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

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

307 development right.

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

310 (49) "Residential facility for persons with a disability" means a residence:

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

312 (b) (i) which is licensed or certified by the Department of Human Services under Title
313 62A, Chapter 2, Licensure of Programs and Facilities; or

314 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter
315 21, Health Care Facility Licensing and Inspection Act.

316 (50) "Rules of order and procedure" means a set of rules that govern and prescribe in a
317 public meeting:

318 (a) parliamentary order and procedure;

319 (b) ethical behavior; and

320 (c) civil discourse.

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

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

327 (53) "Specified public agency" means:

328 (a) the state;

329 (b) a school district; or

330 (c) a charter school.

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

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

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

337 (57) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be

338 divided into two or more lots, parcels, sites, units, plots, or other division of land for the
339 purpose, whether immediate or future, for offer, sale, lease, or development either on the
340 installment plan or upon any and all other plans, terms, and conditions.

341 (b) "Subdivision" includes:

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

344 (ii) except as provided in Subsection (57)(c), divisions of land for residential and
345 nonresidential uses, including land used or to be used for commercial, agricultural, and
346 industrial purposes.

347 (c) "Subdivision" does not include:

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

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

354 (A) no new lot is created; and

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

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

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

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

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

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

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

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

368 (vi) a parcel boundary adjustment.

369 (d) The joining of a subdivided parcel of property to another parcel of property that has
370 not been subdivided does not constitute a subdivision under this Subsection (57) as to the
371 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
372 subdivision ordinance.

373 (58) "Suspect soil" means soil that has:

374 (a) a high susceptibility for volumetric change, typically clay rich, having more than a
375 3% swell potential;

376 (b) bedrock units with high shrink or swell susceptibility; or

377 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum
378 commonly associated with dissolution and collapse features.

379 (59) "Therapeutic school" means a residential group living facility:

380 (a) for four or more individuals who are not related to:

381 (i) the owner of the facility; or

382 (ii) the primary service provider of the facility;

383 (b) that serves students who have a history of failing to function:

384 (i) at home;

385 (ii) in a public school; or

386 (iii) in a nonresidential private school; and

387 (c) that offers:

388 (i) room and board; and

389 (ii) an academic education integrated with:

390 (A) specialized structure and supervision; or

391 (B) services or treatment related to a disability, an emotional development, a
392 behavioral development, a familial development, or a social development.

393 (60) "Transferable development right" means a right to develop and use land that
394 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer
395 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
397 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
404 land use zones, overlays, or districts.

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

406 **10-9a-507. Conditional uses.**

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

410 (b) A municipality may not impose a requirement or standard on a conditional use that
411 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 [shall be approved] if
413 reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated
414 detrimental effects of the proposed use in accordance with applicable standards.

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

418 (b) If a land use authority proposes reasonable conditions on a proposed conditional
419 use, the land use authority shall ensure that the conditions are stated on the record and
420 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
422 cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to
423 achieve compliance with applicable standards, the land use authority may deny the conditional
424 use [may be denied].

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

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

428 **10-9a-509. Applicant's entitlement to land use application approval --**
429 **Municipality's requirements and limitations -- Vesting upon submission of development**
430 **plan and schedule.**

431 (1) (a) (i) An applicant who has ~~[filed]~~ submitted a complete land use application as
432 described in Subsection (1)(c), including the payment of all application fees, is entitled to
433 substantive ~~[land-use]~~ review of the ~~[land-use]~~ application under the land use regulations;

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

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

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

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

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

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

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

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

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

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

461 (e) A municipality may not impose on an applicant who has submitted a complete

462 application for preliminary subdivision approval a requirement that is not expressed in:

463 (i) this chapter;

464 (ii) a municipal ordinance; or

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

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

469 (i) in a land use permit;

470 (ii) on the subdivision plat;

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

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

474 (v) in this chapter; or

475 (vi) in a municipal ordinance.

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

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

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

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

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

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

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

494 **10-9a-604.5. Subdivision plat recording or development activity before required**
495 **infrastructure is completed -- Improvement completion assurance -- Improvement**
496 **warranty.**

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

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

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

503 ~~[(i) upon the applicant's request, the land use authority has authorized the applicant to~~
504 ~~post an improvement completion assurance in a manner that is consistent with local ordinance;~~
505 ~~and]~~

506 ~~[(ii) the land use authority has established a system for the partial release of the~~
507 ~~improvement completion assurance as portions of required improvements are completed and~~
508 ~~accepted.]~~

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

511 (i) complete any required landscaping or infrastructure improvements; or

512 (ii) post an improvement completion assurance for any required landscaping or
513 infrastructure improvements.

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

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

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

521 (c) A municipality shall:

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

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

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

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

532 (3) At any time [~~up to the land use authority's acceptance of~~] before a municipality
 533 accepts a landscaping or infrastructure improvement, and for the duration of each improvement
 534 warranty period, the [~~land use authority~~] municipality may require the [~~developer~~] applicant to:

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

536 (b) post a cash deposit, surety bond, letter of credit, or other similar security, as

537 required by the municipality, in the amount of up to 10% of the lesser of the:

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

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

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

545 [~~(4)~~] (5) The provisions of this section [~~may not be interpreted to~~] do not supersede the
 546 terms of a valid development agreement, an adopted phasing plan, or the state construction
 547 code.

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

549 **10-9a-801. No district court review until administrative remedies exhausted --**
 550 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**
 551 **-- Staying of decision.**

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

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

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

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

562 (B) the property rights ombudsman issues a written statement under Subsection
563 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

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

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

569 (3) (a) A court shall:

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

572 (ii) determine only whether:

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

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

577 (b) A court shall:

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

580 (ii) uphold the decision unless the decision is:

581 (A) arbitrary and capricious; or

582 (B) illegal.

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

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

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

587 (B) contrary to law.

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

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

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

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

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

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

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

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

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

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

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

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

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

621 **10-9a-802. Enforcement.**

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

- 626 (i) injunctions, mandamus, abatement, or any other appropriate actions; or
- 627 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
- 628 (b) A municipality need only establish the violation to obtain the injunction.

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

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

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

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

- 638 (i) that is not essential to meet the requirements for the issuance of a building permit
639 under the building code and fire code; and
- 640 (ii) for which the municipality has accepted an [~~infrastructure~~] improvement
641 completion assurance for landscaping or infrastructure improvements for the development.

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

643 **17-27a-103. Definitions.**

644 As used in this chapter:

645 (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
674 compatible in some areas or may be compatible only if certain conditions are required that
675 mitigate or eliminate the detrimental impacts.

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

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

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

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

683 (9) "Development activity" means:

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

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

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

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

693 (b) "Disability" does not include current illegal use of, or addiction to, any federally
694 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
695 802.

696 (11) "Educational facility":

697 (a) means:

698 (i) a school district's building at which pupils assemble to receive instruction in a
699 program for any combination of grades from preschool through grade 12, including
700 kindergarten and a program for children with disabilities;

701 (ii) a structure or facility:

702 (A) located on the same property as a building described in Subsection (11)(a)(i); and

703 (B) used in support of the use of that building; and

704 (iii) a building to provide office and related space to a school district's administrative
705 personnel; and

706 (b) does not include:

707 (i) land or a structure, including land or a structure for inventory storage, equipment
708 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

709 (A) not located on the same property as a building described in Subsection (11)(a)(i);

710 and

711 (B) used in support of the purposes of a building described in Subsection (11)(a)(i); or
712 (ii) a therapeutic school.

713 (12) "Fire authority" means the department, agency, or public entity with responsibility
714 to review and approve the feasibility of fire protection and suppression services for the subject
715 property.

716 (13) "Flood plain" means land that:

717 (a) is within the 100-year flood plain designated by the Federal Emergency
718 Management Agency; or

719 (b) has not been studied or designated by the Federal Emergency Management Agency
720 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
721 the land has characteristics that are similar to those of a 100-year flood plain designated by the
722 Federal Emergency Management Agency.

723 (14) "Gas corporation" has the same meaning as defined in Section [54-2-1](#).

724 (15) "General plan" means a document that a county adopts that sets forth general
725 guidelines for proposed future development of:

726 (a) the unincorporated land within the county; or

727 (b) for a mountainous planning district, the land within the mountainous planning
728 district.

729 (16) "Geologic hazard" means:

730 (a) a surface fault rupture;

731 (b) shallow groundwater;

732 (c) liquefaction;

733 (d) a landslide;

734 (e) a debris flow;

735 (f) unstable soil;

736 (g) a rock fall; or

737 (h) any other geologic condition that presents a risk:

738 (i) to life;

739 (ii) of substantial loss of real property; or

740 (iii) of substantial damage to real property.

741 (17) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
742 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility
743 system.

744 (18) "Identical plans" means building plans submitted to a county that:

745 (a) are clearly marked as "identical plans";

746 (b) are substantially identical building plans that were previously submitted to and
747 reviewed and approved by the county; and

748 (c) describe a building that:

749 (i) is located on land zoned the same as the land on which the building described in the
750 previously approved plans is located;

751 (ii) is subject to the same geological and meteorological conditions and the same law
752 as the building described in the previously approved plans;

753 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
754 and approved by the county; and

755 (iv) does not require any additional engineering or analysis.

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

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

762 (a) recording a subdivision plat; or

763 (b) development of a commercial, industrial, mixed use, or multifamily project.

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

766 (a) complies with the county's written standards for design, materials, and
767 workmanship; and

768 (b) will not fail in any material respect, as a result of poor workmanship or materials,
769 within the improvement warranty period.

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

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

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

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

776 (ii) has substantial evidence, on record:

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

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

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

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

784 (b) as a condition of:

785 (i) recording a subdivision plat; or

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

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

790 (a) runs with the land; and

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

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

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

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

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

- 803 (28) "Land use application":
- 804 (a) means an application that is:
- 805 (i) required by a county; and
- 806 (ii) submitted by a land use applicant to obtain a land use decision; and
- 807 (b) does not mean an application to enact, amend, or repeal a land use regulation.
- 808 (29) "Land use authority" means:
- 809 (a) a person, board, commission, agency, or body, including the local legislative body,
- 810 designated by the local legislative body to act upon a land use application; or
- 811 (b) if the local legislative body has not designated a person, board, commission,
- 812 agency, or body, the local legislative body.
- 813 (30) "Land use decision" means [~~a final action~~] an administrative decision of a land use
- 814 authority or appeal authority regarding:
- 815 (a) a land use permit;
- 816 (b) a land use application; or
- 817 (c) the enforcement of a land use regulation, land use permit, or development
- 818 agreement.
- 819 (31) "Land use permit" means a permit issued by a land use authority.
- 820 (32) "Land use regulation":
- 821 (a) means [~~an~~] a legislative decision enacted by ordinance, law, code, map, resolution,
- 822 specification, fee, or rule that governs the use or development of land; [~~and~~]
- 823 (b) includes the adoption or amendment of a zoning map or the text of the zoning code;
- 824 and
- 825 [~~(b)~~] (c) does not include:
- 826 [~~(i) a general plan;~~]
- 827 [~~(ii)~~] (i) a land use decision of the legislative body acting as the land use authority,
- 828 even if the decision is expressed in a resolution or ordinance; or
- 829 [~~(iii)~~] (ii) a temporary revision to an engineering specification that does not materially:
- 830 (A) increase a land use applicant's cost of development compared to the existing
- 831 specification; or
- 832 (B) impact a land use applicant's use of land.
- 833 (33) "Legislative body" means the county legislative body, or for a county that has

834 adopted an alternative form of government, the body exercising legislative powers.

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

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

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

843 (37) "Mountainous planning district" means an area:

844 (a) designated by a county legislative body in accordance with Section 17-27a-901; and

845 (b) that is not otherwise exempt under Section 10-9a-304.

846 (38) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
847 and expenses incurred in:

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

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

851 (39) "Noncomplying structure" means a structure that:

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

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

856 (40) "Nonconforming use" means a use of land that:

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

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

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

862 (41) "Official map" means a map drawn by county authorities and recorded in the
863 county recorder's office that:

864 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for

865 highways and other transportation facilities;

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

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

870 (42) "Parcel boundary adjustment" means a recorded agreement between owners of
871 adjoining properties adjusting their mutual boundary if:

872 (a) no additional parcel is created; and

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

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

877 (44) "Plan for moderate income housing" means a written document adopted by a
878 county legislative body that includes:

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

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

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

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

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

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

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

895 (47) "Potential geologic hazard area" means an area that:

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

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

902 (48) "Public agency" means:

903 (a) the federal government;

904 (b) the state;

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

907 (d) a charter school.

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

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

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

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

917 (53) "Residential facility for persons with a disability" means a residence:

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

919 (b) (i) which is licensed or certified by the Department of Human Services under Title
920 62A, Chapter 2, Licensure of Programs and Facilities; or

921 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter
922 21, Health Care Facility Licensing and Inspection Act.

923 (54) "Rules of order and procedure" means a set of rules that govern and prescribe in a
924 public meeting:

925 (a) parliamentary order and procedure;

926 (b) ethical behavior; and

927 (c) civil discourse.

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

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

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

937 (58) "Specified public agency" means:

938 (a) the state;

939 (b) a school district; or

940 (c) a charter school.

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

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

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

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

951 (b) "Subdivision" includes:

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

954 (ii) except as provided in Subsection (62)(c), divisions of land for residential and
955 nonresidential uses, including land used or to be used for commercial, agricultural, and
956 industrial purposes.

957 (c) "Subdivision" does not include:

- 958 (i) a bona fide division or partition of agricultural land for agricultural purposes;
- 959 (ii) a recorded agreement between owners of adjoining properties adjusting their
- 960 mutual boundary if:
 - 961 (A) no new lot is created; and
 - 962 (B) the adjustment does not violate applicable land use ordinances;
 - 963 (iii) a recorded document, executed by the owner of record:
 - 964 (A) revising the legal description of more than one contiguous unsubdivided parcel of
 - 965 property into one legal description encompassing all such parcels of property; or
 - 966 (B) joining a subdivided parcel of property to another parcel of property that has not
 - 967 been subdivided, if the joinder does not violate applicable land use ordinances;
 - 968 (iv) a bona fide division or partition of land in a county other than a first class county
 - 969 for the purpose of siting, on one or more of the resulting separate parcels:
 - 970 (A) an electrical transmission line or a substation;
 - 971 (B) a natural gas pipeline or a regulation station; or
 - 972 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other
 - 973 utility service regeneration, transformation, retransmission, or amplification facility;
 - 974 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
 - 975 their mutual boundary if:
 - 976 (A) no new dwelling lot or housing unit will result from the adjustment; and
 - 977 (B) the adjustment will not violate any applicable land use ordinance;
 - 978 (vi) a bona fide division or partition of land by deed or other instrument where the land
 - 979 use authority expressly approves in writing the division in anticipation of further land use
 - 980 approvals on the parcel or parcels; or
 - 981 (vii) a parcel boundary adjustment.
 - 982 (d) The joining of a subdivided parcel of property to another parcel of property that has
 - 983 not been subdivided does not constitute a subdivision under this Subsection (62) as to the
 - 984 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
 - 985 ordinance.
 - 986 (63) "Suspect soil" means soil that has:
 - 987 (a) a high susceptibility for volumetric change, typically clay rich, having more than a
 - 988 3% swell potential;

989 (b) bedrock units with high shrink or swell susceptibility; or
990 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum
991 commonly associated with dissolution and collapse features.

992 (64) "Therapeutic school" means a residential group living facility:

993 (a) for four or more individuals who are not related to:

994 (i) the owner of the facility; or

995 (ii) the primary service provider of the facility;

996 (b) that serves students who have a history of failing to function:

997 (i) at home;

998 (ii) in a public school; or

999 (iii) in a nonresidential private school; and

1000 (c) that offers:

1001 (i) room and board; and

1002 (ii) an academic education integrated with:

1003 (A) specialized structure and supervision; or

1004 (B) services or treatment related to a disability, an emotional development, a
1005 behavioral development, a familial development, or a social development.

1006 (65) "Transferable development right" means a right to develop and use land that
1007 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer
1008 land use rights from a designated sending zone to a designated receiving zone.

1009 (66) "Unincorporated" means the area outside of the incorporated area of a
1010 municipality.

1011 (67) "Water interest" means any right to the beneficial use of water, including:

1012 (a) each of the rights listed in Section 73-1-11; and

1013 (b) an ownership interest in the right to the beneficial use of water represented by:

1014 (i) a contract; or

1015 (ii) a share in a water company, as defined in Section 73-3-3.5.

1016 (68) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts
1017 land use zones, overlays, or districts.

1018 Section 8. Section 17-27a-506 is amended to read:

1019 **17-27a-506. Conditional uses.**

1020 (1) (a) A county may adopt a land use ordinance [may include] that includes
 1021 conditional uses and provisions for conditional uses that require compliance with standards set
 1022 forth in an applicable ordinance.

1023 (b) A county may not impose a requirement or standard on a conditional use that
 1024 conflicts with a provision of this chapter or other state or federal law.

1025 (2) (a) (i) A land use authority shall approve a conditional use [shall be approved] if
 1026 reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated
 1027 detrimental effects of the proposed use in accordance with applicable standards.

1028 (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate
 1029 anticipated detrimental effects of the proposed conditional use does not require elimination of
 1030 the detrimental effects.

1031 (b) If a land use authority proposes reasonable conditions on a proposed conditional
 1032 use, the land use authority shall ensure that the conditions are stated on the record and
 1033 reasonably relate to mitigating the anticipated detrimental effects of the proposed use.

1034 ~~[(b)]~~ (c) If the reasonably anticipated detrimental effects of a proposed conditional use
 1035 cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to
 1036 achieve compliance with applicable standards, the land use authority may deny the conditional
 1037 use [may be denied].

1038 (3) A land use authority's decision to approve or deny a conditional use is an
 1039 administrative land use decision.

1040 Section 9. Section **17-27a-508** is amended to read:

1041 **17-27a-508. Applicant's entitlement to land use application approval --**
 1042 **Application relating to land in a high priority transportation corridor -- County's**
 1043 **requirements and limitations -- Vesting upon submission of development plan and**
 1044 **schedule.**

1045 (1) (a) (i) An applicant who has ~~[filed]~~ submitted a complete land use application,
 1046 including the payment of all application fees, is entitled to substantive ~~[land use]~~ review of the
 1047 ~~[land use]~~ application under the land use regulations;

1048 (A) in effect on the date that the application is complete; and [as further provided in
 1049 this section.]

1050 (B) applicable to the application or to the information shown on the submitted

1051 application.

1052 (ii) An applicant is entitled to approval of a land use application if the application
1053 conforms to the requirements of the ~~[county's]~~ applicable land use regulations, land use
1054 decisions, and development standards in effect when the applicant submits a complete
1055 application ~~[is submitted]~~ and pays all application fees ~~[have been paid]~~, unless:

1056 (A) the land use authority, on the record, formally finds that a compelling,
1057 countervailing public interest would be jeopardized by approving the application and specifies
1058 the compelling, countervailing public interest in writing; or

1059 (B) in the manner provided by local ordinance and before the ~~[application is submitted,~~
1060 ~~the county has formally initiated]~~ applicant submits the application, the county formally
1061 initiates proceedings to amend the county's land use regulations in a manner that would
1062 prohibit approval of the application as submitted.

1063 (b) The county shall process an application without regard to proceedings the county
1064 initiated to amend the county's ordinances as ~~[provided]~~ described in Subsection (1)(a)(ii)(B)
1065 if:

1066 (i) 180 days have passed since the county initiated the proceedings ~~[were initiated]~~; and

1067 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
1068 application as submitted.

1069 (c) ~~[An application for a land use approval]~~ A land use application is considered
1070 submitted and complete when the applicant provides the application ~~[is provided]~~ in a form
1071 that complies with the requirements of applicable ordinances and pays all applicable fees ~~[have~~
1072 ~~been paid]~~.

1073 (d) The continuing validity of an approval of a land use application is conditioned upon
1074 the applicant proceeding after approval to implement the approval with reasonable diligence.

1075 (e) A county may not impose on an applicant who has submitted a complete
1076 application for preliminary subdivision approval a requirement that is not expressed:

1077 (i) in this chapter;

1078 (ii) in a county ordinance; or

1079 (iii) in a county specification for public improvements applicable to a subdivision or
1080 development that is in effect on the date that the applicant submits an application.

1081 (f) A county may not impose on a holder of an issued land use permit or a final,

1082 unexpired subdivision plat a requirement that is not expressed:

1083 (i) in a land use permit;

1084 (ii) on the subdivision plat;

1085 (iii) in a document on which the land use permit or subdivision plat is based;

1086 (iv) in the written record evidencing approval of the land use permit or subdivision
1087 plat;

1088 (v) in this chapter; or

1089 (vi) in a county ordinance.

1090 (g) A county may not withhold issuance of a certificate of occupancy or acceptance of
1091 subdivision improvements because of an applicant's failure to comply with a requirement that
1092 is not expressed:

1093 (i) in the building permit or subdivision plat, documents on which the building permit
1094 or subdivision plat is based, or the written record evidencing approval of the building permit or
1095 subdivision plat; or

1096 (ii) in this chapter or the county's ordinances.

1097 (2) A county is bound by the terms and standards of applicable land use regulations and
1098 shall comply with mandatory provisions of those regulations.

1099 (3) A county may not, as a condition of land use application approval, require a person
1100 filing a land use application to obtain documentation regarding a school district's willingness,
1101 capacity, or ability to serve the development proposed in the land use application.

1102 (4) Upon a specified public agency's submission of a development plan and schedule as
1103 required in Subsection [17-27a-305](#)(8) that complies with the requirements of that subsection,
1104 the specified public agency vests in the county's applicable land use maps, zoning map, hookup
1105 fees, impact fees, other applicable development fees, and land use regulations in effect on the
1106 date of submission.

1107 Section 10. Section [17-27a-604.5](#) is amended to read:

1108 **17-27a-604.5. Subdivision plat recording or development activity before required**
1109 **infrastructure is completed -- Improvement completion assurance -- Improvement**
1110 **warranty.**

1111 (1) A land use authority shall establish objective inspection standards for acceptance of
1112 a required landscaping or infrastructure improvement.

1113 ~~[(2)(a) A land use authority shall require an applicant to complete a required~~
1114 ~~landscaping or infrastructure improvement prior to any plat recordation or development~~
1115 ~~activity.]~~

1116 ~~[(b) Subsection (2)(a) does not apply if:]~~

1117 ~~[(i) upon the applicant's request, the land use authority has authorized the applicant to~~
1118 ~~post an improvement completion assurance in a manner that is consistent with local ordinance;~~
1119 ~~and]~~

1120 ~~[(ii) the land use authority has established a system for the partial release of the~~
1121 ~~improvement completion assurance as portions of required improvements are completed and~~
1122 ~~accepted.]~~

1123 (2) (a) Before an applicant conducts any development activity or records a plat, the
1124 applicant shall:

1125 (i) complete any required landscaping or infrastructure improvements; or

1126 (ii) post an improvement completion assurance for any required landscaping or
1127 infrastructure improvements.

1128 (b) If an applicant elects to post an improvement completion assurance, the applicant
1129 shall ensure that the assurance:

1130 (i) provides for completion of 100% of the required landscaping or infrastructure
1131 improvements; or

1132 (ii) if the county has inspected and accepted a portion of the landscaping or
1133 infrastructure improvements, provides for completion of 100% of the unaccepted landscaping
1134 or infrastructure improvements.

1135 (c) A county shall:

1136 (i) if an applicant elects to post an improvement completion assurance, allow the
1137 applicant to post an assurance that meets the conditions of this title, and any local ordinances;

1138 (ii) establish a system for the partial release of an improvement completion assurance
1139 as portions of required landscaping or infrastructure improvements are completed and accepted
1140 in accordance with local ordinance; and

1141 (iii) issue or deny a building permit in accordance with Section [17-27a-802](#) based on
1142 the installation of landscaping or infrastructure improvements.

1143 (d) A county may not require an applicant to post an improvement completion

1144 assurance for landscaping or an infrastructure improvement that the county has previously
 1145 inspected and accepted.

1146 (3) At any time [~~up to the land use authority's acceptance of~~] before a county accepts a
 1147 landscaping or infrastructure improvement, and for the duration of each improvement warranty
 1148 period, the land use authority may require the [developer] applicant to:

1149 (a) execute an improvement warranty for the improvement warranty period; and

1150 (b) post a cash deposit, surety bond, letter of credit, or other similar security, as
 1151 required by the county, in the amount of up to 10% of the lesser of the:

1152 (i) county engineer's original estimated cost of completion; or

1153 (ii) applicant's reasonable proven cost of completion.

1154 (4) When a county accepts an improvement completion assurance for landscaping or
 1155 infrastructure improvements for a development in accordance with Subsection (2)(c)(i), the
 1156 county may not deny an applicant a building permit if the development meets the requirements
 1157 for the issuance of a building permit under the building code and fire code.

1158 [~~(4)~~] (5) The provisions of this section [~~may not be interpreted to~~] do not supersede the
 1159 terms of a valid development agreement, an adopted phasing plan, or the state construction
 1160 code.

1161 Section 11. Section **17-27a-801** is amended to read:

1162 **17-27a-801. No district court review until administrative remedies exhausted --**

1163 **Time for filing -- Tolling of time -- Standards governing court review -- Record on review**

1164 **-- Staying of decision.**

1165 (1) No person may challenge in district court a land use decision until that person has
 1166 exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and
 1167 Variances, if applicable.

1168 (2) (a) Any person adversely affected by a final decision made in the exercise of or in
 1169 violation of the provisions of this chapter may file a petition for review of the decision with the
 1170 district court within 30 days after the decision is final.

1171 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a
 1172 property owner files a request for arbitration of a constitutional taking issue with the property
 1173 rights ombudsman under Section [13-43-204](#) until 30 days after:

1174 (A) the arbitrator issues a final award; or

1175 (B) the property rights ombudsman issues a written statement under Subsection
1176 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

1177 (ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional
1178 taking issue that is the subject of the request for arbitration filed with the property rights
1179 ombudsman by a property owner.

1180 (iii) A request for arbitration filed with the property rights ombudsman after the time
1181 under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

1182 (3) (a) A court shall:

1183 (i) presume that a land use regulation properly enacted under the authority of this
1184 chapter is valid; and

1185 (ii) determine only whether:

1186 (A) the land use regulation is expressly preempted by, or was enacted contrary to, state
1187 or federal law; and

1188 (B) it is reasonably debatable that the land use regulation is consistent with this
1189 chapter.

1190 (b) A court shall:

1191 (i) presume that a final decision of a land use authority or an appeal authority is valid;
1192 and

1193 (ii) uphold the decision unless the decision is:

1194 (A) arbitrary and capricious; or

1195 (B) illegal.

1196 (c) (i) A decision is arbitrary and capricious ~~[unless]~~ if the decision is not supported by
1197 substantial evidence in the record.

1198 (ii) A decision is illegal if the decision is:

1199 (A) based on an incorrect interpretation of a land use regulation; or

1200 (B) contrary to law.

1201 (4) The provisions of Subsection (2)(a) apply from the date on which the county takes
1202 final action on a land use application for any adversely affected third party, if the county
1203 conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice
1204 of the pending decision.

1205 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment

1206 of a land use regulation or general plan may not be filed with the district court more than 30
1207 days after the enactment.

1208 (6) A challenge to a land use decision is barred unless the challenge is filed within 30
1209 days after the land use decision is final.

1210 (7) (a) The land use authority or appeal authority, as the case may be, shall transmit to
1211 the reviewing court the record of its proceedings, including its minutes, findings, orders and, if
1212 available, a true and correct transcript of its proceedings.

1213 (b) If the proceeding was recorded, a transcript of that recording is a true and correct
1214 transcript for purposes of this Subsection (7).

1215 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
1216 by the land use authority or appeal authority, as the case may be.

1217 (ii) The court may not accept or consider any evidence outside the record of the land
1218 use authority or appeal authority, as the case may be, unless that evidence was offered to the
1219 land use authority or appeal authority, respectively, and the court determines that it was
1220 improperly excluded.

1221 (b) If there is no record, the court may call witnesses and take evidence.

1222 (9) (a) The filing of a petition does not stay the decision of the land use authority or
1223 appeal authority, as the case may be.

1224 (b) (i) Before filing a petition under this section or a request for mediation or
1225 arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may
1226 petition the appeal authority to stay its decision.

1227 (ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed
1228 pending district court review if the appeal authority finds it to be in the best interest of the
1229 county.

1230 (iii) After a petition is filed under this section or a request for mediation or arbitration
1231 of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an
1232 injunction staying the appeal authority's decision.

1233 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
1236 which violations of this chapter or ordinances enacted under the authority of this chapter occur

1237 or are about to occur may, in addition to other remedies provided by law, institute:
1238 (i) injunctions, mandamus, abatement, or any other appropriate actions; or
1239 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
1240 (b) A county need only establish the violation to obtain the injunction.
1241 (2) (a) A county may enforce the county's ordinance by withholding a building permit.
1242 (b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any
1243 building or other structure within a county without approval of a building permit.
1244 (c) The county may not issue a building permit unless the plans of and for the proposed
1245 erection, construction, reconstruction, alteration, or use fully conform to all regulations then in
1246 effect.
1247 (d) A county may not deny an applicant a building permit because the applicant has not
1248 completed an infrastructure improvement:
1249 (i) that is not essential to meet the requirements for the issuance of a building permit
1250 under the building code and fire code; and
1251 (ii) for which the county has accepted an [~~infrastructure~~] improvement completion
1252 assurance for landscaping or infrastructure improvements for the development.

Legislative Review Note
Office of Legislative Research and General Counsel